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December 31, 2020

VIA ELECTRONIC FILING

Attention: Filing Center
Public Utility Commission of Oregon
201 High Street SE, Suite 100
P.O. Box 1088
Salem, Oregon 97308-1088

Re: Docket UM 1987 – In the Matter of Portland General Electric Company, Request to Update Schedule 201 and Standard Power Purchase Agreements

Attention Filing Center:

Attached for filing in the above-captioned docket is Portland General Electric Company's Motion to Lift Suspension.

Please contact this office with any questions.

Sincerely,

Cheyenne Aguilera
Office Manager

Attachment

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
UM 1987**

In the Matter of

Portland General Electric Company,

Request to Update Schedule 201 and
Standard Power Purchase Agreements.

**PORTLAND GENERAL ELECTRIC
COMPANY’S MOTION TO LIFT
SUSPENSION**

1 Pursuant to OAR 860-001-0420, Portland General Electric Company (PGE or the Company)
2 files this motion requesting that the Public Utility Commission of Oregon (Commission): (a) lift
3 the stay imposed by the Commission ruling, issued on December 23, 2019 (Commission Ruling)
4 and (b) schedule a prehearing conference to be held within 30 days of this filing.

I. INTRODUCTION

5 Over two years ago, PGE initiated this docket with the goal of gaining Commission approval
6 for updated and improved Schedule 201 and Standard Power Purchase Agreements (Standard
7 PPAs or PPA) for Qualified Facility (QF) contracts under the Public Utility Regulatory Policy
8 Act (PURPA). At that time, PGE explained that many of the terms and conditions in its current
9 Standard PPAs—which had been adopted in 2005—had proven to be unclear and ambiguous, and
10 overall the PPAs were lacking in standard commercial terms and conditions that are found in
11 standard commercial agreements of this type, including PURPA PPAs for other Oregon utilities.
12 PGE has experienced a wave of disputes and formal complaints over the last several years (over
13 70 formal complaints since 2017), a problem that the Company anticipated the new contracts
14 would significantly mitigate.

15 After the initial filing, the Company held a series of workshops, and thereafter made a
16 revised filing, incorporating many changes proposed by the QF intervenors. However when the

1 Company requested that the Commission adopt a schedule to move the docket forward, Northwest
2 and Intermountain Power Producers Coalition, Renewable Energy Coalition, and Community
3 Renewable Energy Association (together, the QF Parties) moved for a stay of proceedings (Motion
4 to Stay)¹ in which they claimed that that this docket largely overlapped with the issues slated for
5 AR 631 and that allowing the proceedings to move in parallel would result in a duplication of
6 efforts. They also argued that AR 631 would be promptly concluded after which this docket could
7 proceed.² The Commission Ruling granted the Motion to Stay to allow the parties “to focus their
8 efforts toward developing uniform and unambiguous standard contract terms.” In so doing, the
9 Commission emphasized its expectation that AR 631 would move “at an appropriate pace.”³

10 It has now been over a year since this docket was suspended and there has been virtually no
11 progress in AR 631 during that time. Staff held one workshop last January, and then allowed the
12 docket to flounder—despite PGE’s stated concerns and in spite of repeated promises by Staff to
13 move the process forward. While Standard PPA requests to PGE have slowed over the past two
14 years⁴, and fewer complaints have been filed, PGE is aware that QF development is cyclical, and
15 believes that the current “lull” in requests for new standard contracts presents the best opportunity
16 for the Company to get its contracts in order before the next wave of new standard contract requests
17 begins.

18 The Company understands the value of focusing Commission and party resources on the
19 generic rulemaking. However, as discussed below, the QF Parties’ and Commission’s concerns
20 about duplication of efforts are largely misplaced. Moreover, it is now abundantly clear that AR
21 631 will not be promptly concluded. On the contrary, as a generic proceeding involving all three
22 utilities, and one that is inextricably intertwined with other dockets that are just barely getting
23 going, AR 631 is likely to continue to lag and move invariably slower than a docket focused on a

¹ While Evergreen BioPower LLC did not join the initial Motion to Stay, it did file a response in support.

² Motion to Stay of Northwest and Intermountain Power Producers Coalition, Renewable Energy Coalition, and Community Renewable Energy Association (Motion to Stay) (Nov. 12, 2019).

³ Commission Ruling – Proceedings Suspended at 3 (Commission Ruling) (Dec. 23, 2019).

⁴ On the other hand, PGE has seen an uptick in requests for negotiated PPAs.

