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September 6, 2017

***Via Electronic Mail***

Filing Center  
Public Utility Commission of Oregon  
P.O. Box 1088  
Salem, OR 97308-1088  
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**Re: In the Matter of Portland General Electric's Application to Update Schedule  
201 Qualifying Facility Information  
OPUC Docket No. UM 1728**

Attention Filing Center:

Attached for filing in the above-captioned docket is an electronic version of *Strata Solar Development, LLC's Response to Portland General Electric Company's Motion for Temporary Relief from Schedule 201 Prices*.

Thank you in advance for your assistance.

Sincerely,



Ken Kaufmann  
Attorney for Strata Solar Development, LLC

Attach.

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**BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON**

In the Matter of

PORTLAND GENERAL ELECTRIC  
COMPANY (PGE)

Application to Update Schedule 201  
Qualifying Facility Information

**DOCKET NO. UM 1728**

**STRATA SOLAR DEVELOPMENT,  
LLC'S RESPONSE TO PORTLAND  
GENERAL ELECTRIC COMPANY'S  
MOTION FOR TEMPORARY RELIEF  
FROM SCHEDULE 201 PRICES**

Strata Solar Development, Inc. (Strata) began development of thirteen 4 MW and smaller solar Qualifying Facilities (QFs) located in Portland General Electric Company's (PGE's) service territory in 2016 and has pending requests for a standard renewable avoided cost power purchase agreement (PPA) from PGE for each of its projects. Strata, through its local PURPA counsel, submits the following comments in opposition to PGE's August 18 *Motion for Temporary Relief from Schedule 201 Prices* (PGE's August 18 Motion).

## TABLE OF CONTENTS

<b>I. INTRODUCTION .....</b>	<b>3</b>
<b>II. PROCEDURAL HISTORY .....</b>	<b>4</b>
<b>III. APPLICABLE LAW .....</b>	<b>6</b>
<b>IV. DISCUSSION .....</b>	<b>7</b>
A. PGE’s motion should be denied; PGE’s August 18 rate application should not take effect before September 18. ....	7
1. PGE motion must fail as applied to non-solar QFs. ....	7
2. The Commission already rejected PGE’s request to lower the solar QF eligibility cap for standard contracts. ....	8
3. Except in extraordinary circumstances, Commission rules require at least 30 days for PGE’s August 18 rate application to take effect. ....	9
4. PGE’s circumstances are not exceptional--they are typical. ....	12
5. Past Commission precedent disfavors PGE’s motion for shortening timelines. ....	14
6. Commission needs time to review PGE’s extreme changes. ....	16
7. PGE is asking QFs and Staff to pay for PGE’s tardiness. ....	17
B. QFs who entered the Schedule 201 queue in time to reasonably obtain a contract prior to the effective date of PGE’s pending rate change request should be grandfathered. ....	18
<b>V. SUMMATION.....</b>	<b>20</b>
<b>VI. CONCLUSION.....</b>	<b>22</b>

## I. INTRODUCTION

PGE's August 18 Motion, which in effect asks the Commission to lower PGE's renewable standard avoided cost solar rates by 38% effective retroactively to August 8, 2017, runs directly contrary to longstanding Commission rules on the timing of QF rate changes and recent Commission precedent applying those rules. Accordingly, solar QF developers including Strata could not have predicted it nor made effective plans to avoid this fatal financial blow to their investment backed expectations. Viewed in isolation, one might credit PGE's August 18 request as a good faith attempt to save its customers money. However when viewed in the context of PGE's recalcitrance in processing Schedule 201 applications since June 2017 and earlier, one might conclude it is the last in a series of actions that together would wrongfully deprive up to 61 QF projects of the avoided cost prices<sup>1</sup> to which they are lawfully and equitably entitled.

For the reasons below, Strata urges the Commission to deny PGE's motion, to order any approved rates not become effective until September 18, or later, and to order PGE to offer standard contracts at current avoided cost prices to QFs who entered the Schedule 201 queue in time to reasonably obtain a contract prior to the effective date of PGE's pending rate change request.

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<sup>1</sup> See PGE's August 18 Motion at 1 ("As of July 28, 2017, PGE had requests for contracts from 61 solar QF projects representing 607.8 MW of combined nameplate capacity.")

