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.	MOTION TO STAY OF NORTHWEST AND INTERMOUNTAIN POWER PRODUCERS COALITION, RENEWABLE ENERGY COALITION, AND COMMUNITY RENEWABLE ENERGY ASSOCIATION

INTRODUCTION

The Northwest & Intermountain Power Producers Coalition ("NIPPC"), the Renewable Energy Coalition (the "Coalition"), and the Community Renewable Energy Association ("CREA") (collectively the "QF Parties") respectfully move the Public Utility Commission of Oregon ("OPUC" or "Commission") to stay this proceeding until after completion of the generic proceedings to develop standard contract provisions for qualifying facilities ("QF"), which commenced three months ago in AR 631.

As explained in detail below, the Commission should stay this proceeding to avoid duplicative proceedings and to conserve the resources of the parties and the Commission itself. Portland General Electric Company ("PGE") not only failed to obtain any stakeholder support of these proposed revisions to Schedule 201 and to PGE's standard PPAs ("PGE's Proposal") through its prior efforts in this docket but, through the processes to date, also caused the expenditure of enormous Stakeholder and Staff resources despite strong concerns from the outset

that the entire approach was fundamentally inconsistent with the purposes of a standard contract intended to serve and support smaller QFs projects and associated developers.

Further, the QF Parties strongly oppose PGE's Proposal because, contrary to PGE's claims, it contains substantive and numerous changes adverse to the status quo and in PGE's favor as compared to PGE's currently-effective standard power purchase agreement ("PPA") templates. PGE's initial filing in this docket was a vast, substantial rewrite of its PPA, containing extensive substantive policy, procedural, rights, and relational changes, including attempts to resolve issues in PGE's favor which were the subject of active litigation. PGE did so in the context of a wholly new document that lost all prior ties to documents associated with prior Commission proceedings for the same policies and issues, thus also creating new dispute risks and unmooring the new document from a decade of history and institutional and stakeholder familiarity. This approach introduced unknowable risks into the contracting process. While the QF Parties and others, including Commission staff, engaged in good faith with PGE for several months to attempt to reach agreement, PGE ultimately decided to abandon the stakeholder process and seek Commission approval of its preferences.

PGE's premise for expedited approval of PGE's Proposal is the assertion that the PGE Proposal only reflects an improved status quo. Because that is not correct, the PGE Proposal could only be adopted through a protracted contested case. Full review and briefing on the PGE Proposal would impose an enormous workload on stakeholders, Staff, and eventually the Commission, on top of an already heavy workload in other related PURPA dockets. Such an approach would be ill-fated and wasteful of parties and Commission resources, particularly given other related efforts on QF policy and PPAs, such as Docket Nos. UM 2000 and AR 631.

We provide three examples below of the inefficiencies that would result (among many others available) from PGE's proposed process, and the problems with PGE's Proposal:

1. PGE's Proposal constitutes entirely new documents compared with PGE's currently-approved Schedule 201 and standard PPA, with nearly double the word count from the existing PPA templates. The length and complexity of the proposed PPA fundamentally contradicts the core purpose of a standard PPA for small QFs and will increase transaction costs for developers of renewable resources, especially for the small and less-resourced developers and QFs that a standard form PPA is intended to serve. If the Commission were to require PGE to file a redlined comparison of the PGE Proposal to the currently-approved form of PPA, the extensive nature of PGE's proposed changes would be apparent. Based upon the QF Parties' experience in this docket to date, the changes were so extensive that it required hours upon hours of work simply to even review them once, let alone the many hours and resources required to engage on each of them.
2. PGE proposes new formulas for the calculation of Lost Energy Value and related damages that disadvantage QF facilities. For example, an existing cap on such damages is removed and the calculation period is changed. This presents significant policy issues and legal questions, which in the past have required a major amount of resources and which demand a thoughtful approach by the Commission.
3. The PGE Proposal removes the current language for an extension of the Scheduled Commercial Operation Date for "good cause shown," a provision in PGE's currently effective standard contract and a general concept in commercial law taking into

> account matters such as an unexpected delay in interconnection work. PGE's Proposal replaces it with a tort law concept that such extensions will occur only upon an event of "PGE's negligence." This is a major substantive change in the contract, and it is unwelcome in the view of the QF Parties. This issue in turn relates to many other contractual provisions, and PGE's Proposal creates new rights for itself and burdens on QF developers on those topics as well. In many instances, PGE's Proposal would place lopsided risks and costs on QF developers, without providing material or non-burdensome recourse to them.

