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Via Electronic Filing

Chair Hardie
Commissioner Bloom
Commissioner Decker
Public Utility Commission of Oregon
201 High St. SE, Suite 100
Salem OR 97301

Re: In the Matter of PORTLAND GENERAL ELECTRIC CO.
Application to Update Schedule 201 Qualifying Facility Information
Docket No. UM 1728

Dear Commissioners:

The Industrial Customers of Northwest Utilities (“ICNU”) supports Portland General Electric Company’s (“PGE” or the “Company”) Application to Update Schedule 201 Qualifying Facility Information (“Application”), filed on May 1, 2017 in the above-referenced docket, and urges the Oregon Public Utility Commission (“Commission”) to approve the Application no later than the Company’s requested effective date of May 17, 2017.

As the Company notes, Commission Order 14-058 authorizes PGE to update its avoided costs annually on May 1st, and that such update may go into effect within 60 days.^{1/} To ICNU’s knowledge, the Commission has never held that a minimum period of time must pass before the limited updates to avoided costs in the May 1st filings may go into effect.^{2/} The Commission’s rules plainly require 30 days to pass before updates to avoided costs following an acknowledged IRP may take effect.^{3/} However, this should not be interpreted to mean that the same requirement applies to May 1st updates.

^{1/} Docket No. UM 1610, Order No. 14-058 at 26 (Feb. 24, 2014) (emphasis added).

^{2/} It is true that, in Order No. 16-174, the Commission arguably indicated that thirty days must pass before any updates to avoided costs may go into effect. Id., Order No. 16-174 at 12 (May 13, 2016). However, this statement was part of background information in that order that was commingled with requirements for avoided cost updates following an acknowledged integrated resource plan (“IRP”). Id.

^{3/} OAR 860-029-0040(4)(a).

First, the Commission has strictly limited the scope of the May 1st updates,^{4/} and has rejected utility filings that do not adhere to this scope.^{5/} Because there is, as a general matter, less information to review and less potential overall impact to avoided costs in a May 1st update as opposed to a post-IRP update, it makes sense that a shorter suspension period could apply to the May 1st updates.

Second, applying a 30-day minimum suspension period is arguably inconsistent with the Commission's express statement that avoided costs pursuant to a May 1st update go into effect "within 60 days." Had the Commission intended to apply the same 30-day suspension period to these updates that it applies to updates following acknowledged IRPs, it easily could have done this. Like the established rule of statutory construction that "[w]hen the legislature uses different terms in the same statute, we infer that it intended those terms to have different meanings,"^{6/} by applying a different suspension period to different avoided cost updates, it stands to reason that the Commission intended to give itself flexibility to approve avoided costs pursuant to a May 1st update at any time within the 60-day period.

Of course, ICNU agrees that the Commission and stakeholders should be able to review and understand the bases for the updates in PGE's filing. However, as noted above, these updates are limited in nature. The opportunity for stakeholders to review the Company's filing must be balanced with the interests of customers in paying no more than legally necessary for QF power. Thus, in instances where it is apparent that customers are paying well above a utility's true avoided cost for QF power, the Commission should rectify this situation as quickly as possible. Not only does this advance the public interest, but it is also consistent with the Commission's legal responsibilities.

The Commission has a statutory obligation to protect customers, under both State and Federal law. ORS 756.040(1) requires the Commission to "represent the customers of any public utility ... in all controversies respecting rates" This includes the obligation "to protect such customers, and the public generally, from unjust and unreasonable exactions and practices and to obtain for them adequate service at fair and reasonable rates."^{7/} Meanwhile, the Public Utility Regulatory Policies Act ("PURPA") prohibits the Federal Energy Regulatory Commission ("FERC"), and any state utility commission implementing FERC's rules, from authorizing a rate for purchases from QFs "which exceeds the incremental cost to the electric utility of alternative electric energy."^{8/} The U.S. Supreme Court has confirmed that a utility's avoided cost is the "maximum rate authorized by PURPA."^{9/} By limiting the rate that may be offered for purchases

^{4/} Order No. 14-058 at 25-26.

^{5/} Docket No. UM 1728, Order No. 15-206, Appen. A at 4 (June 23, 2015).

^{6/} Brown v. Hackney, 228 Or. App. 441, 447 (2009).

^{7/} ORS 756.040(1).

^{8/} 16 U.S.C. § 824a-3(b). Meanwhile, ORS 758.525(2) requires utilities to pay for QF power at a rate that "shall not be less than the utility's avoided costs." The effect of the interaction between Federal and State laws governing rates for purchases from QFs is that these rates must exactly equal the utility's avoided cost.

^{9/} Am. Paper Inst. v. Am. Elec. Power Corp., 461 U.S. 402, 417, 103 S. Ct. 1921, 76 L. Ed. 2d 22 (1983).

from QFs to the utility's avoided cost, PURPA intended to make customers indifferent to the purchase of QF power.^{10/}

That is not now the case under PGE's current avoided costs. The sheer volume of contracts the Company is exposed to – over 531 MW of capacity currently in the queue – demonstrates the attractiveness of PGE's avoided cost rates relative to market prices.^{11/} As the Company notes, customers are exposed to hundreds of millions of dollars in excess power costs under its existing avoided costs as a consequence of these contracts.^{12/} In its current general rate case, the Company initially forecast a reduction to its net variable power costs of nearly \$30 million, driven largely by low natural gas prices.^{13/} Current avoided cost rates do not reflect these reduced gas prices. Additionally, the Company notes that, based on recent IRS guidance, facilities that come online as late as 2020 are eligible for the full value of the production tax credit, a factor that is also unaccounted for in current avoided cost rates.^{14/}

PGE is plainly paying QFs far more than its true avoided cost under its current Schedule 201 rates. Accordingly, ICNU urges the Commission to act quickly to redress this situation to minimize incremental harm to customers from the continued implementation of these rates. Such action is consistent both with the public interest and the Commission's statutory duties.

Sincerely,

/s/ Tyler C. Pepple
Tyler C. Pepple

^{10/} Docket No. UM 1129, Order No. 05-584 at 11 (May 13, 2005).

^{11/} PGE Application at 1.

^{12/} Id.

^{13/} Docket No. UE 319, PGE/300 at 34.

^{14/} In fact, PGE's Application does not go far enough to protect customers and ensure accurate avoided costs in this regard. The Company still identifies its Renewable Resource Deficiency Period as beginning in 2020, resulting in an approximate doubling of avoided cost rates in this year. PGE Application, Sheet 201-16 & 201-17. The Company's Integrated Resource Plan, however, demonstrates that it is sufficient with respect to these resources beyond 2030. Docket No. LC 66, PGE Reply Comments, Attach. B at 22 (March 31, 2017). ICNU recognizes that this issue is beyond the scope of the updates PGE is authorized to make in its May 1st avoided cost updates, but urges the Commission to consider this issue in the context of its evaluation of the reasonableness of PGE's IRP Action Plan with respect to near-term acquisition of RPS-eligible resources.