## II. PROCEDURAL HISTORY

On August 18, 2017, PGE filed an Application to Update Schedule 201 Qualifying Facility Information (August 18 Application). OPUC Docket No. UM 1728. The August 18 Application proposed revisions to PGE's standard avoided cost rates based upon the Commission's partial acknowledgment of PGE's Integrated Resource Plan (IRP) at its August 8 meeting. According to PGE, the proposed rates would reduce standard avoided costs up to 46% on a 15-year levelized basis.<sup>2</sup>

Contemporaneously with its August 18 Application, PGE filed a Motion for Temporary Relief from Schedule 201 Prices. The Motion asks for an Order:

- (1) Suspending PGE's obligation to offer or enter into standard contracts under Schedule 201 with any QF project with nameplate capacity exceeding 100 kW until new Schedule 201 prices based on the 2016 IRP become effective; and
- (2) Suspending PGE's obligation to use Schedule 201 prices as the starting point for indicative prices under Schedule 202, and authorizing PGE to use the new prices filed August 18, 2017 as the starting point for indicative prices under Schedule 202 until new Schedule 201 prices based on the 2016 IRP become effective; or
- (3) Alternatively, if the Commission declines to grant the relief requested in (1) and (2) above, then declaring that the new prices filed August 18, 2017 are immediately effective; or

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<sup>2</sup> August 18 Motion at 7.

(4) Alternatively, if the Commission declines to grant the relief requested in (1), (2) and (3) above, then such other relief as the Commission deems appropriate to prevent PGE from being required to pay prices based on the currently effective but inaccurate Schedule 201 prices.

PGE's August 18 application marks its third requested revision to standard rates in four months:

- On May 1, PGE filed its annual May 1 update in compliance with Commission Order No. 14-058. Staff calculated that the May 1 update reduced standard and renewable avoided cost rates for solar QFs by 7% and 6%, respectively.<sup>3</sup> The Commission ordered PGE's update to take effect on June 1, 2017. Order No. 17-177.
- On June 30, PGE filed an unscheduled Application to Lower the Standard Price and Standard Contract Eligibility Cap for Solar Qualifying Facilities. OPUC Docket No. 1854. PGE requested two alternative forms of relief, on an immediate and on a permanent basis.<sup>4</sup> On August 18, the Commission granted in part PGE's June 3

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<sup>3</sup> *Staff Report* at 3 (May 18, 2017) in Docket No. UM 1728.

<sup>4</sup> PGE asked the Commission to:

1. Lower from 10 megawatts ("MW") to 3 MW the eligibility cap for a solar QF project to obtain standard avoided cost prices ("standard prices") from PGE; and
2. Declare that a solar QF project with capacity above 100 kilowatts ("kW") is not eligible for a standard contract or standard prices from PGE if any owner of the solar QF project has requested or obtained standard prices from PGE for more than 10 MW of solar QF capacity; or
3. Alternatively, lower to 2 MW the eligibility cap for a solar QF project to obtain standard prices from PGE.

*Portland General Electric's Motion for Interim Relief* at 1 (June 30, 2017) in *In the Matter of Portland General Electric Company, Application to Lower the Standard Price and Standard*

Motion. It ordered PGE to lower the eligibility cap for standard prices for solar QFs, from 10 MW to 3MW, effective July 14, 2017. Order No. 17-310.

### III. APPLICABLE LAW

In implementing PURPA the Commission must “simultaneously promote QF development by creating a ‘settled and uniform institutional climate for qualifying facilities in Oregon,’ while also ensuring that electric utilities ‘purchase power from QFs at rates that are just and reasonable to the utility’s customers, in the public interest, and that do not discriminate against QFs, but that are not more than avoided costs.’” Order No. 17-310, slip op. at 7 (*citing* Order No. 15-199). Such rates must also be just and reasonable to the qualifying facility.<sup>5</sup>

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*Contract Eligibility Cap for Solar Qualifying Facilities*, OPUC Docket No. UM 1854 (PGE’s June 30 Motion to Lower the Eligibility Cap for Solar QFs).

<sup>5</sup> See ORS 758.515 (2017):

The Legislative Assembly finds and declares that:

(1) The State of Oregon has abundant renewable resources.

