Cleantech Law Partners

**Cleantech Law Partners, PC**
6228 SW Hood Ave.
Portland, OR 97239
541.270.6001

June 14, 2013

Oregon Public Utility Commission
Attention: Filing Center
550 Capitol Street NE, #215
PO Box 2148
Salem OR 97308-2148
E-mail: PUC.filingcenter@state.or.us

Re: Docket UM 1610—Investigation into Qualifying Facility Contracting and Pricing

Attention Filing Center:

Enclosed for filing in UM 1610 are an original and five (5) copies of:

Post–Hearing Brief of Small Business Utility Advocates

This document is being filed by electronic mail with the Filing Center. Hard copies will be sent via US Mail.

Please contact me if you have any questions, however, note that I will be out of the office from June 14-19, 2013.

This document is being served upon the UM 1610 service list.

Sincerely,

Diane Henkels, CLP
Counsel for SBUA

Enclosure

Cc: UM 1610 Service list (by e-mail)

**BEFORE THE PUBLIC UTILITY COMMISSION**

**OF OREGON**

**UM 1610**

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| In the Matter of<br><br>PUBLIC UTILITY COMMISSION OF OREGON,<br><br>Investigation Into Qualifying Facility Contracting and Pricing. | POST-HEARING BRIEF OF SMALL BUSINESS UTILITY ADVOCATES |

## I. INTRODUCTION

In compliance with Judge Kirkpatrick's and Judge Pines' Post-Hearing Memorandum of May 30, 2013, SBUA hereby submits its Post-Hearing Brief in this matter. In this brief, SBUA will summarize and present each legal argument supporting SBUA's position, citing to admitted testimony and exhibits.

As expressed in the Commission's April 25, 2012 Order in UM 1590 and UM 1593, and in ALJ Grant's October 25, 2012 Ruling in this docket, the purpose of this docket is to address, in generic fashion, issues related to PURPA implementation and QF contracting. As set forth in Judge Grant's December 21, 2013 Ruling, the proceeding subject of this brief is Phase One, that is, Issues 1-5, and Issue 6B and 6I.

Issues SBUA covers generally pertain to maintaining a rate pricing that is reasonable for Oregon's small businesses including, among others, those in the energy sector, and expression of pricing that is reasonably understandable to community-based renewable energy project decision-makers.

## II. BACKGROUND

### A. Federal and Oregon PURPA

The Public Utility Regulatory Policies Act of 1978 (P.L. 95-617) (hereinafter "federal PURPA") Title II Section 210 seeks to "encourage development of cogeneration and small power production facilities" *FERC v. Mississippi*, 456 US 742, 750 (1981)(Holding the federal PURPA within Congress' power under the Commerce Clause and do not trench on state sovereignty in violation of the Tenth Amendment). A "small power production facility" is one

that has a production capacity of no more than 80 megawatts and uses biomass, waste, or renewable resources (such as wind, water, or solar energy) to produce electric power. 18 CFR 292.204. The federal PURPA identifies these facilities and cogeneration facilities as "qualifying facilities" herein referred to as "QFs". See 18 CFR 292.204. "Congress believed that increased use of these sources would reduce the demand for traditional fossil fuels". *FERC v. Mississippi*, 456 US 750 (1981). The State of Oregon Legislature chose to take the route of enacting a full statutory and regulatory framework. ORS 758.505 et seq. (hereinafter "Oregon PURPA"). Oregon's legislation closely parallels the federal statute, and the Commission has, in turn, prescribed administrative rules, which, with a few exceptions, are substantively the same as the federal regulations. *Snow Mt. Pine Co.v. Maudin*, 84 Or App 590, 594 (1987), OPUC Order 05-584, p 7.

In the Oregon PURPA, the Legislature declared a goal "to promote a diverse array of sustainable energy resources using the public and private sectors to the highest possible degree" and to insure that rates for purchases by an electric utility from a QF are just and reasonable to the electric consumers of the electric utility, the QF, and in the public interest. ORS 758.515(2). The articulated state policy was to increase the marketability of electric energy produced by qualifying facilities located throughout the state for the benefit of Oregon's citizens and create a settled and uniform institutional climate for QFs in Oregon. ORS 758.515 (2) and (3). Since implementing PURPA, the Commission sought to provide maximum incentives for the development of QFs of *all* sizes, while ensuring that ratepayers remain indifferent to QF power by having utilities pay no more than their avoided costs. Order 05-584 p 11.