1 single utility’s updates and improvements to its contracts and contracting processes. At this point,
2 PGE’s legitimate concerns about the continued execution of outdated PPAs, and the inevitable
3 resulting litigation, should take precedence, and the stay should therefore be lifted.

II. BACKGROUND

4 On December 7, 2018, PGE made its initial filing in this docket, requesting Commission
5 approval of new Standard PPAs for QFs. In the two years leading up to the filing, QFs had filed
6 over 60 complaints against PGE, the significant portion of which had arisen from unclear or
7 ambiguous contract language or the failure of PGE’s Standard PPAs to address crucial issues.
8 PGE hoped that the approval of the proposed PPAs would provide a stronger foundation for clear,
9 fair, and comprehensive contract terms and thereby avoid—or at least minimize—future litigation.
10 Toward that end the filing included a revised Schedule 201, and 8 new Standard PPAs, each
11 representing a variant for (a) On and Off-System QFs; (b) Renewable and Non-Renewable QFs;
12 and (c) Variable and Non-Variable QFs. Because of the need to fully update the current PPAs, the
13 Company started with a new template, and therefore, in place of a redlined version, provided a
14 detailed matrix explaining each change.

15 From the beginning, the QF Parties protested the filing, arguing that they did not have enough
16 time to review it and, despite the detailed matrix, they claimed that they could not identify or
17 evaluate all of the changes. To address these concerns, instead of moving forward with a formal
18 schedule, PGE agreed to hold a number of workshops—six in all—to answer questions about the
19 filing. Over the course of these workshops, the parties discussed the terms and conditions in depth,
20 engaged in settlement discussions, and exchanged several rounds of redlines to the proposed
21 Schedule 201 and PPAs. Despite these productive and long-running discussions, the parties were
22 unable to agree on many significant issues. For that reason, on October 1, 2019, PGE made a
23 revised filing incorporating many of the changes requested by the QFs and asked that the

1 Commission expeditiously consider or approve the new Standard PPAs.⁵

2 One day before the prehearing conference, the QF Parties filed their motion to stay the docket
3 pending the outcome of AR 631. The QF Parties made two primary arguments in support of their
4 motion. First, they pointed to statements from the Staff Memorandum filed during the UM 2000
5 scoping process, in which Staff suggested that they intended to request that the Commission adopt
6 comprehensive and uniform standard PPAs across all utilities.⁶ Based on this suggestion, the QF
7 Parties argued that there would be substantial overlap between the issues addressed in UM 1987
8 and AR 631, and that AR 631 should be allowed to proceed first in order to avoid duplication of
9 efforts.⁷ Second, they argued that the issues to be addressed in AR 631 had been set on a “‘fast
10 track’ for prompt completion in the near term”⁸, suggesting that any stay granted in UM 1987
11 would be of brief duration. On that point, the QFs pointed out that the Commission had already
12 “‘approved Staff’s proposal and [] opened a rulemaking in AR 631”—and had already held “‘two
13 workshops with representatives of all three utilities and the QF Parties.”⁹

14 PGE objected to the Motion to Stay. PGE pointed out that Staff no longer intended that AR
15 631 would result in the adoption of comprehensive and uniform standard PPAs and instead was
16 proposing that the rulemaking address a relatively small number of specific disputed issues, and
17 therefore concerns about duplication of efforts were overstated. Second, PGE expressed its
18 concern that as a generic proceeding involving all three electric utilities, it was unrealistic to
19 suggest that AR 631 would move quickly.¹⁰

20 On December 23, 2019, the Commission issued a ruling granting the QF Parties’ motion.
21 The Commission noted that AR 631 was intended to achieve uniform contract terms across all

⁵ See, *Cover Letter to PGE’s Revised Request to Update Schedule 201 and Standard Power Purchase Agreements*, October 1, 2019.

⁶ Motion to Stay at 9 (citing to Staff Memorandum re Regular Public Meeting on July 30, 2019, Regular Agenda Item 2:UM 2000 at 1 (July 22, 2019)).

⁷ *Id.* at 12-15.

⁸ Motion to Stay at 9 (citing to Staff Memorandum re Regular Public Meeting on July 30, 2019, Regular Agenda Item 2:UM 2000, Attach. A at 23 (July 22, 2019)).

⁹ Motion to Stay at 10.

¹⁰ PGE’s Response to Motion to Stay at 6-8 (Nov. 26, 2019).

