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May 20, 2013

Via Electronic Filing and U.S. Mail

Oregon Public Utility Commission
Attention: Filing Center
550 Capitol St NE #215
PO Box 2148
Salem OR 97308-2148

Re: Investigation into Qualifying Facility Contracting and Pricing
UM 1610

Attention Filing Center:

Enclosed for filing in the above-captioned docket is an original and one copy of Portland General Electric Company's **Prehearing Memorandum**. An electronic copy of this filing is also being filed with the Filing Center and electronically served upon the UM 1610 Service List.

Thank you in advance for your assistance.

Sincerely,

J. Richard George
Assistant General Counsel

JRG: qal
Enclosures
cc: UM 1610 Service List

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1610

In the Matter of PUBLIC UTILITY COMMISSION OF OREGON Investigation into Qualifying Facility Contracting and Pricing.	)	PREHEARING MEMORANDUM OF PORTLAND GENERAL ELECTRIC

I. Introduction and Summary

Portland General Electric Company ("PGE") hereby submits this prehearing memorandum in docket UM 1610 concerning policy issues surrounding Qualifying Facility Contracting and Pricing under the Public Utility Regulatory Policy Act of 1978 (PURPA) as implemented in Oregon. For many of the issues being addressed in this docket, PGE is closely aligned with Staff and many of the other parties. In particular, we support continuing the current methodology for calculating avoided cost, but incorporating standardized adjustments for integration and capacity, as proposed by Staff. We agree with most parties on the disposition of renewable energy credits (RECs) and that updates to avoided costs should be made more frequently than previously. We also support adding Pacificorp's proposal for liquidated damages and cure rights to our mechanical availability percentage (MAP) and Pacificorp's proposed changes to the disaggregation rules to avoid gaming by projects seeking to take advantage of standardized pricing and contracts. Furthermore, we support Staff's proposal regarding a legally enforceable obligation (LEO) at a minimum being established when a final draft PPA is

approved by the QF, although we acknowledge this is for the most part a case-specific legal question.

PGE does not believe levelization of avoided cost prices, as proposed by the QF advocates, is appropriate. This places significant risk on the purchasing utilities and their customers, as the QF project will be essentially "overpaid" or "loaned" money in the front of a long term contract with the expectation of lower payments in the later years to "pay back" the debt. Any default or failure to perform by the QF, before the contract is complete, could result in significant payments above avoided cost by the utilities and their customers. Moreover, levelization is not consistent with the concept of resource sufficiency/deficiency adopted by the Commission as key components of the avoided cost calculation methodology.

Most significantly, PGE differs from the QF advocates regarding the appropriate size threshold for standard contracts and pricing. Many of the issues in this docket are closely related and potentially moot if the size for the eligibility of a standard contract is reduced significantly from the current 10MW threshold. Essentially, reducing the size down to PGE's proposed 100KW will allow more contracts to be negotiated so that avoided costs paid to QFs reflect the true value of the QF power being purchased by a utility. Disaggregation rules, more frequent updates, and even standard adjustments are less necessary if flexibility under the PURPA-prescribed seven adjustment factors is allowed to be reflected in the specific pricing for a QF's power purchase agreement.

Reducing the threshold to 100KW will reduce significantly the risk of harm to utility customers who have no choice but to bear costs imposed by PURPA's mandatory utility purchase obligation. It is important to note that no parties have submitted factual evidence of harm to QFs of such a reduced threshold. Indeed, QFs may still compel purchases of their power

and obtain mandatory contracts and avoided cost pricing if they are above the threshold proposed by PGE. The reduced threshold simply ensures that the prices are accurate.

PGE's positions are not only legally consistent with PURPA; they make good policy sense and will help to protect customers from undue harm. We ask that the Commission carefully consider and balance the objective set forth in ORS 758.515(2)(b) by the Oregon legislature with respect to PURPA: "It is the goal of Oregon to: (b) Insure that rates for purchases by an electric utility from, and rates for sales to, a qualifying facility shall over the term of a contract be just and reasonable to the electric consumers of the electric utility, the qualifying facility and in the public interest." We think PGE's proposals best achieve this objective.