There are many more examples of substantive changes that raise policy considerations. In light of these, approval of PGE's Proposal should not move forward on an expedited basis.

Understanding the burden and risks involved with utility-drafted contract templates, the Commission has undertaken a process to determine the terms and conditions of standard PPAs for all three utilities in AR 631. This rulemaking proceeding will address some of the exact same legal, policy, factual and contract language issues that are raised by PGE's filing. Staff has already commenced its process to develop terms and conditions for standard PPAs, and the QF parties are active participants in that. Thus, PGE's proposal to construct a PGE-specific standard PPA from the ground up, through a contested case process, would be duplicative and an ineffective and unreasonable use of the parties' resources. The unnecessary burden could easily be tripled if the other two Oregon utilities were to follow PGE's lead by proposing to completely re-write their own standard PPAs. Indeed, practically speaking, a Commission decision to approve PGE's approach in UM 1987, would send the message to other utilities that they should

do so. On the other hand, PGE will not be harmed by a stay because PGE's proposal in this docket will not be approved in the near-term in any event.

Furthermore, resolution of these issues in Staff's ongoing process to develop the terms and conditions of standard PPAs applicable to all three utilities and all QFs *by rule, i.e.* in a collaborative rulemaking in AR 631, is consistent with ORS 758.535(2)(a), which requires the Commission to establish terms and conditions of such contracts by rule. PGE's proposal to expeditiously approve over 500 pages of PGE-drafted documents as the embodiment of Commission rule and policy – after PGE failed to garner stakeholder support – would violate the statute and would be unreasonable on even a policy basis.

As explained in further detail below, the QF Parties strongly urge the Commission to stay this proceeding until AR 631 is complete.

BACKGROUND

On December 7, 2018, PGE filed its "Request to Update its Schedule 201 and Standard Power Purchase Agreements" (hereafter "PGE's Initial Application"). The filing was 387 pages long, but it did not include a legislative (or "redline") comparison of the changes to be made to PGE's currently-effective standard PPA and Schedule 201. Indeed, such a comparison document would be difficult to use because PGE proposed to completely re-write these documents from scratch. PGE's Initial Application generally asserted that PGE's currently-approved standard PPA – which PGE drafted – does not provide the same clarity and "commercially standard" provisions as PGE's standard PPA filed in this case. *PGE's Initial Application* at 2. PGE asserted that, while it believes changes are needed to the Commission's PURPA policies, PGE "elected to proceed with this filing without suggesting updates that would require a change in

Commission policy." *PGE's Initial Application* at 2. In other words, PGE represented that its initially-filed standard PPA and Schedule 201 contained no provisions that were in any way inconsistent with existing Commission PURPA orders and policy. In short, taken at face value, the parties and the Commission should have, in PGE's view, expected that PGE did not change the substantive treatment of the various issues in the standard PPA, and that this proceeding was merely a process to make the documents clearer.

The QF Parties and other stakeholders began reviewing PGE's proposed standard PPA and Schedule 201 through a workshop process that commenced in January 2019. It quickly became apparent that PGE had proposed numerous provisions that were directly contrary, and in many cases radically different, from existing Commission policies or substantive provisions of PGE's currently effective standard PPA. For example, to name just a few, PGE proposed:

- Provisions that substantially changed the performance security provisions of the standard PPA, and even appeared to require the QFs to post a liquid security, *e.g.*, a letter of credit, despite Commission orders authorizing step-in rights and senior liens;
- Elimination of a critically important cap on damages owed by the QF to PGE in the event of default;
- A provision providing PGE with a valuable right of first refusal to purchase the renewable energy certificates ("RECs") owned by a QF;
- A provision requiring QFs to indemnify PGE for any future carbon emissions regulations;
- A provision stating PGE would pay the QF nothing for energy delivered prior to the commercial operation of the facility, yet giving PGE ownership of the RECs associated with such "test energy;"
- A provision changing the language regarding scheduling of transmission deliveries from off-system QFs to unambiguously require QFs to lock in hourly block schedules no more than 75 minutes before the hour of delivery – in direct contradiction of

precedent of the Federal Energy Regulatory Commission ("FERC") in a complaint proceeding against PGE;[1]

- A provision stating that PGE would pay nothing for energy it receives in a month in excess of the QF's net output under monthly imbalance settlement – allowing PGE to potentially receive substantial quantities of energy for free;