1 utilities “as promptly as possible,”¹¹ and concluded that suspending UM 1987 “will enable all
2 interested parties to focus their efforts toward developing uniform and unambiguous standard
3 contract terms.”¹² Finally, the Commission directed Staff as follows:

4 *We expect that docket AR 631 will continue to move at an appropriate*
5 *pace* and serve as the best venue for dealing with standard contract
6 language for all utilities. No later than six months from the date of this
7 ruling, or when the rules are adopted in docket AR 631, whichever occurs
8 first, we request that Staff file a status report that includes a
9 recommendation on whether the suspension of the procedural schedule in
10 these proceedings should be lifted.¹³

11 Unfortunately, very soon after the Commission Ruling was issued, Staff’s efforts to advance
12 AR 631 floundered, then stalled entirely. An initial workshop was held in January of 2020, but
13 Staff cancelled a second workshop that had been scheduled for February and failed to fulfil its
14 promise to reschedule. Over the next six months, PGE made several inquiries regarding the status
15 of the docket. In these communications PGE emphasized the importance to the Company of
16 completing the rulemaking process so that the Company could proceed with this docket
17 expeditiously. Staff failed to file the six-month status report in June, as required by the
18 Commission Ruling. When Staff ultimately submitted a status update to the Commission on July
19 28, 2020, Staff promised to circulate proposals by the end of September. After September came
20 and went, PGE made additional inquiries and was told that Staff would circulate proposed rules in
21 December. At this point, Staff has stated that its straw proposal will not be circulated until January.

III. ARGUMENT

22 This Commission has discretion to grant a motion to stay “when the interests of justice”

¹¹ Commission Ruling at 3.

¹² Commission Ruling at 3.

¹³ Commission Ruling at 3 (emphasis added).

1 demand it.¹⁴ Generally, Oregon’s practice of granting stays appears to be consistent with the
2 federal standard,¹⁵ under which the reviewing court balances (1) the interests of the parties,
3 (2) efficiency, and (3) the interests of nonlitigants and the public.¹⁶ When these factors are
4 considered against this facts in this case, it is clear that the stay imposed by the Commission Ruling
5 should be lifted, and this docket should proceed.

6 **A. Continuing the Stay Will Harm PGE and its Customers**

7 When PGE initiated this docket, the Company explained that its current PPAs had been the
8 source of numerous disputes in the contracting process—which, in the words of Commission Staff,
9 had resulted in a “flood” of litigation¹⁷, both at the Commission and in the courts. This litigation
10 taxed not only the resources of PGE, but also the QFs and the Commission.

11 In the two years since PGE made its initial filing, disputes over QF contracting have
12 continued to arise. But more importantly, continuing the stay at this late date will result in
13 **additional** QFs signing the current Standard PPAs, and **new** disputes over the contractual terms
14 and conditions. This litigation will continue to drain not only PGE’s resources, but the resources
15 of the QFs and the Commission as well. This harm can only be avoided by lifting the suspension,
16 and moving UM 1987 ahead expeditiously, to allow for the approval of new Standard PPAs that
17 are clear and comprehensive.

¹⁴ *Sawyer v. Real Estate Agency*, 268 Or App 42, 52 (2014) (internal citations omitted). The Commission follows the procedural rules set forth in the ORCP where not specifically enumerated in the OAR; there are no specific administrative rules governing the standard for approving a motion to stay.

¹⁵ *Seneca Sustainable Energy, LLC v. Dep’t of Revenue*, No. TC 5323, 2018 Ore. Tax LEXIS 29 at *2-3 (March 7, 2018) (noting that “Oregon’s practice seems consistent with the federal courts’ general recognition that a ‘court may, with propriety, find it is efficient for its own docket and the fairest course for the parties to enter a stay of an action before it, pending resolution of independent proceedings which bear upon the case.’”) (quoting *Mediterranean Enterprises, Inc. v. Ssangyong Corp.*, 708 F2d 1458, 1465 (9th Cir 1983)). Note, while the tax court’s decision is plainly not binding, that tribunal receives motions to stay “relatively often,” yet noted that it had “not found an Oregon opinion listing specific factors to be considered in whether to place a case into abeyance,” and so relied on restated federal factors.

¹⁶ *Keating v. Office of Thrift Supervision*, 45 F3d 322, 325 (9th Cir 1995).

¹⁷ *In the Matter of the Pub. Util. Comm’n of Or., Request to Adopt a Scope and Process for the Investigation into PURPA Implementation*, Docket UM 2000, Order No. 19-254, App. A at 17, 19 (Jul. 31, 2019) (“Since 2009, the Commission has overseen more than 60 contested cases regarding the interaction between QFs and regulated electric utilities[,]” with litigation centering around “the execution of Power Purchase Agreements between the utility and the QF.”).