(2) It is the goal of Oregon to:

- (a) Promote the development of a diverse array of permanently sustainable energy resources using the public and private sectors to the highest degree possible; and
- (b) Insure that rates for purchases by an electric utility from, and rates for sales to, a qualifying facility shall over the term of a contract *be just and reasonable to the electric consumers of the electric utility, the qualifying facility and in the public interest.*

(3) It is, therefore, the policy of the State of Oregon to:

- (a) Increase the marketability of electric energy produced by qualifying facilities located throughout the state for the benefit of Oregon’s citizens; and
- (b) Create a settled and uniform institutional climate for the qualifying facilities in Oregon.

*Id.*(emphasis added).

## IV. DISCUSSION

### A. **PGE's motion should be denied; PGE's August 18 rate application should not take effect before September 18.**

While the Commission has ample discretion in determining the effective date of a rate change, it does not exercise its discretion in a vacuum. Some aspects of its balancing process have been codified in Commission rules and established by precedent Commission orders; and PGE must support its rate change requests with verifiable data.<sup>6</sup>

#### **1. PGE motion must fail as applied to non-solar QFs.**

PGE's Motion provides no evidence of excess subscription by non-solar QFs. In Docket No. UM 1725<sup>7</sup> and Docket No. UM 1734<sup>8</sup>, the Commission rejected interim or permanent modification to the cap as applied to non-solar QFs because the utility provided no justification for its request. Accordingly, PGE's Motion, as applied to non-solar QFs, must fail; any interim relief granted must apply only to solar QFs.

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<sup>6</sup> OAR 860-029-0080(6)(2017) ("Any data submitted by a public utility under this rule shall be subject to review and approval by the Commission. In any such review, the public utility has the burden of supporting and justifying its data. Any standard rates filed under OAR 860-029-0040 [IRP acknowledgment] shall be subject to suspension and modification by the Commission." *Id.*)

<sup>7</sup> Order No. 16-129 ("We find no factual basis to support a reduction to the standard contract eligibility threshold for wind QFs. \* \* \* Thus, we conclude that the standard contract eligibility standard [sic] should remain at 10 MW for wind QF projects." *Id.*, slip op. at 6).

<sup>8</sup> Order No. 16-130 ("We find no factual basis to support a reduction to the eligibility threshold for wind QFs. Thus, we conclude that the eligibility standard should remain at 10 MW for wind QF projects." *Id.*, slip op. at 5).



**2. The Commission already rejected PGE's request to lower the solar QF eligibility cap for standard contracts.**

Less than a month ago, in Docket No. UM 1854, the Commission considered and rejected PGE's request to lower the solar QF standard contract eligibility cap to 2 MW.<sup>9</sup> Granting PGE's request, in Docket No. UM 1854, would have affected approximately 41 QFs between 10 MW and 2 MW totaling 272.2 MW seeking Schedule 201 contracts.<sup>10</sup> Now PGE is rehashing the same argument, but this time asking the Commission to apply the requested relief to 10 MW and 100 kW (approximately 55 QF projects totaling 298.8 MW already in the Schedule 201 queue as of July 28, 2017).<sup>11</sup>

PGE's request is an improper collateral attack on a settled matter. Furthermore, it asks the Commission to consign all QFs over 100kW to an unknown fate. The Commission still does not know what a PGE Schedule 202 contract looks like--whether the terms comply with PURPA and with Commission guidelines in Order No. 07-360--or whether any small QF will be capable of negotiating and/or performing one.<sup>12</sup> PGE's

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<sup>9</sup> Order No. 17-310, slip op. at 8 (reducing the cap to 3 MW for prices but keeping the 10MW cap for standard contracts).

<sup>10</sup> Although PGE implied, and the Commission understood in Order No 17-310, that PGE's June 30 Motion to Lower the Eligibility Cap for Solar QFs affected 61 projects with 607.8 MW combined capacity, a careful inspection of PGE's Exhibit 201 supporting PGE's motion reveals that PGE's 607.8 MW total included 289 MW of QFs over 10 MW that were never eligible for the standard contract and therefore could not have been affected by PGE's Motion.