In 2007, the Oregon Legislature declared that community-based renewable energy projects are an essential element of Oregon's energy future, and that it is the goal of the State of Oregon that by 2025 at least eight percent of Oregon's retail electrical load comes from small-scale renewable energy projects with a generating capacity of 20 megawatts or less. ORS 469A.210. This statute also requires executive agencies, including the Commission, to establish policies and procedures promoting the eight percent goal. Id. As enacted, this statute impacts all PURPA standard offer contracts in Oregon since those projects are all under 20 MW**.** Oregon's value in community-based energy is particularly meaningful to small businesses involved with PURPA projects. Testimony demonstrates a strong correlation between economic development and community based renewable energy projects, which are also PURPA projects. SBUA's

testimony references National Renewable Energy Laboratory reports demonstrating that PURPA projects create more local value to the communities of Oregon where these projects are located than larger projects developed by outside companies. SBUA/100/Price/5; SBUA/200/Price/2. Due to the demographics of small business which play a crucial role in the economies of rural counties throughout the state, SBUA/100/Price 3-4, and the concentration of renewable resources, such as distributed wind energy, in rural Oregon, the rural parts of the state will be impacted by results of this docket. SBUA/100/Price/3. Rural Oregon is the same constituency of concern in the previous UM 1129. See Order 05-584 p 4. Consequently, this docket offers the Commission an opportunity to establish a policies and procedures promoting the eight percent goal.

Importantly, PURPA "establishes a program of cooperative federalism that allows the States, within limits established by federal minimum standards, to enact and administer their own regulatory programs, structured to meet their own particular needs." *Fed. Energy Regulatory Comm'n. v. Mississippi*, 456 U.S. 742, 767 (1982)(Quoting *Hodel v. Virginia Surface Mining & Recl. Assn., Inc.*, 452 U.S. 264, 289 (1981)(Emphasis added). This is significant because Oregon's way of implementing PURPA, is defining and may be different from those of neighboring states yet consistent with the federal statute.

Decisions made in this docket will impact the ability of small businesses to participate in Oregon's clean energy economy. SBUA/100/Price/4. State of Oregon statistics indicate that small businesses are those businesses with under 100 employees, ORS 285B.123(2), and that in March 2012, firms with fewer than 20 employees accounted for 89 percent of all Oregon firms. SBUA/100/Price/2. Of the 1,400,277 customers of OPUC regulated utilities, Pacific Power, Portland General Electric, and Idaho Power in this docket, many if not the vast majority of the 195,803 commercial and industrial customers are small businesses. SBUA/100/Price/3. SBUA represents, a wider array of companies which have an interest in clean energy project development including the others besides project developers. SBUA/100/Price/1, SBUA/200/Price/2-3. Clean technologies is a key industry sector identified as focus area and pressing need by the Small Business Advisory Council in its 2009-10 Action Plan and funding and regulatory issues were identified as barriers. SBUA/100/Price/4.

## B. Standard of Review

Order 05-584 explains that QF rates were subject to a standard of review that required the rates to be just and reasonable to ratepayers and in the public interest as set forth in Order 81-755. Order 05-584 p. 7.

## III. ISSUES

SBUA provides briefing only on some of the issues of Phase One of this docket and focuses on QFs of 10 megawatts or less, that is, those entitled to standard offer contracts under PURPA. Any issue that SBUA does not include should not be construed as SBUA's lack of interest in that issue, nor agreement or disagreement with any other party's position in the issue.

### A 1 A Continue Using the Current Methodology as the Most Transparent and Accurate Way Proposed to Determine Avoided Costs.

SBUA advocates retaining the current methodology for calculating avoided costs for standard offer contracts, rather than adopting a model as proposed by PacifiCorp or Idaho Power Company, in order to maintain transparency for small businesses in Oregon while ensuring accuracy. The Commission has consistently interpreted its PURPA mandate to be the adoption of policies and rules that promote QF development, using among other tactics, accurate price signals and full information to developers, while ensuring that utilities pay no more than avoided costs. Order 05-584 pp 9, 11 (emphasis added).

"Avoided costs" means the incremental costs incurred by the utility to purchase electric energy which, but for the purchase from the QF, the electric utility would have to generate itself or buy from another source. OAR 860-029-0010. The Commission currently utilizes two methodologies for determining avoided costs as set forth in Order 05-584 and described in Staff's testimony. Order 05-584 pp 26-28, Staff/100/Bless/5. The Standard and Renewable Methods, avoided cost prices are based on monthly on-peak and off-peak forward price curves when the utility is resource sufficient requirement, or, in the case of the Renewable Method, when the utility is renewable resource sufficient). Id. During the resource deficient periods, the Standard Method is comprised of off-peak and on-peak prices, based on the fixed and variable costs of an avoidable Combined Cycle Combustion Turbine (CCCT). Id. The off-peak price is comprised of energy costs, which are the fuel costs plus a portion of the capital costs of the CCCT that are allocated to energy. Id. The on-peak price includes all of the above energy costs, plus a capacity cost equal to the portion of CCCT capital costs that are allocated to capacity. The

Renewable Method is similar to the Standard Method, except that the avoided resource is the next renewable generation resource identified for acquisition in the utility's Integrated Resource Plan (IRP) for Renewable Portfolio Standard (RPS) compliance, currently a wind resource in PGE's and PacifiCorp's IRPs. These components are spelled out in a spreadsheet with data from the utility's IRP.