- A lengthy provision allocating all transmission costs on PGE's side of the point of delivery to the QF and potentially resulting in termination of the PPA, which is a topic completely unaddressed in the currently-effective PPA;

- New provisions requiring the QF to supply PGE with a costly "certificate" of counsel regarding compliance with a wide range of permitting and contractual arrangements to achieve commercial operation;

- A provision requiring QFs to supply PGE with third-party generation forecasts, which is both not required in any Oregon QF PPA and not available for many QF generation types, such as small hydropower;

- Provisions that purported to further expand and solidify the OPUC's jurisdiction over any dispute that might arise under the standard PPA, which went well beyond the provisions currently required for inclusion by administrative rule;

- Provisions requiring QFs to expend unknown amounts to support PGE's use of the facility's capacity attributes in the California Independent System Operator markets; and

- Substantial changes to PGE's Schedule 201, materially changing the process and contract procurement risks for QFs seeking PPAs.

As the foregoing partial list of changes demonstrates, PGE's proposals thus far in this docket have been extensive and raise many important policy questions. Yet, it bears repeating,

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[1] *See PaTu Wind Farm LLC v. Portland General Elec. Co.*, 151 FERC ¶ 61,123, at PP 44-49 (June 18, 2015) (interpreting PGE's currently effective standard PPA's scheduling provisions, and determining as follows regarding PGE's demand for hourly block scheduling: "[I]t is Portland General's actions dictating the manner by which PaTu delivers its net output, which are not mandated by the Standard Contract, that are in violation of PURPA").

PGE presented the filing as a mere clarification of its currently-effective PPA. The QF Parties emphasize that PGE's assertion in its Initial Application that these and numerous other changes were not substantive undermines any confidence the QF Parties have in PGE's statements about the impact of its recent filing.

Additionally, aside from individual issues, PGE's Initial Application masked the fact that the documents proposed were extremely lengthy and completely new documents – requiring enormous effort to carefully review for potential problems. While PGE's stated goal was to remove ambiguity that PGE perceives to exist in its currently-effective standard PPA, in virtually every case of such "clarification," PGE resolved ambiguities in its own favor. The QF Parties were continuing to identify new issues and concerns with the documents several months into the workshop process. Ultimately, the parties engaged in six workshops and exchanged numerous drafts and proposed revisions to PGE's proposed documents. However, PGE elected not to continue with discussions to reach agreement. Instead, PGE decided to move forward with a proposal to the Commission in this proceeding – apparently hoping the Commission would override or overlook stakeholder concerns with PGE's proposals.

Meanwhile, during pendency of the parties' discussions related to PGE's proposed revisions to its Schedule 201 and standard PPAs in this proceeding, the Commission commenced a proceeding to develop standardized terms and conditions applicable to QFs selling to all three utilities. This proceeding was proposed by Staff, which had participated in the workshops in this proceeding and apparently understood the burdens and risks associated with each utility drafting its own standard PPA.

Specifically, on July 30, 2019, the Commission approved Staff's proposal to open such an investigation as part of the UM 2000 process. The Staff memorandum proposed that the Commission: "Open a rulemaking to address procedures, terms and conditions associated with Qualifying Facilities (QF) standard contracts." *Staff Memorandum Re Regular Public Meeting on July 30, 2019*, Regular Agenda Item 2: UM 2000, at 1 (July 22, 2019). In describing the purpose of the process, Staff further explained:

> The second rulemaking would focus on development of standard contract terms and conditions. Parties have commented that more standardized contracts across utilities could be beneficial. Staff has seen instances where the definitions and process may differ across utilities, leading to many complaints. A standardized contract could simplify the process, and eliminate those complaints. Note too, this process could also benefit from the work done in the current UM 1987 docket, PGE's update of its standard contract. Staff would hold informal workshops, and put out a standardized contract strawman for parties to comment on. Eventually rules would be proposed to adopt these standard terms and conditions.

Id. at 4. Staff's UM 2000 White Paper further explained the purpose of the standardized contract process:

> Staff proposes to draft a straw proposal of standard contract procedures and terms to initiate a holistic review of contract terms. The terms of a contract are interdependent and previous changes to certain terms of a contract after a complaint proceeding or general investigation can have unintended consequences for the application or implementation of other terms. A holistic examination of PURPA standard contracts, with emphasis on obtaining internal consistency that balances the interests of the utility and QFs would benefit the Oregon wholesale market and ratepayers.

Id. at Attachment A at 21.

