

September 25, 2017

Via Email

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

RE: 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
Docket No. UM 1805.

Dear Commissioners:

The Northwest and Intermountain Power Producers Coalition, Community Renewable Energy Association, and Renewable Energy Coalition (jointly, “Complainants”) submit this letter recommending that the Oregon Public Utility Commission (the “Commission”) require Portland General Electric Company (“PGE”) to conform with the Commission’s Order No. 17-256, which directed PGE to “promptly file revisions to Schedule 201 which shall include a revised standard contract PPA with language consistent with our requirement that the 15-year term of fixed prices commences **when the QF transmits power to the utility**”.¹ The Commission did not order PGE to file a revised standard contract with language consistent with a requirement to pay a 15-year term of fixed prices that “commences at the time the QF is scheduled to transmit power to the utility.” This should just be a simple task of taking the plain language of the Commission’s order and making minimal changes to PGE’s standard contracts.

In response comments filed September 11, 2017, PGE admits that instead of drafting a contract that commences the 15-year period *when the QF transmits power to the utility*, PGE drafted a contract that commences the 15-year period when the QF is *scheduled* to transmit power to the utility. Ignoring the unambiguous directive in the order, PGE recrafted a modified outcome of this proceeding that it believes is a reasonable middle point between the PacifiCorp and Idaho Power contracts.

¹ Order No. 17-256 at 4 (emphasis added).

As the Complainants have thoroughly explained the flaws in PGE's compliance filing in their comments filed on September 11, 2017 and oral comments at the September 12, 2017 public meeting, these comments are limited to responding to PGE's comments, and the Staff Report. In addition, to being consistent with the plain meaning, the Complainants' proposed language is more consistent with the purpose of the Commission's policy, which is to ensure that a QF can obtain financing based on the certainty that, if becomes operational, then it will be paid 15 years (and not something less) of fixed prices. PGE's language will deprive many QFs of the full benefit of the 15 year fixed price requirement.

1. The Commission Should Require PGE's Compliance Filing Contract Be Consistent with Its Order

Staff submitted a Staff report on September 19, recommending that the Commission not make any changes in PGE's proposal to pay based on the scheduled commercial operation date rather than the actual date of power deliveries, articulating the issue as: "Whether the fixed-price effective date of PGE is consistent with the approved effective dates for PacifiCorp and Idaho Power." Staff concludes that PGE's proposal is not consistent with either PacifiCorp's and Idaho Power's standard contracts, and a change to "PGE's contract but not PacifiCorp's would be arbitrary." For some reason, Staff is not concerned about allowing PGE to have a contract that is inconsistent with Idaho Power's contract or the plain language of the Commission's order.

Staff has not articulated the correct issue. The issue is not whether PGE's filing is consistent with the approved PacifiCorp and Idaho Power contracts, but whether PGE's filing is consistent with the plain meaning of the Commission's Order 17-256. The PacifiCorp and Idaho Power contracts are irrelevant to whether PGE is in *compliance* with Order No. 17-256. If PGE thought the directive or logic in the order is mistaken or erroneous, PGE should have filed a motion for reconsideration. It did not do so, and instead made a filing inconsistent with the literal and plain language of the order. If Staff wants to ensure consistency between all three utilities, then that issue should be raised in a separate proceeding.²

² The Complainants have previously argued and continue to believe that a single standard contract for all three utilities is appropriate, rather than individual contracts that have inconsistent and confusing language. Now, however, is not the time to re-address those issues, because this is simply a compliance filing. Regardless of whether the Commission elects to continue to review issues related the contract term and other standard contract provisions, then it should first require PGE to comply with Order No. 17-256. In addition, the Complainants oppose the opening of a generic investigation at this time. The Complainants have already expended significant resources in an effort (that has not yet been completed) to ensure that PGE's standard contracts are consistent with Commission policy, and there is an overabundance of cases regarding QFs at this

PGE suggested that the Idaho Power contract is ambiguous on this point and that PGE should not be ordered to offer a contract that begins the 15-year period at the same time as Idaho Power's contract. Upon further review, the Complainants have confirmed that the currently effective Idaho Power contracts are unambiguously consistent with the modifications proposed by Complainants for PGE's compliance filing. Both begin the 15-year period of fixed prices on the date the QF "is operational and delivering power to the utility" *after* "the performance benchmark dates that must be achieved before the QF can offer power to the utility,"³ just as the reasoning of Order No. 17-256 requires. Staff's report agrees with the Complainants that Idaho Power allows for 15 years of fixed prices at the time of power deliveries.

The Complainants have further confirmed, however, that PGE is partially correct regarding the PacifiCorp contract. Under the currently effective PacifiCorp contracts, if the QF achieves actual commercial operation after the scheduled initial delivery date, then the QF will not receive 15 full years of fixed prices. Nothing in the PacifiCorp contract precludes 15 years of fixed prices in the event that the QF achieves actual commercial operation prior to the scheduled initial delivery date.⁴ The confusing details of PacifiCorp's contract are not relevant to the question of whether PGE's compliance filing complies with the order because nothing in the order directs PGE to file a contract that complies with PacifiCorp's contract.