Regarding the issue of methodology, all parties agree on the standard of avoided costs, that the price paid to PURPA projects should be the replacement price of power that would be obtained from other source. Parties differ on which methodology should be used to determine the calculation of the avoided costs.

PacifiCorp believes that for projects under three megawatts, the level proposed for standard contracts, the Proxy Method used in Oregon is a reasonable balance between accuracy and transparency, and serves to minimize the transaction costs for smaller and less sophisticated project developers. PAC/100/Dickman/5. Nonstandard rates, however, would be based on the partial displacement differential revenue requirement (PDDRR) method that utilizes the Company's Generation and Regulation Initiative Decision Tools (GRID) production cost model to measure the impact of a QF on PacifiCorp's system net power costs. PAC/100/Dickman/7-8; PAC/300/Dickman/3.

PGE supports retaining the current method as a fair and accurate measure of avoided cost. PGE/McFarlane-Morton/100/12.

Idaho power proposes using the current method used for the other utilities to calculate standard rates for all three utilities for standard contracts, but that standard contracts eligibility be reduced to 100kW, and that energy and capacity values be calculated separately so that published rates for various resource types can be based on the capacity each type of resource actually provides to the electrical system. Idaho Power/200/Stokes/26. Although capacity and energy rates would be calculated separately, the two would be combined to produce a single published rate for each of the various resource types, including base load (biomass, geothermal, etc.), hydro, canal drop hydro, wind, and solar. Thus, there would be five different pricing schedules, one for each resource type, for Oregon standard rates. Idaho Power/200/Stokes/27. For those QF's larger than those eligible for the standard rate, IPC prefers the incremental cost IRP methodology. Stokes/36. The incremental IRP methodology determines the avoided cost of

energy by using Idaho Power's power cost model, AURORA, to calculate the incremental cost for each hour of the proposed QF contract term to come up with an accurate avoided cost.

ODOE recommends retaining current methods for standard avoided cost pricing that uses wholesale power prices during resource sufficiency periods, and for resource deficiency period, the cost of the next avoidable resource as identified in the company's IRP, with the exception that ODOE would agree with adding a wind integration cost. ODOE/100/Carver/2. ODOE notes that the modeling process recommended by the utility companies would be less transparent and more difficult for QFs. See ODOE/100/Carver/7.

Staff proposes retaining the current methodology but modifying it to ensure accuracy by incorporating capacity, transmission, integration aspects. See Staff/100/Bless/9, Staff/100/Bless/26. In supporting continuing use of the existing method, Staff notes: "The current Standard Method has been used by PGE and PacifiCorp since the issuance of Order 06-538. It is familiar to the utilities and to QF developers. The calculation is a straightforward spreadsheet with inputs and assumptions that are easy to identify and review." Staff/100/Bless/9. "Staff's chief concern is that the model-based approaches are not transparent to the QF developers and their lenders. Understanding the results from the modeling methodology requires the reviewer to understand how the model works, its sensitivity to different inputs, and how the model approximates the complexities of the Western grid." Staff/100/Bless/9. Staff also notes how this method enables leverage of the extensive IRP review process. Staff/100/Bless/27.

SBUA supports retaining the current method with no change for the reason, as expressed by ODOE, that the current method was adopted after extensive investigation, and utilities have not shown fundamental changes justifying a change to a more complex modeling system. Id. In addition, SBUA agrees and supports ODOEs statement that using complex models to forecast avoided costs for standard offer contracts would yield opaque results harder to predict than the current method and this would seriously hamper QF developers in getting projects designed and financed. SBUA's witness Gregory Price noted that smaller projects are already very difficult to finance and not knowing the risks in advance stifles what market opportunity there is, and puts a risk premium on smaller projects. SBUA/100/Price 5. Price and ODOE witness Carver both focus on the upfront planning of a QF project in noting that the upfront initial analysis, and SBUA notes investment requirements just to determine feasibility and show that a project has a

reasonable prospect of economic viability when the contract is signed. SBUA/100/Price/6. Under the current method it is possible to do that, while under the modeling methods it is not.

Responding to the claim made by several parties regarding the lack of transparency of a model "black box" such as the PDDRR, PacifiCorp refers to the example of the impact that 80MW QF would have on the system. PAC/300/Dickman/10, and PAC/300/Dickman/13. SBUA would point out that the scale reduces the usefulness of PacifiCorp's example since an 80 MW QF is eight times larger than the eligibility threshold of the 10 MW QF, the largest of projects within SBUA's concern.

SBUA supports the current methodology as just and reasonable and in the public interest. The current methodology includes the different components that make up incremental avoided costs, which data can be examined in depth in the IRP process. SBUA's testimony, as indicated earlier, uses state supplied information demonstrating the significance of small business in Oregon, and the ORS 469A.210 demonstrates a state preference to support the smaller scale projects. SBUA provides first-hand account from business person experienced in small-scale renewable energy development and related businesses, working in the distributed renewable energy market sector and their related projects. SBUA/100/ Price/2. These businesses include members of the Distributed Wind Energy Association referred to in SBUA/200 Price/2-3.

