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September 11, 2017

***Via Electronic Filing***

Chair Lisa Hardie  
Commissioner Steve Bloom  
Commissioner Megan Decker  
Oregon Public Utility Commission  
201 High St. SE, Suite 100  
Salem, Oregon 97301

RE: Docket No. UM 1805 - In the Matter of the Complaint of NORTHWEST AND INTERMOUNTAIN POWER PRODUCERS COALITION, COMMUNITY RENEWABLE ENERGY ASSOCIATION, and RENEWABLE ENERGY COALITION against PORTLAND GENERAL ELECTRIC COMPANY

Dear Commissioners:

Portland General Electric Company ("PGE") submits this letter in response to comments filed earlier today by the Complainants in Docket No. UM 1805. In its Staff Report filed on September 7, 2017, Commission Staff recommends that the Commission approve PGE's July 20, 2017 compliance filing without alteration, effective September 17, 2017. PGE agrees that the compliance filing should be made effective without alteration.

In comments filed September 11, 2017, the Complainants have asked the Commission to allow the compliance filing to become effective but to require PGE to amend the compliance filing within five days to change the benchmark or trigger date for the 15-year fixed price period to a date that Complainants prefer over the date proposed by PGE. For the reasons discussed below, Complainants' request should be denied and the compliance filing should be approved.

Docket No. UM 1805 was a complaint proceeding brought by the Northwest and Intermountain Power Producers Coalition, Community Renewable Energy Association, and Renewable Energy Coalition (jointly the "Complainants"). The complaint asked the Commission to issue an order:

1. Ordering PGE to cease and desist from any business practices inconsistent with Commission policy and orders that require long-term contracts with fixed rates, by openly disputing that it must offer 15 years of fixed prices from the QF's operation date, as PacifiCorp and Idaho Power contracts already do in an unambiguous fashion; and
2. Declaring that PGE's standard contract, as interpreted in the regulatory context from which it arose, requires payment by PGE at fixed prices for 15 years after the QF's operation date rather than merely 15 years after the time

of contract execution, unless express language is inserted by the QF that demonstrates a contrary intent;

3. Alternatively, if the relief requested in paragraphs 2 and 3 of this Prayer for Relief is denied, ordering PGE to file revised standard contracts clearly stating that the 15 years of fixed prices run from the commercial operation date; ...<sup>1</sup>

PGE filed a motion for summary judgment, arguing that the Commission's policy as established by Order No. 05-584 did not require PGE to begin paying fixed prices on the commercial operation date. Instead, PGE argued that the Commission had repeatedly approved PGE's form contracts and Schedule 201 rate schedules providing that fixed prices were available for 15 years measured from the date a contract is executed. There were extensive materials filed in the case to demonstrate exactly what PGE's current and prior standard contract forms and current and prior versions of Schedule 201 stated with regard to this question of when the 15 year period of fixed prices begins to run. Complainants were clearly seeking a ruling that since 2005 the Commission's policy and orders required PGE to offer fixed prices for 15 years from the commercial operation date rather than from the date the contract was executed. Complainants lost that argument.

In Order 17-256, the Commission agreed with PGE, granted summary judgment, and dismissed the complaint. The Commission held:

When we concluded QFs should receive 15 years of fixed prices under standard contracts in Order No. 05-584, we did not specify the date on which that 15-year term begins. ... Due to this fact, Oregon utilities have filed, and we have approved, standard QF contracts that use, as the triggering event, both the date of contract execution and the date of power delivery. **Because we approved PGE's standard contract filings that limited the availability of fixed prices to the first fifteen years measured from contract execution, PGE cannot be found to have been in violation of our orders.** Accordingly, PGE's motion to dismiss the complaint should be granted.<sup>2</sup>

However the Commission went on to state:

We take this opportunity, however, to clarify our policy in Order No. 05-584 to explicitly require standard contracts, on a going-forward basis, to provide for 15 years of fixed prices that commence when the QF transmits power to the utility. Standard contracts, whether prepared by PGE, Idaho Power or PacifiCorp, all contain QF performance benchmark event dates that must be achieved before the QF can offer power to the utility.

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<sup>1</sup> Docket No. UM 1805, Complaint at 16 (Dec. 6, 2016).

<sup>2</sup> Docket No. UM 1805, Order No. 17-256 at 3 (Jul. 13, 2017) (emphasis added).