Development of the standardized contract is among the elements of the generic PURPA investigation that is set on the "fast track" for prompt completion in the near term. *See id.* at Attachment A at 23 (stating, "Staff believes development of standard contract terms in the fast-

track part of the investigation could alleviate many contracting issues"). At the public meeting, Staff explained: "There's been some great work done – waiting to see what happens in UM 1987 by PGE and the stakeholders[,]" and Staff stated it expects to have some of its own proposals available for consideration by the parties in "early September[.]" OPUC Public Meeting, Video Recording at 10:00 (July 30, 2019).

The Commission approved Staff's proposal, and it opened a rulemaking in AR 631. Staff has already commenced the informal phase of this process to develop standardized contract terms applicable to all three utilities. That process has already included two workshops with representatives of all three utilities and the QF Parties.

Despite the commencement of the AR 631 process, PGE filed its Revised Request to Update Schedule 201 and Standard Power Purchase Agreements (hereafter "PGE's Revised Application") on October 1, 2019. PGE now appears to concede that its initial filing contained provisions that were inconsistent with current Commission policy. PGE asserts that it "eliminated changes proposed in the Original Filing that would have imposed additional substantive responsibilities on QFs and removed those few provisions that would have required a change in Commission policy." *PGE's Revised Application* at 2. Of course, the only way to verify this characterization is to review the *whole new* set of documents in PGE's Revised Application, which totals 505 pages. Although PGE acknowledges that "the parties have been unable to agree upon a final product for either Schedule 201 or the Standard PPAs[,]" PGE asserts this 505-page filing was "designed . . . so that it can be expeditiously reviewed by stakeholders and approved by the Commission." *Id.* PGE asserts that its revised documents

"incorporate feedback received from parties[,]" but does not claim that any party or Staff supports PGE's revised documents.

Although PGE provides some limited discussion of a handful of changes it made to the revised filing, *id.* at 2-4, PGE is unable to claim that any party specifically endorsed *any* of the provisions in the newly-proposed PPA. PGE did not ask the QF Parties to review the newly revised documents before it filed its Revised Application. And, after preliminary review of PGE's Revised Application, the QF Parties have identified dozens of provisions in Schedule 201 and the proposed standard PPAs that would be disputed and thus would need to be resolved by the Commission. We have attached this preliminary list of major issues related to topics previously under discussion with PGE in the workshops, but we stress this is only a preliminary list that would certainly include far more issues with additional time and investigation.

Additionally, PGE's Revised Application has not limited the length or burdensomeness of its newly proposed documents. The standard PPAs in PGE's Initial Application had nearly double the word count compared to the currently-approved standard contract, and the newly-revised documents are even longer still. The documents mask this fact to a certain extent because the new templates filed in this case use a smaller font which reduces the page count. To take the example of just one of the PPA templates, the Renewable Off-System Variable PPA template currently approved and in effect contains a word count of 9,032 words, while the same template proposed in PGE's Initial Application was 15,461 words. The standard PPAs in PGE's Revised Filing further increased the length of the document, now totaling 17,737 words for the same PPA template. And, due to the way PGE has chosen to compile its templates, there are

eight different contract templates to review, in addition to the completely re-written and re-formatted Schedule 201.

ARGUMENT

PGE unreasonably asks the Commission to approve a whole new set of standard PPAs and Schedule 201 at the same time that the Commission is engaged in a major PURPA investigation to develop standard PPA terms and conditions applicable to all three utilities. It would be one thing if PGE had merely built off of the work of its currently-approved standard PPA, or if PGE were presenting the Commission with a set of standard PPAs that had universal stakeholder support to adopt for interim use during the generic proceedings. But PGE has done neither of these things. Instead, PGE seeks to rush its enormous filing with vast and unknowable consequences through the Commission on what it proposes to be an expedited process. The Commission should deny PGE's attempt to force these documents on the parties, and it should instead stay this proceeding during pendency of the Staff-driven rulemaking process in AR 631.

1. This Proceeding Should be Stayed to Avoid Duplicative Procedures

The Commission should stay this proceeding until completion of the generic PURPA proceeding in AR 631, which was recently commenced to address the standard PPA terms for all three utilities. Administrative efficiency and Commission precedent warrant a stay under these circumstances. Both AR 631 and PGE's UM 1987 filing raise similar and sometimes the exact same issues, which (if UM 1987 is not stayed) will require the parties to litigate and the Commission to issue orders on the same issues and contract language in two different dockets. AR 631 is the far superior forum because it is open to all three utilities, as well as QFs that only

sell power to PacifiCorp and/or Idaho Power, which may not be following UM 1987 or may be unaware that issues critical to them may be resolved in a PGE-specific proceeding.