SBUA has indicated the lack of time and financial resources small business have to absorb the risks and development costs, and participate in the regulatory processes impacting projects, such as selection of avoided cost methodology. SBUA/100/Price 6-7. Challenges faced by smaller projects are also described in the page 28 of the Oregon Department of Energy's 2005 Distributed Generation Report ("ODOE's 2005 DG Report"), referenced in SBUA/200/Price/4. Increasing difficulties for small projects is not in the state's interest. Empirical studies by National Renewable Energy Laboratory reports demonstrating that PURPA projects create more local value to the communities of Oregon where these projects are located than larger projects developed by outside companies. SBUA/100/Price/5; SBUA/200/Price/2. It is just and reasonable that businesses desiring and suited to participate in clean energy economy be able to assess for themselves whether or not to engage in a PURPA projects, whether as a developer, a contractor, supplier, let alone be able to participate in working with a project. The current methodology is transparent enough to enables that to happen.

## B. 4 C Accounting for FERC's Seven Factors is Practicable and Particularly for Projects Interconnected to Distributed Energy Lines.

SBUA supports taking into account the seven factors of 18 CFR §292.304 (e)(2), considering data provided pursuant to 18 CFR §292.304(e)(1), by including among avoided costs calculation payment or other terms for additional benefits conferred by smaller qualifying facilities. PURPA rules require to the extent practicable, that factors be considered in determining avoided costs including the expected or demonstrated reliability of the QF, extent to which the QF's outages can be coordinated with the utility's outages, the individual and aggregate value of the QF on the utility's system, the usefulness of the QF's capacity and energy on the utility's system during emergencies, the smaller capacity increments, among other factors. 18 CFR §292.304(e)(1) & (2)(ii)-(vii), OAR 860-029-0040 ("FERC factors"). In its Order 05-584, the Commission considered compensating projects to account for costs avoided by utilities from benefits conferred by small QF generation. See Order 05-584 at 30. The problem the Commission notes in that docket, UM 1129, was that the Commission did not receive information on how the benefits conferred actually resulted in costs. Id.

This issue having not been comprehensively covered in the UM 1129 docket, it appropriately comes before the Commission now. Parties present varying positions on the FERC factors as summarized below.

PacifiCorp maintains that standard rates should not be adjusted for perceived benefits of small QFs, and there should not be special consideration made for a subclass of smaller-sized QFs eligible for standard rates. PAC/300/Dickman 36. If adjustments are made to increase standard rates, PacifiCorp believes the Commission should consider other adjustments that reduce the price relative to the avoidable proxy resource. PAC/300/Dickman/5. PacifiCorp maintains that small QFs, including distributed generation, may offset load for certain periods of time, but they do not result in a real reduction to the load the utility must be ready to serve upon demand. When a QF generator intended to offset retail load becomes unavailable, the Company must have resources available to continue serving the load. Likewise, if retail customer load peaks when the QF generation is not at its maximum availability (as is often the case with solar generation), the Company must have the transmission and distribution facilities in place to meet customer demand. PAC/300/Dickman/36.

PGE maintains that applying these factors to projects smaller than 100kW is impractical on the basis of materiality, but that that if the eligibility cap is lowered to 100 kW, then these seven factors should be considered for all negotiated contracts whether they are additions or subtractions. PGE/McFarlane-Morton/22. If the Commission keeps the eligibility cap at 10 MW, then each of the seven factors should be used by the utilities to adjust the standard avoided cost prices. Id. PGE correctly notes that adjustments to standard rates are expressly allowed by PURPA under 18 CFR18 § 292.304(c)(3).

Idaho Power notes that "In Order No. 69, FERC found that small, dispersed QFs may provide, in total, an amount of capacity sufficient to allow the utility to offset other purchases. In other words, even if the energy and capacity from one QF does not, when considered in isolation, allow the utility to avoid a particular cost, FERC directed state commissions to consider the impact to a utility's system of all QFs when calculating the standard rates for purchases. FERC correctly concluded that the cumulative impact of all QFs may allow a utility to defer an investment that any one individual QF would not." Idaho Power/200/Stokes/55.

Staff has testified in support of reserving the seven FERC factors to negotiation of nonstandard QF contracts. Staff/100/Bless/34. Staff recognizes the beneficial characteristics of distributed generation, but is concerned with demonstrating the beneficial characteristics, which Staff finds to be impractical for standard contract projects, creating an invitation to disaggregate, which is a concern to utilities and renewable advocates alike, and creating a slippery slope to more special classes in the future. Staff/200/Bless/25. Staff believes the modifications to the avoided cost price Staff proposes including credit for avoided transmission and integration costs, exempting solar QFs from integration charges, and providing a capacity credit for non-intermittent renewable QFs, will help compensate distributed generation QFs for their true avoided cost, without changing the eligibility cap. Staff/200/Bless/25.