II. PGE Positions By Issue

1) Avoided Cost Price Calculation

1.Ai *Should the Commission retain the current method based on the cost of the next avoidable resource identified in the company's current IRP, allow an "IRP" method based on computerized grid modeling, or allow some other material?*

With respect to the methodology for avoided cost calculation, PGE believes that the parties, other than Idaho Power, are essentially in agreement that the current methods established in Commission Order Nos. 05-584 and 11-505 largely should be retained. (See Exhibit PAC/100, Dickman/2; Coalition/200, Schoenbeck/2; CREA/200, Reading/8; and OneEnergy/100, Eddie, 21-22). Staff proposed price adjustments for capacity, based on peak load, by resource type and for integration costs. (Staff/100, Bless/4-6). PGE agrees with Staff that these adjustments are necessary to ensure accurate avoided cost prices. (PGE/300 Macfarlane – Morton/15, 18). These adjustments are discussed more fully below.

1.B Should QFs have the option to elect avoided cost prices that are levelized or partially levelized?

PGE strongly believes that avoided cost prices should not be levelized, because, as discussed above, it places undue risk on utilities and their customers. In effect, the QF will be paid higher than actual avoided cost prices in the front end of a long term contract, and will compensate for this with lower rates on the back end. Any default, failure to perform, or degradation of performance (including a reduction in size or output) will result in overpayment to the QF. (PGE/300 Macfarlane – Morton/8). This may not be consistent with PURPA and FERC's PURPA regulations. 18 CFR § 292.304 (a)(2) clearly provides that utilities may not be required to pay "more than avoided costs for purchases." 18 CFR §292.304 (b)(5) does allow an exception for standard rates calculated at the front end of a contract to differ from actual avoided costs over the term of that contract. However, the rule only allows for a difference between "estimated" rates for the term and "actual" rates at the time of delivery. Levelized rates are not estimated rates. They are rates that are artificially modified to achieve uniformity on a monthly basis. (*See* CREA/200, Reading/10).

Moreover, levelized rates are inconsistent with the concept of resource sufficiency/deficiency adopted by the Commission in Order No 05-584. In that order, the Commission adopted differentiation in order to reflect a utility's resource position. Levelized rates would blur this distinction and undermine this key element of achieving accurate avoided costs. (PGE/300 Macrfarlane – Morton/ 8). The Commission in Order No 05-584 emphasized that the long history of the Commission differentiating between resource deficit and surpluses in calculating avoided costs was to achieve "the accurate calculation of avoided costs," which the Commission explained is one of its primary goals. See Order No. 05-584 at 26.

1.C Should QFs seeking renewal of a standard contract during a utility's sufficiency period be given an option to receive an avoided cost price for energy delivered during the sufficiency period that is different than the market price?

PGE is in agreement with Staff (Staff/100, Bless/13-14) and supports retaining the current policy in which the standard rates for renewal of a standard contract reflect the applicable sufficiency period. Elimination of the sufficiency period will have the effect of having an avoided cost that is artificially high. As Staff explained, the policy goal of the Commission in Order 05-584 was to allow projects to be financed without undue risk to customers. Renewed contracts are for projects that are already operational and presumably already financed based on the prior contract. (PGE/300 Macrfarlane – Morton/ 9-10). Paying them subsidized rates is inconsistent with the Commission's objectives.

2) <u>Renewable Avoided Cost Price Calculation</u>

2.A Should there be different avoided cost prices for different renewable generation sources?

PGE supports continuation of the approach adopted by the Commission in Order No 11-505 (the avoidable renewable resource is the next major renewable resource identified in the IRP), and thus does not support different avoided cost prices for different renewable generation sources. However, PGE does support Staff standard adjustments for capacity and integration, as discussed below.

2.B How should environmental attributes be defined for purposes of PURPA transactions?

2.C Should the Commission amend OAR 860-022-0075, which specifies that the non-energy attributes of energy generated by the QF remain with the QF unless different treatment is specified by contract?