During the Commission's last generic PURPA investigation, the Commission resolved a nearly identical procedural question in favor of staying an individual utility's proceeding during pendency of the larger generic proceeding. Specifically, in Docket No. UM 1546, an individual utility (PacifiCorp) and a QF disputed the proper allocation of costs to transmit the QF's power out of a load pocket, but the Commission also intended to address the policy question of how to allocate such third-party transmission costs for all three utilities in Docket No. UM 1610. *Three Mile Canyon Windfarm, LLC v. PacifiCorp*, Docket No. UM 1546, Order No. 12-475 at 1-2 (Dec. 10, 2012). PacifiCorp argued to stay proceedings in UM 1546, and the QF sought to lift the stay to move forward with its individual case adjudicating the issue under PacifiCorp's standard PPA. The Commission affirmed the Administrative Law Judge's ("ALJ") decision to maintain a stay until completion of the generic proceeding. *Id.* at 3.

The Commission's reasoning in *Three Mile Canyon* is instructive to the circumstances here. The stay was maintained to "avoid unnecessary duplicative litigation and to resolve the issue of third-party transmission costs in a proceeding involving all affected parties[.]" *Id.* The Commission explained: "Both proceedings address the legal question whether the provisions of PURPA prohibit a utility from paying both avoided cost rates for a QF's output and related transmission costs to a third-party to move that output." *Id.* It explained that it would make little sense to address an issue solely with respect to one utility while adjudicating it in a generic fashion with respect to all three utilities – "[b]ecause the third-party transmission cost issue affects other utilities and QFs, we affirm the decision to address the issue in docket UM 1610

with input from all affected parties." *Id.* The QF was not prejudiced by the stay because PacifiCorp had agreed to perform under a PPA during the pendency of the parties' dispute. *Id.* Additionally, similar to the circumstances here where the standard PPA terms will be addressed in the fast-track process in AR 631, the Commission had required that the overlapping load pocket issue be addressed in the "initial phase" of Docket No. UM 1610. *Id.*

Moreover, the Commission's decision to stay UM 1546 in fact served to avoid duplicative litigation. After issuance of the Commission's Phase I Order No. 14-058 in Docket No. UM 1610, the individual QF and PacifiCorp were able to resolve their dispute without the need for expenditure of the Commission's resources. *Three Mile Canyon Windfarm, LLC v. PacifiCorp*, Docket No. UM 1546, Order No. 14-492 (Aug. 18, 2014) (noting parties requested the case be dismissed after reaching settlement). Likewise here, it is reasonable to expect that Staff's development of a standard PPA applicable to all three utilities will negate the need to litigate the appropriate terms and conditions of PGE-specific standard PPAs.

PGE's suggestion in its Revised Application that this proceeding can be resolved expeditiously is baseless. As noted above, the QF Parties strongly oppose PGE's proposed standard PPA and Schedule 201. We have already identified dozens of issues within the documents that would have to be resolved – many of which implicate important policy questions that will be better resolved in AR 631 by Staff's proposed PPA. As earlier indicated, those preliminary issues are attached hereto for reference.

For example, although PGE again presents its proposed revisions as mere clarifications, PGE has proposed to eliminate important limitations on damages assessed to QFs for a default under the mechanical availability guarantee or the minimum delivery guarantee. In PGE's

currently-effective standard PPA, those damages are capped at the contract price, but PGE now proposes to remove that cap and expose QFs to unlimited damages – which is a real risk to QFs given market price spikes at the Mid-Columbia hub in the past year. PGE's proposed standard PPA also completely reformulates the damages calculation from what exists in PGE's currently-approved standard PPA.

Another example of why PGE's proposal should not be considered on an expedited basis is PGE's proposed clarifications regarding the achievement of commercial operation. PGE proposes to now include an express requirement that the QF supply PGE with an as-built supplement to achieve commercial operation, placing the QF at risk of default and termination if the engineers are unable to complete these detailed documents overnight after the facility becomes operable. For comparison, in interconnection agreements, where the utility is the party that must supply the as-built supplement, the agreement does not require that it be supplied until 120 days after commercial operation. *See, e.g.*, Order No. 10-132 at Ex. B, p. 28, § 5.11.