ODOE recognizes adjustments up and down for FERC factors, noting the Commission hold periodic evidentiary proceedings to set the value for each utility. ODOE/100/Carver/10. For example, ODOE (and CREA) references the geographical spread of projects to reduce area variability, and refers to recent reports on this issue such as the Northwestern Energy Montana Wind Integration Study from 2011. Carver Exhibit/63-64. Report notes that tools optimizing siting are developing to maximize and optimize renewable energy. ODOE/400/Carver/5-6 Exhibit p. 65.

OneEnergy proposes specific terms be incorporated into QF's smaller than 3MW include the option to choose fixed prices for a 25 year contract term, the option to choose levelized prices, and an adder for line loss avoidance. OneEnergy/100/Eddie/6). In its testimony, OneEnergy included information in the form of specific data from PacifiCorp indicating a benefit of 3.9% line loss avoidance. OneEnergy/100/Eddie/36-37.

Staff's concerns notwithstanding, PURPA mandates taking into account the FERC factors where practicable. Commission rulings have made this more practicable by providing for evidentiary hearings in renewable resource avoided cost rate compliance filings. Order 11-505, p 2. ODOE is particularly well-suited to take up a challenge to provide necessary technical assistance for evidentiary hearings or related efforts as the current director directed a Commission report regarding Distributed Generation in Oregon and is poised to update on this 2005 report. SBUA/200/Price/4.

SBUA agrees with OneEnergy's proposal to pay a 3.9% for line loss avoidance to projects of 3 MW or less connecting directly to distribution lines. Paying a QF for line loss avoidance is entirely in compliance with OAR 860-029-0040(5)(d): (d) The costs or savings resulting from variations in line losses from those that would have existed in the absence of purchases from a qualifying facility if the purchasing public utility generated an equivalent amount of energy itself or purchased an equivalent amount of energy and/or capacity. OneEnergy provides evidentiary support for this proposal, drawn from PacifiCorp data. In addition, a National Wind Coordinating Committee's 2001 Distributed Wind Power Assessment, presented by SBUA's testimony corroborates this figure identifying potential reduction of 3% transmission line losses as a specific benefit of distributed wind energy. SBUA/200/Price/4. An adder like this is consistent with PURPA, Oregon's 8% small-scale energy goal, and is an appropriate support for the value of distributed energy which the Commission has required be part of integrated resource planning processes.

The problems Staff presents in distinguishing distributed generation from QFs particularly where benefits would not apply to QFs located far from load or outside the utility's balancing area, Staff/200/Bless/15 and 18, may be resolved via study and adjustment resulting from the evidentiary hearings proposed by ODOE, thereby keeping adjustments just and reasonable.

Insofar as the FERC factors offer a means to incorporate values adopted and expressed by Oregon, such as a value of reducing carbon, in community-based energy, SBUA supports using the data provided to more accurately assess the avoided costs. If the Commission declines to adopt this position in these proceedings, SBUA supports the Commission's explicit review of this issue when the Commission Staff review avoided cost data at least every two years, as required by 18 CFR §292.302(b), particularly in conjunction with ODOE's updating the ODOE 2005 DG Report. SBUA/200 Price/4. SBUA recommends that the Commission enable review of the siting optimization as a FERC adjustment factors periodically as part of a strategy to reasonably implement the 8% goal set by the Oregon legislature.

**C. 5 A Maintaining the 10 Megawatt (MW) Eligibility Limit for Standard Offer Contracts is Just and Reasonable, and Consistent with PURPA Policy.**

SBUA supports maintaining the 10 MW eligibility limit for standard offer contracts. Oregon statute requires that the Commission set the minimum criteria for qualifying facilities and that these criteria be consistent with standards set out in Public Utility Regulatory Policies Act of 1978 (P.L. 95-617), that is, the federal PURPA statute. ORS 758.535(1), and (3)(b). Federal statute sets a ceiling of 80 megawatts on small power production projects coming under PURPA, 16 USC §824a-3(a), and federal rule very clearly sets forth the federal parameters of the eligibility, requiring standard rates for qualifying facilities of 100 kilowatts or less capacity, and allowing standard rates for QFs of more than 100 kilowatts capacity. 18 CFR 292.304(c)(1) and (2)(Emphasis added). In the Commission's Order 05-584, after extensive review on this issue, the Commission opted for a 10 MW eligibility limit. The Commission stated to the Oregon Legislature: "It is the goal of the Commission to ensure desired qualifying facility development through stable and predictable actions by the Commission, accurate price signals, and full information to developers and the public regarding power sales". Order 05-584, p. 9 (Emphasis added.).