The 15-year period of fixed prices is, of necessity, tied to these benchmarks. Prices paid to a QF are only meaningful when a QF is operational and delivering power to the utility. Therefore, we believe that, to provide a QF the full benefit of the fixed price requirement, the 15-year term must commence on the date of power delivery.<sup>3</sup>

On July 20, 2017, PGE made a timely compliance filing in response to Order No. 17-256. PGE's compliance filing states that standard prices (i.e., fixed prices) will be paid for net output delivered during the first 15 years following the scheduled commercial operation date selected by Seller in Section 2.2.2 of the contract and that thereafter, market prices will apply for the remainder of the contract term.

In selecting the Section 2.2.2 scheduled commercial operation date as the benchmark for the 15-year fixed price period, PGE used PacifiCorp's currently effective standard contract as its model. PacifiCorp's contract provides that fixed prices will apply for 15 years measured from the scheduled initial delivery date.<sup>4</sup> This is a date selected by the Seller when the contract is executed. It is essentially the scheduled date to begin supplying test energy and it is a date that comes *before* the scheduled commercial operation date. PGE did not use the same date as PacifiCorp because it felt the scheduled commercial operation date was the most appropriate benchmark. Nevertheless, both PacifiCorp and PGE use a date that is selected by the Seller when the contract is entered into as the trigger or benchmark for the 15-year period for fixed prices.

As required by Order No. 17-256, PGE has proposed tying the 15-year fixed price period to a QF performance benchmark event date that must be achieved before the QF can offer power to the utility. PacifiCorp has tied it to the scheduled initial delivery date, the earliest date associated with scheduled delivery of test energy. PGE has tied it to the scheduled commercial operation date, a somewhat later date associated with the end of scheduled test energy and the beginning of the scheduled commercial operations period. And Idaho Power appears to have tied the 15-year fixed price period to the actual commercial operation date, although that is not entirely clear to PGE.<sup>5</sup>

PGE will of course begin the 15 year fixed price period whenever the Commission requires it to do so. However, PGE does not understand Order No. 17-256 to mandate that it must offer a 15-year fixed price period that begins later than that offered by the other two jurisdictional utilities.

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<sup>3</sup> *Id.* at 4.

<sup>4</sup> See PacifiCorp's Power Purchase Agreement for a new Firm Qualifying Facility with 10,000 kW Facility Capacity Rating or Less and an Intermittent Resource with Mechanical Availability Guarantee, at Section 5.2 ("In the event Seller elects the Fixed Price Standard pricing method, PacifiCorp shall pay Seller the applicable On-Peak and Off-Peak rates specified in the **Standard Avoided Cost Rates Schedule** during the first fifteen (15) years after the Scheduled Initial Delivery Date." Thereafter, PacifiCorp will pay Seller Firm Electric Market.").

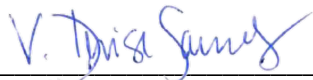
<sup>5</sup> See Idaho Power Company's Oregon Standard Energy Sales Agreement (Intermittent Resource) at Section 7.1, 1.4 and 1.28 (providing for fixed prices for the first fifteen Contract Years which are defined as the 365 day period commencing each calendar year on the same date as the Operation Date which is the day after the Seller achieves commercial operation).

And PGE believes that the benchmark it has proposed places it between the other two utilities with a 15 year fixed price period that does not begin as early as PacifiCorp's and does not begin as late as Idaho Power's. For these reasons, PGE requests that the Commission approve PGE's compliance filing as submitted and not require the revisions proposed by Complainants.

Regarding Complainants' recently filed petition for clarification and application for rehearing or reconsideration ("Petition"), PGE's initial reaction is that it should be denied. However, PGE reserves its right to file a formal response within 15 days of the September 11, 2017 filing of the Petition. In granting PGE's motion for summary judgment in UM 1805, the Commission clearly considered the language of PGE's current and prior standard contract forms and Schedule 201 rate schedules and concluded that PGE's materials provided for a 15-year fixed price period that began to run at contract execution. It appears that the Petition seeks to re-litigate that issue and that it should be denied.

Likewise, PGE's initial reaction to the joint petition to intervene out of time filed on September 8, 2017 by several QF parties is that it should be denied as prejudicial and that the associated motion for clarification and application for rehearing or reconsideration should also be denied. However, PGE further reserves its right to file a formal response in opposition to the motion to intervene and a formal response in opposition to the motion for clarification and application for rehearing or reconsideration.

Sincerely,



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V. Denise Saunders  
Associate General Counsel

/s/ Jeffrey S. Lovinger

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VDS:bop