These are just two of the dozens of issues that would have to be resolved through contested case proceedings if this case is not stayed. Additionally, as is apparent from the attached list, many of the issues already identified implicate important policy questions that are more appropriately addressed in a generic proceeding applicable to all three utilities and to QFs who do not sell, or plan to sell, to PGE.

More generally, the QF Parties strongly object to the increased length and complexity of the PPA included with PGE's proposal. The purpose of the Commission's standard contract is to have an off-the-shelf contract that will reduce transaction costs and contracting issues with small QFs—as well as to mitigate exposure to disputes over contract terms, for which a power

imbalance exists between a QF and an unwilling utility subject to PURPA. By nearly doubling the word count in the document and significantly increasing its complexity, PGE's proposed PPA will impose significant increases in transaction costs on developers and owners of these small renewable energy facilities. The length and complexity of the document alone may well deter certain entities from attempting to sell their output to PGE under PURPA. Additionally, the length of the document, and the fact that PGE proposes to break its contract up into eight different forms, significantly increases the costs on parties and Staff to review and identify potential issues in the documents.

Similarly, PGE's complete re-write of the form creates new challenges. The currently approved PPAs are imperfect, but at least the number of issues associated with them is discrete and known. Indeed, one of the strongest merits of the current OPUC implementation of PURPA is the compact, fill-in-the-blank nature of the current standard contracts. The existing PPA template has successfully resulted in fully developed and financed QF power plants. The risks of a complete do-over are substantial and fundamentally unknowable. The burden of those risks will compromise future QF viability, and will result in future disputes and litigation that are necessarily borne from starting over from scratch, instead of fixing known issues.

Additionally, history demonstrates that litigating the contents of PGE's standard PPAs through a contested case will take many months, and more likely multiple years. In the last major docket where the Commission adjudicated the terms and conditions of standard contracts, the adjudication of such issues was protracted and burdensome on the parties and the Commission. The phase I process in Docket No. UM 1129 commenced in January 2004 and addressed six issues related to PURPA contract rates, terms and conditions: 1) contract length

and price structure; 2) size threshold for standard contracts; 3) utility tariff content; 4) avoided cost calculation models; 5) applicability of Oregon PURPA administrative rules; and 6) dispute mediation. Order No. 05-584 at 5. A full procedural schedule followed, including two prehearing conferences and a workshop to define the scope of the proceeding, utility informational filings, Staff and intervenor testimony, utility rebuttal and supplemental rebuttal testimony, and Staff and intervenor surrebuttal testimony. *Id.* at 5-6. A two-day hearing was conducted, the parties filed opening and reply briefs, and the Commission held oral argument which concluded over a year after the initial filing in February 2005. *Id.* at 6. The Commission's initial order, Order No. 05-584, released May 15, 2005, simply made various policy decisions about particular terms in the utility's standard contract forms. *Id.* at 59. The Commission then directed the utilities to file revised contract forms "consistent with the policy decisions made in this order." *Id.* The compliance filings, in turn, then raised thirty general issues and over eighty questions from stakeholders. Order No. 06-538 at 8-9. The order resolving the majority of those issues pertaining to standard contract terms and conditions was issued in September 2006 and directed the utilities to submit revised compliance filings, which after further review and revision were approved by the Commission on February 27, 2007 (PGE, Order No. 07-065), April 2, 2007 (PacifiCorp, Order No 07-120), and May 18, 2007 (Idaho Power, Order No. 07-197).

Even after this extensive process, however, some issues remaining from phase I carried forward into phase II of the docket, which was not resolved until August 20, 2007, Order No. 07-360 at 1, and to which additional compliance filings were filed and the case ultimately concluded in November 2008. Therefore, at a minimum, it took three years to complete the contested case

process for a utility standard contract revision (January 2004 to February 2007, the date PGE's initial compliance filing was approved), but the whole process from beginning to end took nearly five years (January 2004 to November 2008).

The QF Parties are confident that either the AR 631 generic standard contract rulemaking and/or reviewing a single utility's standard contract would not be so protracted (e.g., PGE's filing). However, the fact is PGE's contract revisions raise numerous substantive questions that require careful review and attention, which takes time. The QF Parties will request the right to submit written testimony and/or significant comments in response to PGE's filing, which is how the UM 1129 contracts were reviewed and litigated. The review in UM 1987 will be difficult, because PGE has not proposed discrete revisions to its current contract form, but a whole new contract. Engaging in this UM 1987 effort on PGE's contract while simultaneously engaging in the same effort in AR 631 would likely result in delay to one or both proceedings due to the conflicting time commitments of likely the same individuals from multiple organizations engaging in both dockets.