Nor does the order direct PGE to split the difference between the PacifiCorp and Idaho Power contracts. No party brought a complaint against PacifiCorp or Idaho Power, and neither PacifiCorp nor Idaho Power have not sought to participate in this proceeding. If a QF party, Staff or PGE wishes to argue PacifiCorp's or Idaho Power's contracts should be changed in the future, then they may raise the issue in a proceeding to which those utilities are parties, and they will have the opportunity to respond. Notably, while Staff is concerned about arbitrary treatment between PGE's and PacifiCorp's contracts, Staff has no concerns about arbitrary treatment between PGE's and Idaho Power's contracts. Adopting PGE's and Staff's recommendation will ensure that Idaho Power is the only utility that has a contract consistent with the plain meaning of Order No. 17-256. Finally, if the Commission believes that either PacifiCorp's and Idaho Power's contracts

time. The Commission does not need yet another PURPA proceeding on its docket.

³ Id. (emphasis added).

⁴ PacifiCorp's contract includes a date for payment of fixed prices based on the Scheduled Initial Delivery Date. PacifiCorp's contract also states that all Excess Output and power delivered prior to the actual Commercial Operation Date be paid a lower price. While PacifiCorp must pay for all net output, the contract does not appear to have a clear price for power deliveries after commercial operation but before the scheduled delivery date. See Section 5 of PacifiCorp's New Firm QF not an Intermittent Resource.

are at all relevant, then the Commission should default to the contract (Idaho Power's) that is more consistent with the language in Order No. 17-256.

2. The Commission's Order Will Have Practical Consequences

There are two practical impacts regarding the different contract terms. First, under PGE's and PacifiCorp's contracts, a QF that misses its commercial operation date loses a day of fixed price payments for every day of delay until the contract is subject to termination, which can occur one year after missing its scheduled commercial operation date. Second, a QF will be paid a lower test energy rate for power delivered after commercial operation but before the scheduled commercial operation date.⁵ Neither problem exists with Idaho Power contract, which pays a QF the full fixed prices for 15 years if its misses its commercial operation date, and does not pay a lower test energy rate after commercial operation. This treatment is also far simpler, easy for all parties to understand, and less likely to cause future disputes.

3. Paying for 15 Years of Fixed Prices, Rather than Something Less than 15 Years, Is Consistent with the Commission's Policy

Paying a QF for fifteen years of fixed prices from the time of power deliveries (as the Commission directed in Order No. 17-256) is more consistent with the intent and purpose of the Commission's order than paying fifteen years of fixed prices from the time of scheduled commercial operation. As a reminder, this complaint was filed because PGE was not providing QFs 15 years of fixed prices from the time of power deliveries, but from contract execution. Since contract execution always preceded power deliveries, QFs would always receive less than 15 years of fixed prices.

The Commission reaffirmed its policy that had been adopted in UM 1129, and confirmed in UM 1610, UM 1725 and UM 1734, stating that:

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

⁵ Staff argues that for the period prior to the Commercial Operation Date, a QF is paid the standard off-peak price and not a test energy rate. Staff is correct regarding the rate paid. However, the Complainants have failed to adequately explain their concern because Staff misunderstands it. The issue is not what is paid prior to commercial operation, but what is paid after commercial operation for those QFs that come on line before the scheduled commercial operation date. Power delivered prior to commercial operation is paid the standard off-peak price (or what the Complainants called test energy), then is paid this off-peak price again between commercial operation and scheduled delivery (which could last months), and then is paid the full fixed price after reaching the scheduled commercial operation date.

the full benefit of the fixed price requirement, the 15-year term must commence on the date of power delivery.

The Commission's policy is to ensure that a QF gets the "**full benefit of the fixed price requirement**." Almost no QF ever comes online on the precise date that is its scheduled commercial operation date, and many come on late. Thus, PGE's proposed contract language when these QFs come on late will deprive the QF of the full benefit of the 15 years of fixed prices. This will upset the expectations of QF financiers, who expected 15 years of fixed prices.

The Commission's order also recognized that QFs have sufficient incentive to come on line at their scheduled commercial operation date. The Commission recognized that:

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.

These include the payment of damages when the QF misses its scheduled commercial operation date, and the right of the utility to terminate the QF contract if the scheduled commercial operation date is missed by a year. Therefore, QFs have adequate incentives to come on line at or before the scheduled commercial operation date without losing their full fixed prices.

Ultimately, the Complainants continue to disagree that the Commission should be doing anything other than checking to see if PGE's compliance filing complies with the plain language of the Commission's order. However, an additional reason to adopt Complainants' revisions to PGE's contract is that the plain language in the Commission's order is more consistent with its policy of ensuring that a QF gets the full benefit of the 15 year fixed price provision.

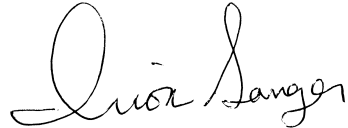
4. The Issues Are Much Larger than a Compliance Filing

The larger issue for the Complainants is the integrity of the Commission's processes. Regardless of whether parties win or lose before the Commission, there should be a good faith effort to comply with the clear direction of orders. The Complainants have moved for clarification and reconsideration of Order No. 17-256 because some of the language is confusing. The Complainants followed the proper process by seeking clarification and reconsideration of that order, rather than proposing contract language that is different from the plain and ordinary meaning of the order. If the Commission intended something other than what it said in its order, if Staff wants a different result, or if PGE disagrees with the conclusions, then these issues should not be litigated in a compliance filing.

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In conclusion, nothing in PGE's comments or the Staff Report warrants revision to the directive in the order, and the Commission should therefore direct PGE to file a revised compliance within five days that uses the contract language attached to Complainants' comments.

Sincerely,

A handwritten signature in cursive script that reads "Irion A. Sanger". The signature is written in black ink and is positioned centrally below the word "Sincerely,".

Irion A. Sanger