Parties agree on the point of departure, that Oregon currently has a 10 MW eligibility cap for projects to receive the standard offer contract, but that is the extent of agreement. Parties disagree on whether standard offer contracts larger than 100 kW are consistent with the federal PURPA, whether smaller power producers need a greater threshold to realize projects, and whether a greater eligibility cap exposes projects to the risk of ratepayers subsidizing PURPA project for costs in excess of avoided costs.

PacifiCorp categorizes standard offer projects as projects developed by individuals or organizations with limited resources that do not have the corporate backing, financial wherewithal, or technical skills to handle significant administrative issues or cost. PAC/200/Griswold/19. It is clear that there has been a shift from the "mom & pop" developer to the well-staffed development firm where there is a direct correlation between the size of the QF project and the amount of resources that can be applied to the project. PAC/200/Griswold/19. The Company's experience is that regardless of the standard contract threshold, QF projects over 3 MW generally have technical, business, and legal experts engaged in the analysis, development, and contracting phases of their project regardless of the resource technology type. PAC/400/Griswold/17. PacifiCorp states that disaggregation cannot improve this as parties will "circumvent the process" PAC/400/Griswold/18.

PGE also recommends reducing the 10 MW eligibility cap to 100 kW as PGE alleges PURPA recommends. PGE/McFarlane-Morton/8. Idaho having lowered its cap, leaving a disproportionately large cap relative to the rest of the region, QFs are sophisticated well-funded entities capable of bilateral negotiations, QF's larger than 100kw have the resources to pay transaction costs associated with a negotiated contract." PGE/McFarlane-Morton/5. 100 kW is a "fair" demarcation for a small project for which barriers may truly exist and a larger project that has considerably more resources at its disposal. PGE/McFarlane-Morton/11.

For wind and solar QF projects, Idaho Power proposes that standard rates and contracts be required only for those projects that have a nameplate capacity of 100 kilowatts ("kW") or less, consistent with Federal Energy Regulatory Commission ("FERC") regulations, and with the Company's Idaho jurisdiction. Idaho Power/200/Stokes/3-4. An eligibility cap set at 100 kW will continue to provide a standard contract and a standard avoided cost rate to small distributed generation projects that are not equipped with the knowledge or financial strength to negotiate an individual contract with the utility. Idaho Power/200/Stokes/47. Idaho power is concerned with QF projects have attempted to arbitrage the rate differential between Idaho and Oregon's avoided cost rates for Idaho Power, and maintains that this regulatory arbitrage will be reduced by reducing the cap. Idaho Power/200/Stokes/48, 65-66.

Idaho Power is approaching this from a perspective of having experienced challenges in the Idaho. It is now concerned with its prospective PURPA obligations in Oregon as it works different QF projects in Oregon. Idaho Power/400/Stokes/3. Idaho Power was obligated to sign

294 MW of QF wind contracts during a two-month period in late 2010 without any evaluation or scrutiny given to whether those resources were needed. Idaho Power/400/Stokes/8. Idaho Power testifies that the impacts are not just in Idaho but that it is experiencing the same impact in Oregon, with multiple Oregon QFs seeking standard rates contracts in 2012. Idaho Power/200/Stokes/13. Regarding market barriers and unsophisticated negotiators, Idaho power offers testimony that the majority of QF developers in the utility's experience are in fact sophisticated companies who do not experience the market barriers and that the percentage of costs of the assistance needed has decreased since 05-584 Idaho Power/200/Stokes/58-65, and that negotiation costs per MW have reduced. Idaho Power/200/Stokes/64-65.

In supporting continuation of a 10MW eligibility threshold, Staff notes specifically regarding Idaho Power that the methodology employed by that utility, the SAR method, is not structured with a sufficiency and deficiency period, which results in QFs receiving a higher price in the early years, compared to the market price that QFs receive during the sufficiency period under the Oregon Method. Staff/100/Bless/35.

Oregon small business must be able to benefit from a fully developed Oregon PURPA framework carefully designed to be consistent with federal PURPA and to achieve the goals of the statute and the aims of the Oregon Legislature. Oregon's framework may be modified consistent with PURPA, but should remain intact as Oregon administers its own regulatory program to meet its own particular needs, pursuant to PURPA's cooperative federalism model. Idaho Power seems to importing its problems in Idaho to Oregon and disregarding Oregon's policies articulated in statute supporting PURPA and renewable power projects of less than 20 MW. Further, given Oregon's discriminating avoided cost methodology incorporating sufficiency and deficiency periods, as described earlier, Idaho Power might be premature in its concern in Oregon. Both Oregon Commissions have denied the requests of two QFs to establish contracts with the utility. Idaho Power/200/Stokes/48.