1 It should be obvious by now that the AR 631 rulemaking process will be complex and
2 protracted. As clarified by Staff, AR 631 will be addressing key substantive PPA provisions that
3 are the subject of intense debate among the QFs and the utilities. And despite the fact that AR 631
4 was opened 17 months ago, Staff has yet to adopt a formal issues list or scope of the AR 631
5 docket, let alone develop proposed rules. And while Staff has indicated that it may be attempting
6 to move the docket forward in January, it is unclear what can or will be achieved. Crucially, many
7 of the issues under discussion for AR 631 are inextricably tied to issues that will be addressed in
8 other contested case processes either ongoing or proposed through UM 2000. It is not
9 unreasonable to expect Staff to recommend that AR 631 be further delayed until other dockets are
10 resolved. Therefore, a failure to lift the stay will result in continued harm to PGE.

11 **B. The Parties Will Not be Harmed by Lifting the Stay**

12 The Commission granted the original Motion to Stay to avoid an inefficient use of the parties’
13 efforts, based at least in part on the assumption that AR 631 would resolve most issues raised in
14 this docket by allowing the Commission to approve “uniform and unambiguous standard contract
15 terms.”¹⁸ However, given Staff’s clarification about the scope of AR 631—i.e. that it will not be
16 drafting a generic template PPA-- concerns about duplication of efforts are misplaced.

17 PGE initiated this docket to achieve a comprehensive overhaul of its current Standard PPAs,
18 to substitute the current PPAs with functional contracts that are clear and complete. And indeed,
19 as the Commission’s Ruling points out, the changes proposed by PGE are significant and the
20 filings substantial. That is precisely what is required to lay the foundation for reasonable and
21 predictable contractual relationships between PGE and the QF developers. Significantly, based on
22 the changes made by PGE resulting from the workshop process the vast majority of the new
23 provisions should be uncontroversial, and, as noted in the filing, many of the changes benefit the
24 QFs.

25 AR 631, on the other hand, will address a set of discrete policy issues that are hotly contested

¹⁸ Commission Ruling at 3.

1 and importantly, *will not result in comprehensive generic PPAs*, as originally proposed by Staff.
2 It is true that a small number of the issues that have been considered for AR 631 are addressed in
3 PGE’s filing in this case. But PGE has already agreed that to the extent that the AR 631 issues list
4 includes issues that also are presented in UM 1987, those issues may be removed from UM 1987
5 pending decision in AR 631.¹⁹ This agreement should entirely eliminate any concerns about
6 duplicative efforts.

7 A secondary theme underlying the Motion for Stay was that it was somehow wrong for PGE
8 to seek to comprehensively update its PPAs, and that it was unfair to ask the QFs to expend time
9 and effort to review them—particularly when they were being asked to take the time to participate
10 in AR 631. This argument is flawed for several reasons. First, there is a real irony to this position,
11 when viewed in retrospect, given that the QF Parties have devoted no time at all to AR 631 for the
12 past 11 months—and there is no guarantee that the docket will require any substantial time or
13 effort on their parts any time soon. Second, PGE, Staff and the QFs have all invested a significant
14 amount of work into reviewing the proposed Standard PPAs filed in this docket and exploring
15 potential resolution of related disputes. The fact that getting to a final resolution will require
16 additional work is not a valid objection to completing the task.

17 In short, given that PGE has agreed to remove from this docket any items that overlap with
18 AR 631, the QF Parties will not be prejudiced by lifting the stay and moving forward to review
19 the proposed Schedule 201 and Standard PPAs that PGE so urgently requires.

IV. CONCLUSION

20 It has now been over a year since the Commission suspended this docket pending the
21 resolution of AR 631, and despite all of PGE’s efforts to move the rulemaking process forward,
22 the Company is no closer to achieving improved PPAs than the date the suspension was issued.
23 The Commission processes allow PGE to apply for the relief requested in this docket in order to
24 update its contracts and contracting processes. That request was filed over two years ago, and

¹⁹ PGE’s Response to Motion to Stay at 7.

1 concerns matters of high priority to PGE, our customers, and QF developers. Yet there has been
2 no progress made in this docket, not even a substantive response to the filing or adoption of a
3 procedural schedule. The Company deserves consideration of its filing. For all these reasons, PGE
4 requests that the Commission lift the suspension and set a prehearing conference for the adoption
5 of a schedule.

Dated: December 31, 2020.

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