Environmental attributes should be defined using the industry standard WSPP Agreement definition, both for situations when the QF is retaining the environmental attributes during the

sufficiency period and when the utility receives the attributes during the deficiency period for renewable QF contracts. This definition is industry tested (PGE/100 Macfarlane – Morton/15; PGE/300 Macfarlane – Morton/11) and consistent with OAR 860-022-0075, which pertains to "non-energy" attributes, not simply compliance renewable energy credits (RECs) under Oregon's renewable portfolio standard (RPS). All environmental attributes associated with actual generation of electricity should be transferred to the utility during the deficiency period when a QF chooses the renewable avoided cost, in order to align the characteristics of the avoided renewable resource pricing (which includes all non-energy attributes) with the renewable QF.[1]

3) <u>Schedule for Avoided Cost Price Updates</u>

3.A *Should the Commission revise the current schedule of updates at least every two years and within 30 days of each IRP acknowledgment?*

3.B *Should the Commission specify criteria to determine whether and when mid-cycle updates are appropriate?*

3.C *Should the Commission specify what factors can be updated in mid-cycle (such as factors including but not limited to gas price or status of production tax credits)?*

3.D *To what extent (if any) can data from IRPs that are in the late stages of review and whose acknowledgment is pending be factored into the calculation of avoided cost prices?*

3.E *Are there circumstances under which the Renewable Portfolio Implementation Plan should be used in lieu of the acknowledged IRP for purposes of determining renewable resource sufficiency?*

Unless the threshold for negotiating QF contracts is lowered to 100KW, the schedule of avoided cost updates needs to be shortened to annual updates to help achieve more accurate avoided costs. In the current system, where the standard prices remain unchanged for up to two

[1] However, PGE has become aware of environmental attributes that could be created by certain facilities that are not linked to energy generation (e.g. biomass) and proposes to carve those out of the definition.

years (unless an IRP is acknowledged), there is a high likelihood that the determinants for avoided cost, specifically gas and electricity prices, and capital costs will have changed (PGE/100 Macfarlane – Morton/16; PGE/300 Macfarlane – Morton/12), resulting in inaccurate avoided costs. This could harm both QFs and utility customers, depending on how the determinants have moved, thus it is in both QF and utilities' interests to have more frequent updates.

Although having an annual update will eliminate the need for most mid-cycle updates (Staff/100 Bless/21), it is still possible that significant changes in the inputs to avoided cost calculations may require special treatment. PGE believes such instances will be rare, but that the Commission should retain sufficient flexibility to address these circumstances on a case by case basis. Thus, the Commission should not adopt specific criteria, nor limit which factors the Commission may consider in these instances. In addition, the Commission should maintain sufficient flexibility to incorporate information from the integrated resource planning (IRP) process, including from IRP's awaiting acknowledgement.

PGE strongly recommends that the Commission continue its policies developed in Order Nos. 10-488 and 11-505 regarding use of the IRP as the method for determining resource sufficiency/deficiency for renewable avoided costs. The IRP (as opposed to the Renewable Resource Implementation Plan) allows resource sufficiency/deficiency decisions to be made as part of the fully integrated process, where resource decisions, including for renewable and non-renewable resources, are made.

4) <u>Price Adjustments for Specific QF Characteristics</u>

4.A *Should the costs associated with integration of intermittent resources (both avoided and incurred) be included in the calculation of avoided cost prices or otherwise be accounted for in the standard contract? If so, what is the appropriate methodology?*

PGE is flexible with respect to how the costs associated with variable or intermittent QF projects should be included in avoided costs or standard contracts. However, we believe inclusion of such costs is necessary "to obtain an accurate avoided cost calculation and ensur[e] a fair balanc[e] of interests between utility customers and QFs." (PGE/300 Macfarlane – Morton/15). Intermittent QF resources impose real costs on PGE's system (PGE/300 Macfarlane – Morton/16; PGE/101 Macfarlane – Morton), and thus PGE should be able to capture such costs, otherwise they would be subsidized by PGE customers. In our testimony, PGE offered a proposed approach to adjusting payments to QFs to reflect whether they offer variable energy, or more valuable firm energy. (PGE/100 Macfarlane – Morton 19-21). In some cases the payments would be adjusted upwards to reflect the firmness of the power. In other cases, integration costs would be subtracted to account for the costs imposed on the utility by variable resources. A summary table is provided at PGE/100 Macfarlane – Morton 20.

4.B Should the costs or benefits associated with third party transmission be included in the calculation of avoided cost prices or otherwise accounted for in the standard contract?

PGE includes the costs and benefits of third-party transmission in the calculation of avoided cost prices and recommends continuing this policy for IRP resources located outside of the service territory of the utility. (PGE/300 Macfarlane – Morton/17)

4.C How should the seven factors of 18 CFR 292.304(e)(2) be taken into account?