While SBUA can appreciate the utilities being soured by some examples, SBUA remains mindful of the significance of the PURPA option for Oregon's small businesses and communities' desiring to develop smaller renewable energy projects. As noted above, each utility complains that QFs are no longer unsophisticated and unable to negotiate PURPA project, yet offer no or little substantive support for choosing a lower threshold. ODOE, however, presents quantitative findings from SELP and SBUA presents first-hand experience in the SBUA

expert's testimony in the small wind industry. SBUA maintains even today that smaller projects lack the ability of larger to negotiate. For example, "Small businesses and renewable energy generators, typically do not have the time and financial resources to participate directly in the regulatory processes impacting these projects, which presents a danger that their interests will not be adequately represented." SBUA/100/Price 6. Yet, none of the utilities appears to refute ODOE or SBUA's claim, providing an evidence-based response regarding the cost of expertise required for a PURPA project and the ability of a QF developer to afford the expertise required for a financially viable project.

Further, PURPA does not recommend the 100 kW cap as PGE maintains. PGE/McFarlane-Morton/8. "While the rules prescribed under section 210 of PURPA are subject to the statutory parameters, the States are free, under their own authority, to enact laws or regulations providing for rates which would result in even greater encouragement of these technologies. However, State laws or regulations which would provide rates lower than the federal standards would fail to provide the requisite encouragement of these technologies, and must yield to federal law." 45 Fed. Reg. 12,214, 12,221 (Feb. 25, 1980). Accordingly, in choosing the 10 MW threshold and enacting the goal of increasing small renewable energy projects, Oregon sought to provide rated resulting in greater encouragement of renewable energy. SBUA's constituency includes companies that work in clean technologies in the range of 100kw-10MW in distributed generation, and these companies do not benefit as easily as larger companies from economies of scale. SBUA/100/Price 4.

For these reasons maintaining a 10 MW eligibility is just and reasonable and in the public interest.

RESPECTFULLY SUBMITTED June 14, 2013.

Diane Henkels
Of Counsel, Cleantech Law Partners PC
Counsel for Small Business Utility Advocates

CERTIFICATE OF FILING SERVICE

I hereby certify that on June 14, 2013, I served a copy of SBUA's Post-Hearing Brief on the persons named in the UM 1610 Service list by electronic mail only as all parties have waived service.

Oregon Dockets
PacifiCorp, dba Pacific Power
825 NE Multnomah St, Ste 2000
Portland OR 97232
oregondockets@pacificorp.com

Regulatory Dockets
Idaho Power Company
PO Box 70
Boise ID 83707-0070
dockets@idahopower.com

RNP Dockets
Renewable Northwest Project
421 SW 6TH Ave., Ste. 1125
Portland OR 97204
dockets@rnp.org

Citizen Utility Board
Citizens Utility Board
610 SW Broadway, Ste 400
Portland OR 97205
dockets@oregoncub.org

Paul Ackerman
Exelon Business Services Company
100 Constellation Way, Ste 500C
Baltimore, MD 21202
Paul.ackerman@constellation.com

Gregory M. Adams
Richardson & O'Leary
PO Box 7218
Boise ID 83702
greg@richardsonandoleary.com

Northwest Energy Systems Company LLC
Daren Anderson
1800 NE 8TH ST., STE 320
Bellevue WA 98004-1600
da@thenescogroup.com

Brittany Andrus
Public Utility Commission of Oregon
PO Box 2148
Salem OR 97308-2148
Brittany.andrus@state.or.us

Stephanie Andrus
Oregon Department of Justice
Business Activities Section
1162 Court St NE
Salem OR 97301-4096
Stephanie.andrus@state.or.us

James Birkelund, President
Small Business Utilities Advocates
548 Market St. Ste 11200
San Francisco, CA 94104
james@utilityadvocates.org

Peter Blood
VP Origination & Portfolio Mgmt
Columbia Energy Partners LLC
317 Columbia St.
Vancouver WA 98660
pblood@columbiaenergypartners.com

Kacia Brockman
Oregon Department of Energy
Energy Policy Analyst
625 Marion St NE
Salem OR 97301
kacia.brockman@state.or.us

Larry Cable
Cable Huston Benedict Haagensen & Lloyd LLP
1001 SW Fifth, Suite 2000
Portland, OR 97204
lcable@cablehuston.com

Annala, Carey, Baker et al
Will H. Carey
PO Box 325
Hood River OR 97031
wcarey@hoodriverattorneys.com

Randy Dahlgren
Portland General Electric
121 SW Salmon St - 1WTC0702
Portland OR 97204
pge.opuc.filings@pgn.com

R. Bryce Dalley
Pacific Power
825 NE Multnomah St., Ste 2000
Portland OR 97232
bryce.dalley@pacificorp.com

Melinda Davison
Davison Van Cleve PC
333 SW Taylor St Ste 400
Portland OR 97204
mjd@dvclaw.com
mail@dvc.law.com

Megan Walseth Decker
Renewable Northwest Project
421 SW 6TH Ave #1125
Portland OR 97204-1629
megan@rnp.org

Bill Eddie
One Energy Renewables
206 NE 28TH Ave
Portland OR 97232
bill@oneenergyrenewables.com