Moreover, resolution of these issues in AR 631 comports with Oregon law, while PGE's proposal does not. Oregon's mini-PURPA statute provides: "The terms and conditions for the purchase of energy or energy and capacity from a qualifying facility shall . . . [b]e established *by rule by the commission* if the purchase is by a public utility . . . ." ORS 758.535(2)(a) (emphasis added). Staff's ongoing process to develop the terms and conditions of standard PPAs applicable to all three utilities and all QFs *by rule*, *i.e.* in a collaborative rulemaking, is consistent with the statute. PGE's proposal to expeditiously approve over 500 pages of PGE-drafted documents as

the embodiment of Commission rule and policy – after PGE failed to garner stakeholder support – violates the statute and all reasonable notions of sound policy.

Additionally, a stay is warranted because even if PGE's new contract gets approved, it is likely to be mooted shortly thereafter at the conclusion of AR 631. Given that PGE's Proposal in UM 1987 is so controversial and will need significant review, it may only be in effect for a very limited period of time and become irrelevant once the Commission adopts new provisions in AR 631.

In sum, Commission precedent and administrative efficiency compel a stay until the generic proceedings in AR 631 are complete. After that proceeding is complete, the need for PGE's proposed litigation will likely no longer exist or, at the very least, it will be significantly limited.

2. The Equities Weigh in Favor of a Stay

When considering the equities and possible harm to the respective parties, the need for a stay becomes even more apparent. *See Three Mile Canyon*, Order No. 12-475 at 3 (considering harm to the parties). Put simply, the QF Parties would be seriously harmed by the duplicative litigation PGE now proposes, while PGE makes no plausible case for harm occasioned by a stay.

The harm to the QF parties is real and certain. PGE's Revised Filing presents a substantial amount of work just to determine a party's position on the matter, much less to adjudicate the various word phrasings and meanings throughout the eight standard PPA templates and the newly proposed Schedule 201. As noted above, the sheer burden of evaluating PGE's newly proposed documents is significant. The standard PPAs PGE proposes are nearly double the word count of the currently-approved standard PPA. A redline comparison using

normal word processing applications is impossible because PGE rebuilt the documents from scratch. The QF Parties already expended substantial resources to engage in a months-long workshop and settlement process with PGE in a good faith attempt to reach a mutually agreeable standard PPA. That was no small task and, in and of itself, an enormous expenditure of time and financial resources that detracted from numerous other important regulatory and renewable resource development efforts. To now face the possibility of months to years of contested case litigation against PGE over the contents of the standard PPA would impose a major burden.

Furthermore, the precedent set by allowing PGE to impose this extreme cost on the QF Parties may well provide incentive for PacifiCorp or Idaho Power initiating their own utility-specific contested cases to engage in an extensive standard PPA re-write. PGE's proposals in this case highlight the problems with utility-drafted standard PPAs. PGE casts its proposal as a way to avoid disputes, but the QF Parties do not agree that PGE's proposal is the silver bullet to end future disputes between PGE and QFs. Instead, PGE's proposal appears to be designed to resolve all possible policy differences that might exist in PGE's favor.

On the other hand, PGE is unable to identify any legitimate harm it will suffer with a stay. PGE's Initial Application and Revised Application complain that PGE is required to continue executing the currently-effective standard PPA templates, which PGE argues are poorly drafted and not commercially standard. The problem with this argument is that PGE drafted its currently effective standard PPA. If there is a problem with PGE's standard PPA, it is a problem of PGE's own making and should provide no basis for PGE to foist a whole new set of documents on stakeholders without obtaining stakeholder support. Moreover, PGE should not be rewarded for its approach in this docket, which began with incorrect characterizations of the

impact of its proposals and led to substantial burdens borne by all else concerned in the several months that followed.

Furthermore, PGE's assumption that its revised proposal will be expeditiously approved and thus in effect pending the outcome of AR 631 is simply wrong. PGE makes no case for immediate approval of its documents over other parties' objections. Nor could it. There is no record or other basis to conclude that PGE's 505-page filing – to which the QF Parties object – is reasonable and consistent with Oregon law and policy. As noted above, the contested case process that would need to be undertaken to address PGE's Revised Filing will take many months, or more likely multiple years. Thus, PGE will not be harmed by a stay because PGE's proposal in this docket will not be approved in the near term in any event. By the time the contested case is over, AR 631 is likely to be resolved. Conversely, allowing it to proceed has a high likelihood of harm to the statutory requirement of a stable and settled QF environment, as well as immense direct costs in engaging in the process, and a high likelihood of proliferating disputes, at great burden and expense to ratepayers, Staff, and on stakeholders.