The seven factors set forth in 18 CFR 292(e)(2) are applicable to both standard and negotiated rate contracts. *See* 18 CFR 292(c)(3) and (e) generally. PGE proposes that if the standard cap is lowered to 100KW, that the utilities be able to apply these adjustment factors only to avoided cost rates for QFs above the 100KW threshold. If the cap is not lowered, PGE requests that these factors be applied for each specific QF's avoided cost rates, even for standard

contracts under 10MW, as allowed under PURPA. By applying these factors, PGE and its customers will have greater certainty that they are paying the actual avoided cost value for the specific QF's energy they are purchasing.

5) Eligibility Issues

5.A Should the Commission change the 10MW cap for the standard contract?

In the alternative, if Staff's proposals (Staff/100, Bless/4,6) for standard adjustments to avoided cost for capacity and integration are adopted, PGE recommends that the cap for standard contracts be set at 1MW. The adjustments proposed by Staff will help significantly to mitigate the potential for avoided costs to be inaccurate for a given QF, however they do not specifically reflect the particular QF's characteristics. Thus, Staff's proposed adjustments do not fully address the unlikelihood for the standard avoided costs to reflect the actual avoided cost of the QF delivering the power. As set forth in PGE's testimony, two identical solar facilities may have different capacity factors than Staff's proposed adjustment, simply based on their geographic location. (PGE/300 Macfarlane – Morton/20). But since Staff's adjustments are a step in the right direction, PGE is willing to suggest a 1MW cap if they are adopted, rather than the 100KW proposal. If Staff's standardized adjustments are not approved, PGE continues to support a 100KW threshold for standard contract eligibility.

5.B What should be the criteria to determine whether a QF is a "single QF" for purposes of eligibility for the standard contract?

5.C Should the resource technology affect the size of the cap for the standard contract cap or the criteria for determining whether a QF is a "single QF"?

PGE agrees with Pacificorp's proposal to remove the passive investor exception from the Partial Stipulation in the UM 1129 Docket. (PAC/200 Griswold/25-26). PGE does not wish to prevent independent family or community-based projects from sharing common infrastructure and having common passive investors, but we do believe changes are necessary to avoid serious

concerns about large sophisticated developers taking advantage of standard contracts. As Pacificorp notes, "13 of the 14 Oregon wind QF projects are the result of a large wind project developed by a single developer that have been disaggregated into smaller wind QF projects that are less than or equal to 10MW." (PAC/200 Griswold/26). PGE does not support having different rules depending on resource type for determining whether projects constitute a single QF for standard contract purposes. (PGE/300 Macfarlane – Morton/21). In addition, the proposed 100KW threshold should apply uniformly to all QFs, regardless of resource technology, to avoid administrative inefficiency and issues of discriminatory treatment.

5.D Can a QF receive Oregon's Renewable avoided cost price if the QF owner will sell the RECs in another state?

During resource sufficiency periods, the QF controls the RECs and can sell them at will, including in another state. See Order 11-505.

6) <u>Contracting Issues</u>

6.A When is there a legally enforceable obligation?

Cedar Creek Wind, LLC, 137 FERC P 61006 (2011) holds that a state Commission cannot limit the method through which a legally enforceable obligation ("LEO") may be created to an executed contract. The Commission, however, may determine the date on which an LEO is incurred. *West Penn Power Co.* 71 FERC P 61,153 (1995) and *Power Resources Group, Inc.*, 422 F.3d 231, 238 (2005). PGE recommends a rule that establishes that a LEO cannot be created more than one year before the QF has or will have power available, or a demonstrated construction period if longer than one year.[2] Under this approach, QFs cannot lock down QF rates well in advance of commercial operation, and current avoided costs are more likely to be

[2] Other jurisdictions have developed similar rules. In Texas, the Commission adopted a 90-day rule, which was upheld by the Texas district court. *Exelon Wind 1, LLC v. Smitherman*, A-09-CA-917-SS, 2012 WL 4465607 (W.D. Tex. Sept. 25, 2012)

reflected in prices paid to the QF. Moreover, filed avoided cost rates are much more likely to be accurate (not necessarily lower or higher) if the date on which the LEO and rates are established is close to the QFs actual delivery of net output. (PGE/100 Macfarlane – Morton/23). PGE believes a year is a reasonable period to allow for financing and most construction. (PGE/300 Macfarlane – Morton/22). PGE is also willing to allow for a case-by-case exception for projects where construction would take longer than a year.

