

BEFORE THE  
PUBLIC UTILITY COMMISSION OF OREGON

IN THE MATTER THE PUBLIC UTILITY COMMISSION OF OREGON	)	CASE NO. UM 1610
Investigation Into Qualifying Facility Contracting and Pricing	)	MOTION OF THE COMMUNITY RENEWABLE ENERGY ASSOCIATION TO AMEND PHASE I ISSUE LIST

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Pursuant to OAR 860-001-0420, the Community Renewable Energy Association (“CREA”) hereby respectfully moves to amend the Issues List in Phase I of this proceeding to include Issue No. 6 E “How should contracts address mechanical availability?” Issue No. 6 E is currently scheduled to be considered in Phase 2. PaTu has made a good faith effort to seek agreement from the other parties and as of this date has received no objection to its recommendation but has received some expressions of concern about timing. CREA believes the PUC Staff solution to the timing questions is a good one. Staff suggested that the utilities be given until February 19 to file testimony on the MAG issue which gives them some extra time to gather facts and still gives the other parties about a month to reply.

BACKGROUND, PaTu WIND’S MAG SAGA

The question of the administration of the mechanical available guarantee clause (“MAG”) that is currently in Portland General Electric’s (“PGE”) standard QF power purchase agreement (“PPA”) has been extensively, and fruitlessly, argued by PaTu Wind LLC, in Docket No. UM 1566. PaTu, a ten megawatt off-system wind QF, asserted in that docket that PGE’s MAG is impossibly high and, depending on PGE’s interpretation of the MAG, it may not physically possible to comply with while at the same time complying with the wind turbine manufacturer’s specifications for routine maintenance. The annual MAG contained in PGE’s

standard contract requires the QF to maintain an annual mechanical availability factor of 91 percent in the first contract year and 95 percent in all subsequent years. In addition, PGE may terminate the PPA without an opportunity for the QF to cure if it fails to meet those high standards in any given year.

The result of the UM 1566 litigation was the Public Utility Commission of Oregon's (PUC) Order No. 12-316 (on certification from an adverse ALJ ruling), in which the Commission refused to provide PaTu any relief from the onerous MAG clause stating:

Accordingly we affirm the ALJ's ruling to grant PGE's motion on the pleadings for the first [MAG] claim. In making this decision, we note that we recently opened a generic docket, UM 1610, to investigate a range of issues arising recently related to electric utilities' purchases from QFs. PaTu may request reconsideration of certain provisions to the standard contract in that proceeding.

Order No. 12-316 p. 6.

Then, on December 20, 2012, in its order on reconsideration, the Commission reaffirmed its position that PaTu raise the MAG issue in UM 1610:

The MAG clause in the utilities' standard contracts may be addressed in docket UM 1610. PaTu or any other party may raise associated issues, including amendment of existing PPAs.

Order No. 12-494 p. 6.

Then, on January 15, 2013, the Community Renewable Energy Association attempted to obtain provisional relief from the MAG clause, but was rebuffed by the Commission at the weekly public meeting during which PGE's standard contract and updated avoided cost rates were being considered. See Item 1 on the PUC's Regular Agenda for January 15, 2013.

<http://www.oregon.gov/puc/meetings/pmemos/2013/011513/reg1.pdf>; OPUC Docket No. 1637.

CREA had filed an objection to approval of PGE's standard contracts which were before the Commission for approval at that Public Meeting, and requested revision of PGE's MAG clause

pending full resolution of the issue in UM 1610. The Commission approved the contracts without comment from the bench and without a written order explaining its rationale.

#### DE FACTO PGE WIND MORATORIUM

No wind QFs can execute a PPA with Portland General Electric Co. until its MAG clause is revised. PGE has effectively imposed a moratorium on new wind QFs until this issue is resolved. It is simply impossible for a wind QF to comply with a 95 percent mechanical available guarantee.


#### NO PARTY WILL BE PREJUDICED BY AMENDING THE PROCEDURAL SCHEDULE

Addressing the MAG in Phase One will not prejudice any party. CREA has no objection to the MAG contained in PacifiCorp's standard PPAs. PGE will not be prejudiced by CREA (or other parties) raising the MAG issue as PGE's MAG is already established in its standard contracts. The other parties to the docket are not scheduled to file testimony until mid March – giving them plenty of time to address this single, and relatively straight forward issue in their direct testimonies. PGE and the other utilities will have an opportunity to respond thereto afterwards in reply testimony.

For all of the above and foregoing reasons, CREA respectfully requests the Commission amend the procedural schedule in UM 1610 by moving Issue No. 6 E to phase one for consideration.

RESPECTFULLY SUBMITTED this 25th day of January, 2013.

RICHARDSON & O'LEARY PLLC

  
Peter J. Richardson  
OSB#06668

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 25th day of January, 2013, a true and correct copy of the within and foregoing **REQUEST FOR CHANGE TO SERVICE LIST OF THE COMMUNITY RENEWABLE ENERGY ASSOCIATION** was served as shown to:

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