<sup>11</sup> See Docket No. UM 1854, PGE Exhibit 204 at 2 (showing a total of 55 solar QF projects totaling 298.8 MW seeking standard contracts).

<sup>12</sup> Executed power purchase agreements generally are not confidential due to FERC and Commission disclosure requirements. FERC's Electronic Quarterly Report (EQR) filing requirements require public utilities to electronically file EQRs summarizing transaction information for short-term and long-term cost-based sales and market-based rate sales and the contractual terms and conditions in their agreements for all jurisdictional services. *Electricity Market Transparency Provisions of Section 220 of the Federal Power Act*, Order No. 768, 140 FERC ¶ 61,232 (2012) slip op. at 4-5. Most QFs greater than 20MW are subject to FERC's EQR

recycled motion to lower the eligibility cap for standard contracts should be denied (again).

**3. Except in extraordinary circumstances, Commission rules require at least 30 days for PGE's August 18 rate application to take effect.**

PGE's alternative request, that the rates in its August 18 Application take effect retroactive to August 8, should also be denied, because it contravenes Commission rules and precedent. Only three mechanisms exist for revising standard rates, and each has a specified timeline for effectiveness. Annual May 1 updates, which were authorized by Commission Order in Docket No. UM 1610, take effect within 60 days of application.<sup>13</sup>

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requirement. *See* 18 CFR §292.601(c). FERC noted in Order No. 2001 the EQR data is designed to "provide greater price transparency, promote competition, enhance confidence in the fairness of the markets, and provide a better means to detect and discourage discriminatory practices." *Revised Public Utility Filing Requirements*, Order No. 2001, FERC Stats. & Regs. ¶ 31,127 at P 31. In 2012, FERC extended the EQR filing requirement to non-public utilities with more than *de minimis* market presence. Order No. 768, 140 FERC ¶ 61,232 (2012) slip op. at 1.

The OPUC's rules require PGE to file either a true copy or a summary identifying "the quantity and quality of the power and the price being paid" for each QF contract within 30 days of execution. Staff may request a true copy of any executed contract at any time:

(1) The owner or operator of a qualifying facility purchasing or selling electricity pursuant to these rules shall execute a written agreement with the public utility. The public utility shall file a true copy or summary of the terms of the executed agreement with the Commission within 30 days of the execution of the agreement. *If a summary is filed, the summary shall identify the quantity and quality of the power and the price being paid.* A true copy of the executed contract shall be available upon request for Commission staff review.

OAR 860-029-0020(1) (emphasis added).

<sup>13</sup> *In the Matter of Pub. Util. Comm. of Oregon, Investigation Into Qualifying Facility Contracting and Pricing*, Docket No. UM 1610, Order No. 14-058 slip op. at 28, (Feb. 24, 2014) ("Electric utilities' annual updates will be presented at a public meeting, with a rate effective date within 60 days of the May 1 filing." *Id.*), corrected by April 17, 2014 Errata Order.

Midcycle updates due to changed circumstances take effect in 90 days.<sup>14</sup> And biennial updates following IRP acknowledgment (the type of update PGE seeks in its August 18 application), take effect 30 days after application.<sup>15</sup> The rules allow suspension of the timelines for review and modification by the Commission<sup>16</sup>, but do not provide for shortening the wait periods specified in the rules.

Minimum wait periods balance the goals of maintaining just and reasonable rates to ratepayers (*and* QFs), and encouraging development of renewable energy required by ORS 758.515.<sup>17</sup> Speed of implementation of rate changes must be balanced with predictability and regularity. A predictable wait period is standard practice in most state legislative bodies. It gives the Commission time to review data from the utility and determine whether proposed rates are just and reasonable. It also gives QFs notice of pending rate changes and some ability to act prior to the change taking effect.

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<sup>14</sup> OAR 860-029-0080(7) (“A public utility may propose or the Commission may require a public utility to file the data described in OAR 860-029-0080(3) during the two-year period between filing least-cost plans pursuant to Order No. 89-507 to reflect significant changes in circumstances, such as the acquisition of a major block of resources or the completion of a competitive bid. Such a revision will become effective 90 days after filing.” *Id.*).