PGE also supports proposals set forth by PacifiCorp (PAC/200, Griswold/30-31) and Staff (Staff/100, Bless/40) that the Commission allow the final executable draft contract as the basis for potential legal commitment to performance by the QF. Although the establishment of a LEO is a legal question, based on the specific facts concerning a QF project, PGE believes in most cases the LEO will be established at that point, as terms and conditions are known and established enough that a QF may commit. Prior to the exchange of the final draft contract under PGE's Schedule 202 governing negotiated contracts, terms such as security, default, damage and termination are not yet established. (PGE/100 Macfarlane – Morton/22). As PGE expressed in its testimony, "[c]oncerns about the utility's ability to delay or avoid execution of the agreement are mitigated by the specific timelines contained in Schedule 202, the expedited dispute resolution process established by the Commission, and the requirement set forth in our schedule that PGE 'not unreasonably delay negotiations and respond in good faith to any additions, deletions or modifications to the draft Negotiated Agreement that are proposed by the Seller'." (*Id.*).

6.B How should contracts address mechanical availability?

PGE proposed in its testimony a significant concession regarding the MAP that is currently contained in its effective standard contract for intermittent resources. Specifically, although the percentages are unchanged (91% in the first year and 95% in subsequent years), we

proposed to include an explicit recognition of 200 hours for year in planned maintenance per wind turbine. In addition, we would calculate "downtime" on a turbine-by-turbine basis, meaning that if one turbine was down, the entire facility would not be considered down. *See* PGE/200 Macfarlane – Bettis/3. In addition, we propose to include liquidated damages and cure provisions similar to Pacificorp's current standard provisions, which should make the MAP even less stringent for the QF. (PGE/300 Macfarlane – Morton/23). We note that this MAP, as proposed, would clearly be in line with industry standards and achievable by PGE's own Biglow Canyon Wind Project. (PGE/200 Macfarlane – Morton/3-5).

6.C What is the appropriate contract term? What is the appropriate duration for the fixed price portion of the contract?

PGE continues to support the current practice for a newly constructed QF of a 20 year standard contract term with 15 years of fixed prices and the final 5 years based on a daily market index. For a negotiated contract, the term may differ and the length of the fixed portion versus the market price portion may differ, consistent with Order No 07-360 at 11-12 ("We agree with ODOE that risks associated with longer term contracts can be mitigated by "market-based" pricing provisions. We do not reach any conclusion regarding when such provisions should first go into effect, relative to the length of the contract.").

With respect to renewals of standard QF agreements, PGE recommends a 5 year fixed term, because renewing QFs "generally have recovered their investment and should no longer be financing a project." (PGE/100 Macfarlane – Morton/24). However, we agree with CREA that a 5 year term may not be appropriate for facilities that are repowering with new wind turbines or solar panels, because such facilities may require additional financing. Thus, we propose that a facility that has been repowered within the past 5 years should be eligible for a full 20 year term, with the first 15 years fixed and the remaining five years at market, similar to a new standard QF.

III. Conclusion

Care must be taken to implement PURPA in Oregon in a way that balances the interests of utility customers with QF developers. Key to this balance is accurate avoided costs. Greater accuracy can be achieved by having significantly lower thresholds for standard contracts, thereby allowing negotiations to reflect the specific characteristics of a QF facility. Incorporating standard adjustments for capacity and integration, as proposed by Staff, will help to achieve more accuracy, although PGE believes application of all seven of the PURPA adjustment factors will go even further. More frequent updates will also help achieve greater accuracy by accounting for changes to the inputs, such as gas forecasts and capital costs, which go into calculating avoided cost rates. The collection of PGE's proposals, contained in our testimony, is designed in aggregate to help achieve greater accuracy and balance the interests of utility customers with promoting QF development.

DATED this 20 day of May, 2013

Respectfully Submitted,

PORTLAND GENERAL ELECTRIC COMPANY

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CERTIFICATE OF SERVICE

I hereby certify that I have this day caused **PORTLAND GENERAL ELECTRIC COMPANY'S PREHEARING MEMORANDUM** to be served by electronic mail to those parties whose email addresses appear on the attached service list for OPUC Docket No. UM 1610.

Dated at Portland, Oregon, this 20th day of May, 2013.

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