CONCLUSION

For the reasons explained above, the Commission should place a stay on this proceeding until the completion of AR 631.

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Respectfully submitted,

RICHARDSON ADAMS, PLLC

Gregory M. Adams
OSB No. 101779
515 N. 27th Street
Boise, Idaho 83702
Telephone: (208) 938-2236
Fax: (208) 938-7904
greg@richardsonadams.com

SANGER THOMPSON, PC

Irion A. Sanger
1041 SE 58th Place
Portland, OR 97215
Telephone: 503-756-7533
Fax: 503-334-2235
irion@sanger-law.com

Attorneys for NIPPC, the Coalition, and CREA

Attachment 1

Preliminary List of Objectional Terms and Conditions in PGE's Revised Application

- Overall length and complexity of the proposed standard PPA with many favorable definitions/wording for PGE; far too many to list here

- PGE's proposal to provide no compensation to QFs for "surplus" imbalance energy delivered in excess of net output in PGE's proposed monthly settlement provisions

- PGE's proposal to revise the definitions related to the measurement of nameplate capacity of the facility, which are both inconsistent with PGE's currently effective standard PPA and especially problematic for solar QFs

- PGE's proposed use of more limited cure periods in the event of a default than are commercially reasonable

- PGE's newly proposed formula for calculation of Lost Energy Value for damages owed by a QF that experiences a delay default, a failure to achieve the annual mechanical availability guarantee or minimum delivery guarantee, or termination damages, which among other problems eliminates the cap on such damages at the contract price in some cases that currently exists in PGE's standard PPA

- PGE's proposed expansive definition of Required Facility Documents, which creates unnecessary and unreasonable exposure to termination of the PPA and which also increases the documents that must be reviewed by an attorney at cost to the QF to achieve commercial operation

- PGE's proposed changes regarding the requirements of an off-system QF's transmission agreement

- PGE's proposed requirement that a QF submit an As-Built Supplement as a condition of achieving commercial operation even though utilities typically provide themselves 120 days after commercial operation to supply such as-built supplements under interconnection agreements

- PGE's proposed requirements for establishment of commercial operation, including an open-ended right for PGE to require materials not listed in the agreement

- PGE's proposal to only require itself to agree to amend the scheduled commercial operation date in cases where PGE engaged in "negligence" as opposed to other PGE or third-party delays

- PGE's proposed amendments regarding facility upgrades and modifications after the effective date, which the QF parties believe are not a reasonable implementation of

existing Commission precedent and should be considered as an important policy question applicable to all three utilities in UM 2000/AR 631

- PGE's refusal to include a duty of good faith and fair dealing in the processing of QF PPA requests under Schedule 201 and in its performance under the PPA

- PGE's proposed revisions regarding security requirements, which PGE may construe to require QFs to post liquid security in certain circumstances

- PGE's proposal to include express forum selection clauses for OPUC to resolve "any disputes" arising under the PPA

- PGE's inclusion of more expansive uncompensated curtailment rights than are allowed by FERC rules, such as an unqualified line maintenance curtailment right

- PGE's proposed inclusion of numerous provisions that create the risk of cross-default (i.e., default on the PPA solely by virtue of an issue arising under some other agreement or legal requirement)

- PGE's proposal to include language PGE may later be able to rely upon as a basis to expand its termination rights and unreasonably limit damages exposure for a wrongful termination

- PGE's proposals for the representations and warranties section of the standard PPA

- PGE's proposal to provide itself an open-ended right to force renegotiation to "increase" (but not decrease) insurance requirements on the QF

- Numerous aspects of PGE's newly revised Schedule 201 which were under discussion in workshops, including: the contracting process; changes to terminology and definitions; a new open-ended right for PGE to expand the set of information it can require of the QF to provide a draft PPA; PGE's proposal to eliminate the right of run-of-river hydropower QFs to sell at baseload rates under the variable standard PPA (with a mechanical availability guarantee) in contradiction to OPUC Order No. 07-0360 at p. 34; and PGE's position that it need not act reasonably or in good faith when processing contract requests