<sup>15</sup> OAR 860-029-0040. (“In the same manner as rates are published for electricity sales each public utility shall file with the Commission, within 30 days of Commission acknowledgement of its least-cost plan pursuant to Order No. 89-507, standard rates for purchases from qualifying facilities with a nameplate capacity of one megawatt or less, to become effective 30 days after filing. The publication shall contain all the terms and conditions of the purchase. Except when a public utility fails to make a good faith effort to comply with the request of a qualifying facility to wheel, the public utility's standard rate shall apply to purchases from qualifying facilities with a nameplate capacity of one megawatt or less.” *Id.*)

<sup>16</sup> OAR 860-029-0080 (6) (“State review: Any data submitted by a public utility under this rule shall be subject to review and approval by the Commission. In any such review, the public utility has the burden of supporting and justifying its data. Any standard rates filed under OAR 860-029-0040 shall be subject to suspension and modification by the Commission.” *Id.*).

<sup>17</sup> See ORS 758.515 at note 5, *supra*.

The wait period, by comporting with widely accepted norms, providing reasonable time for review, and reasonable predictability, reduces legal challenges and improves regulatory efficiency.

The rate change rules for biennial and midcycle updates, including the 30- and 90-day wait periods, were adopted in 1981 and have survived many subsequent rulemakings intact. In Docket No. UM 1610, the Commission considered abolishing the midcycle update mechanism. The Commission opted to retain the midcycle mechanism, but gave notice that those who seek to use it must meet a “very high” burden.<sup>18</sup> While the Commission was speaking specifically about updates under OAR 860-029-0080(7), the impact of shortening the wait period in OAR 860-029-0040 is the same. Shortening the 30-day wait period for biennial avoided cost rate changes places an almost unrealistic expectation on Staff’s ability to review the proposed rates and inflicts uncertainty upon QFs affected by the rate changes. Because such waivers increase pressure on Commission staff responsible for vetting the applications, upset predictability for QFs seeking a PPA at existing rates, and are contrary to community norms, they should be allowed only in truly exceptional circumstances. Otherwise, the minimum wait periods in Commission rules should be enforced.

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<sup>18</sup> Order No. 14-058 slip op. at 26 (“Finally, in light of our adoption of a yearly update, we will continue to allow requests for mid-cycle updates for significant changes to avoided cost prices. However, in light of our decision here to require annual updates in addition to updates following IRP acknowledgement, we caution stakeholders that the “significant change” required to warrant an midcycle update will be very high. We expect the parties to use this option infrequently.”)

#### **4. PGE's circumstances are not exceptional--they are typical.**

PGE asserts, on page 1 of its Motion, that “[t]he need for relief is urgent.” PGE claims that “[i]f the [607.8 MW nameplate capacity of] solar QF projects seeking contracts from PGE as of July 28, 2017 are allowed to achieve legally enforceable obligations before PGE’s new prices become effective, then PGE--and ultimately its customers--will be obligated to pay approximately \$492 million more than actual avoided cost for QF power.”<sup>19</sup>

PGE’s assertions are unsupported by any work papers and so speculative as to be unsubstantiated. The only fact in the above statement that can be verified is the amount of solar QFs seeking contracts from PGE as of July 28 (61 projects, 607.8 MW nameplate capacity).<sup>20</sup> PGE did not disclose in its Motion that any relief granted by the Commission would have no effect on a large portion of those 61 projects:

- *Many QF projects between 10 MW and 3 MW capacity will not be affected. When the Commission lowered solar cap from 10 MW to 3MW in Order 17-310, 27 QF projects totaling 241 MW became ineligible for the standard prices.<sup>21</sup> PGE’s Motion does not mention this critically important deviation from its base assumptions, nor estimate the resulting impact to PGE’s customers.<sup>22</sup>*

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<sup>19</sup> *Declaration of Robert MacFarlane* at 1, (August 18, 2017) in Docket No. UM 1728 (attached to PGE’s August 18 Application).

<sup>20</sup> *See* Docket No. UM 1854, PGE Exhibit 201 (August 3, 2017)(list of proposed QF solar projects totaling 607.8MW).

<sup>21</sup> *See Id.*

<sup>22</sup> This is understandable because the Commission did not publish Order No. 17-310 until a few hours before PGE filed its Motion, on August 18.