Lloyd Fery
11022 Rainwater Lane SE
Aumsville OR 97325
dlchain@wvi.com

Renee M. France
Senior Assistant Attorney General
Natural Resources Section
1162 Court St NE
Salem OR 97301-4096
renee.m.france@doj.state.or.us

J. Richard George
Portland General Electric Company
121 SW Salem ST 1WTC1301
Portland OR 97204
richard.george@pgn.com

John Harvey
Exelon Wind
4601 Westorn Pkwy. #300
West Des Moine, IA 50266
John.harvey@exeloncorp.com

Robert Jenks
Executive Director
Citizens Utility Board
610 SW Broadway, Ste 400
Portland OR 97205
bob@oregoncub.org

Kenneth Kaufmann
Lovinger Kaufmann LLC
825 NE Multnomah Ste 925
Portland OR 97232-2150
kaufmann@lklaw.com

Matt Krumenauer
Oregon Department of Energy
Senior Policy Analyst
625 Marion St NE
Salem OR 97301
matt.krumenauer@state.or.us

David A. Lokting
Stoll Berne
209 SW Oak Street, Ste 500
Portland OR 97204
dlokting@stollberne.com

Richard Lorenz
Cable Huston Benedict Haagensen & Lloyd LLP
1001 SW Fifth Avenue, Ste 2000
Portland, OR 97204-1136
rlorenz@cablehuston.com

Jeffrey S Lovinger
Lovinger Kaufmann LLC
825 NE Multnomah Ste 925
Portland OR 97232-2150
lovinger@lklaw.com

John Lowe
Renewable Energy Coalition
12050 SW Tremont St
Portland OR 97225-5430
jravensandmarcos@yahoo.com

Adam Lowney
McDowell Rackner & Gibson PC
419 SW 11TH Ave, Ste 400
Portland OR 97205
adam@mcd-law.com

Mike McArthur
Executive Director
Association of Oregon Counties
PO Box 12729
Salem OR 97309
mmcarthur@aocweb.org

G. Catriona McCracken
Legal Counsel/Staff Attorney
Citizens Utility Board
610 SW Broadway, STE 400
Portland OR 97205
catriona@oregoncub.org

Glenn Montgomery
Oregon Solar Energy Industries Association
PO Box 14927
Portland OR 97293
glenn@oseia.org

Thomas Nelson
Attorney at Law
PO Box 1211
Welches OR 97067-1211
nelson@thnelson.com

Kathleen Newman
Oregonians for Renewable Energy Policy
1553 NE Greensword Dr
Hillsboro OR 97214
Kathleenoipl@frontier.com;
k.a.newman@frontier.com

Mark Pete Pengilly
Oregonians for Renewable Energy Policy
PO BOX 10221
Portland OR 97296
mpengilly@gmail.com

Elaine Prause
Energy Trust of Oregon
421 SW Oak ST #300
Portland OR 97204-1817
elaine.prause@energytrust.org

Greg Price
PMB 634
11124 NE Halsey
Portland, OR 97220

Lisa F. Rackner
McDowell Rackner & Gibson PC
419 SW 11TH AVE., STE 400
Portland OR 97205
dockets@mcd-law.com

Peter J. Richardson
Richardson & O'Leary PLLC
PO Box 7218
Boise ID 83702
peter@richardsonandoleary.com

Toni Roush, Roush Hydro Inc.
366 E Water
Stayton OR 97383
tmroush@wvi.com

Irion A. Sanger
Davison Van Cleve PC
333 SW Taylor - Ste 400
Portland OR 97204
ias@dvclaw.com

Donald W. Schoenbeck
Regulatory & Cogeneration Services, Inc.
900 Washington St. Ste 780
Vancouver WA 98660-3455
dws@r-c-s-inc.com

John W. Stephens
Esler Stephens & Buckley
888 SW Fifth Ave Ste 700
Portland OR 97204-2021
stephens@eslerstephens.com;
mec@eslerstephens.com

Chad Stokes
Cable Huston Benedict Haagensen &
Lloyd LLP
1001 SW Fifth, Suite 2000
Portland, OR 97204
cstokes@cablehuston.com

David Tooze
City of Portland Bureau of Planning & Sustainability
1900 SW 4TH Ste 7100
Portland, OR 97201
david.tooze@Portlandoregon.gov

John Volkman
General Counsel
Energy Trust of Oregon
421 SW Oak St #300
Portland OR 97204
john.volkman@energytrust.org

S. Bradley Van Cleve
Davison Van Cleve PC
333 SW TAYLOR - STE 400
PORTLAND OR 97204
bvc@dvclaw.com

Donovan E. Walker
Idaho Power Company
PO BOX 70
BOISE ID 83707-0070
dwalker@idahopower.com

Mary Wiencke
Pacific Power
825 NE Multnomah St., Ste 1800
Portland OR 97232-2149
mary.wiencke@pacificorp.com

Dated: June 14, 2013.

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Diane Henkels, Attorney at Law
Cleantech Law Partners, PC
Attorneys for SBUA