- *QF Projects that achieve a Legally Enforceable Obligation (LEO) prior to the biennial rate change effective date will not be affected.* PGE also does not say how many of the 607.8 MW would not be affected because they achieved a LEO (or were prevented from achieving a LEO by PGE) prior to the Commission’s August 8 hearing. Based on PGE’s prior statements to the Commission, it’s safe to assume that number is large.<sup>23</sup> Those QFs must also be subtracted from PGE’s 607.8 MW total.
- *Few, if any, QFs will sign contracts with PGE if the proposed rates take effect.* Finally, PGE’s assumption that 61 solar QFs seeking contracts at current rates will sign contracts at the lower rate relies on faulty logic. If the proposed new rates take effect, PGE will not subscribe the same QF capacity at its drastically lower rates. Strata Solar has no intention of signing contracts with PGE with the rates it proposed August 18, and few, if any, new QF projects will be viable if PGE’s proposed rates are adopted.<sup>24</sup> Instead, PGE will likely build its own resources, which poses different costs and risks to PGE’s customers.<sup>25</sup>

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<sup>23</sup> See, e.g. *PGE’s Motion for Interim Relief* at 3 (June 30, 2017) in Docket No. UM 1854 (“Under the timelines established by PGE’s Schedule 201, it is likely that the 417.2 MW worth of solar QF contract requests facing PGE will be processed, and new contracts executed, before the Commission resolves PGE’s Application for permanent relief.”).

<sup>24</sup> If the Commission approves the solar integration charge PGE proposed in its August 18 Application, the decrease in standard contract value to QFs will substantially exceed 38.4%.

<sup>25</sup> See Sickenger, Ted, *“PGE sues insurers for cost overruns on power plant; could turn to ratepayers next”*, The Oregonian, March 26, 2016 (PGE stated that “the cost of the 440-megawatt [Carty] power plant it is building in Boardman could increase by up to \$156 million, or 30 percent above the original \$514 million price tag approved by state utility regulators \* \* \* PGE

In summary, PGE's Motion, which was finalized before the Commission published Order No. 17-310, relies on an exaggerated and outdated upper bound estimate of customer cost impact and makes no attempt to quantify the most likely cost impacts from granting its requested relief. After accounting for the QFs that would not be subject to the requested relief, and the QFs that will liquidate rather than sign a non-standard PPA or a PPA with PGE's proposed new rates, the potential savings from granting PGE's requested relief are highly uncertain, and certainly much less than advertised. The potential impacts from denying its motion are limited, and typical of past biennial updates where no expedited implementation occurred.

**5. Past Commission precedent disfavors PGE's motion for shortening timelines.**

Utilities have sought extraordinary relief from QF standard avoided cost rates at least four times since 2013. In no case did the Commission shorten the waiting period for IRP related rate changes:

- Docket No. UM 1664. On July 22, 2013 PGE applied for a midcycle update to its standard avoided cost prices subsequent to its executing a construction contract to build the Carty Generating Station. PGE requested that the rates take effect on an expedited basis--30 days after its application. Staff, in reliance on OAR 860-029-0080(7), recommended that the update take effect on October 20--90 days after PGE's application. The Commission approved the update effective February

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said that if it can't recover the cost overruns from the contractor or its insurers, it would seek to recover them from customers.”).

20, 2014--213 days after PGE's application. Docket No. UM 1664; Order No. 13-378.

- Docket No. UM 1725. On April 24, 2015 Idaho Power Company (Idaho Power) applied for a midcycle update to its standard avoided cost prices subsequent to the addition of significant demand response resources. The update included a change to the sufficiency period, from 2016 to 2021. Idaho Power also sought to lower the standard contract eligibility cap for wind and solar QFs to 100kW, effective immediately. The Commission ordered a temporary standard contract eligibility cap reduction, from 10 MW to 3MW, effective April 24, 2015. However Idaho Power's requested change in the avoided cost prices did not occur until May 12, 2016--30 days after Idaho Power's compliance filing, and more than 12 months after its original application. Order No. 16-129.
- Docket No. UM 1734. On May 21, 2015 PacifiCorp (d/b/a Pacific Power) applied to lower the eligibility cap for wind and solar standard QF contracts, from 10 MW to 100 kW. On July 9, 2015, PacifiCorp filed a motion asking the Commission to lower the solar eligibility cap to 3MW on an interim basis. The Commission granted PacifiCorp's motion, effective May 21, 2015. The Commission ultimately ordered PacifiCorp to lower the solar QF eligibility cap for *standard prices* to 3 MW but left the solar QF eligibility cap for standard contracts at 10 MW, and left the wind QF eligibility cap for standard contracts and standard prices at 10 MW. Order No. 16-130.



- Docket No. UM 1844. On June 30, 2017 PGE applied to lower the eligibility cap for solar standard QF contracts from 10 MW down to 2 MW, among other requested relief. The Commission authorized PGE to reduce the solar QF eligibility cap for standard prices, but not standard contracts, to 3 MW effective July 14, 2017. Order No. 17-130.

The roadmap for extraordinary changes to standard rates is delineated by prior Commission orders, even if the road bears multiple ruts. Historically, the Commission has made cap reductions effective on the application date, or shortly thereafter, but has made rate changes effective no sooner than the date allowed in its rules.

<b>Docket</b>	<b>Application (App.) Date</b>	<b>Cap Change effective date</b>	<b>Rate Change effective date</b>
UM 1664	July 22, 2013	n/a	App date + 230 Days
UM 1725	April 24, 2015	App. date	App date + 383 days
UM 1734	May 21, 2015	App. date	n/a
UM 1844	June 30, 2017	App. Date + 14 days	n/a

**Table 1. Time until effectiveness in recent avoided cost rate revisions.**

If the Commission follows its precedent, above, it will allow more than 30 days from PGE's application for rate changes to take effect.

**6. Commission needs time to review PGE's extreme changes.**

PGE has calculated that the renewable standard prices will decline 29% for wind, 38% for solar, and 46% for baseload projects on a 15-year levelized basis. Before these rates (which would drastically curtail new QF development in Oregon for the

foreseeable future) take effect, Strata hopes that the Commission will examine closely whether they are just and reasonable. Strata shares the concerns, expressed by NIPPC, REC, and CREA, that the renewable sufficiency period is too long; the standard sufficiency period is not acknowledged, the solar integration charge is unauthorized; and the solar capacity contribution in the avoided cost rates is inconsistent with PGE's own IRP. Strata appreciates the work entailed in reviewing PGE's filing, and asks the Commission to permit its staff the full 30 days (or more if needed) to do so.

**7. PGE is asking QFs and Staff to pay for PGE's tardiness.**

A final relevant consideration is the unfairness of asking the QFs and staff to bear the burden of delays in rate change process caused by PGE. PGE knew by March 31, 2017, that it had enough RECs to be in renewable resource sufficiency until 2029.<sup>26</sup> And it knew that the July 27, 2017 Staff Report recommended the Commission adopt the change at the August 8, 2017 public meeting. Despite this advance notice, PGE took until August 18 to file its rate change application and Motion. Strata agrees with Staff, that “[r]equiring Staff and stakeholders to simultaneously respond to the request for interim relief and review PGE's avoided cost filing would be particularly unfair given the timing of PGE's filing. Notwithstanding PGE's assertion that the need for relief from its current avoided cost prices is ‘urgent,’ PGE waited ten days after the date of the Commission's partial acknowledgment of its IRP, (which occurred on August 8, 2017) to file its

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<sup>26</sup> *PGE's Reply Comments* at 16 (March 31, 2017) in Docket No. LC 66 (“Due to the load forecast update and additional QF contracts the Delay Portfolio in this supplemental analysis does not require procurement until 2029.”)

avoided cost prices.”<sup>27</sup> If anything, PGE’s Motion justifies a longer wait to give adequate time for parties to review the proposed rates and respond to PGE’s Motion.

**B. QFs who entered the Schedule 201 queue in time to reasonably obtain a contract prior to the effective date of PGE’s pending rate change request should be grandfathered.**

In Docket No. UM 1129, the Commission ordered the utilities to develop contracts with standard rates and terms. Because those contracts require NO negotiation, strict timelines for processing standard contract applications was deemed realistic and proper. The Commission approved staff’s proposed timelines which contemplate execution of a standard PPA within 45 business days of application.<sup>28</sup> Of the approximately 61 QFs seeking PGE solar PPAs as of July 28, 2017, more than half have already filed a complaint alleging that PGE violated those timelines.<sup>29</sup> PGE has admitted to withholding executable standard PPAs pending Commission action on its requests for relief.<sup>30</sup> The Commission has never authorized such actions by a utility,

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<sup>27</sup> *Staff’s Response to Request for Expedited Consideration and Motion to Stay Response to PGE’s Motion for Temporary Relief* at 2 (August 25, 2017) in Docket No. UM 1728.

<sup>28</sup> In Docket No. UM 1610, Commission Order No. 16-174 explained the process for obtaining a standard contract: “(1) a QF initiates the process by submitting certain information, the utilities then have 15 days to provide a draft standard contract; (2) the QF may agree to the terms of the draft contract and ask the utility to provide a final executable contract, or suggest changes; (3) the utility provides iterations of the draft standard contract no later than 15 days after each round of comments by the negotiating QF; and (4) when the QF indicates that it agrees to all the terms in the draft contract, the utility has 15 days to forward a final executable contract to the QF.” *Id.* at 24.

<sup>29</sup> A review of the Commission’s eDocket’s database revealed 37 active QF complaints, 13 of which were initiated by QFs 4 MW and smaller owned by Strata.

<sup>30</sup> On August 7, Strata received a letter to several of its QFs from PGE which stated in part:

Lastly, on June 30, 2017, PGE applied to the Public Utility Commission of Oregon to modify eligibility for standard contracts and standard prices. That application has been assigned to Commission Docket No. UM 1854 and includes a motion for interim relief. The relief requested in UM 1854 could impact your eligibility for standard prices or a Standard PPA. PGE has requested expedited consideration of its motion for interim relief

however PGE may have felt it was necessary to break the Commission's rules in order to preserve potential solutions until the Commission could make a decision. QFs feel strongly they were deprived of procedural due process; PGE may feel trapped by the Commission's rules. A determination of who is more correct--and the accompanying legal risks of running afoul of PURPA--can be mooted by grandfathering all QFs with standard PPA requests pending prior to PGE's application.

Grandfathering is a common feature used to mitigate the impact of new laws upon persons who lawfully relied on the previous laws. It has been employed in PURPA rate changes in the past.<sup>31</sup> It is also consistent with the Commission's past precedent of delaying rate changes to allow QFs to finalize their standard contracts. In Docket No. UM 1644, the Commission ordered PGE's midcycle update to the sufficiency period to take effect 230 days after PGE's application in order to permit several QFs to finalize standard contracts with PGE. In Docket No. UM 1725, rates did not change for 383 days after application by the utility. These prior decisions illustrate the Commission's past flexibility in determining a cutoff date for QFs that are close to obtaining a contract. Grandfathering is a similar but superior remedy to short-term delays (which may provide PGE with an incentive to drag its feet in processing the current queue backlog).

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and does not expect to provide you with an executable Standard PPA before the Commission has ruled on PGE's motion for interim relief in UM 1854.

Thirty days later (and two weeks after the Commission issued its order in UM 1854 substantially denying PGE's requests), PGE still has not tendered an executable PPA to any of Strata's projects.

<sup>31</sup> See *NIPPC, Coalition and CREA's Response to PGE's Motion for Interim Relief* at 31-35 (July 27, 2017) in Docket No. UM 1854 (discussing prior precedent in Oregon and elsewhere for grandfathering).

Grandfathering would avoid a host of protracted, expensive legal disputes over whether PGE took enough time, or too much, and whether its delays were excusable or not. Grandfathering eliminates any perception that utilities can frustrate QF development by ignoring the processing timelines. And grandfathering will benefit PGE's customers by reducing uncertainty in PGE's resource planning and greatly reducing its legal fees for litigation that will continue in the absence of grandfathering. Grandfathering is a just and reasonable solution for QFs and utility's customers alike.

## **V. SUMMATION**

If and when the Commission approves PGE's August 18 application, renewable avoided cost rates for solar QFs will have plummeted over 40% since June 1. Oregon's current climate that attracts robust, diverse, job-creating investment in Oregon's solar industry will change to a new environment where few, if any, new QFs will be developed in the foreseeable future.

To some extent, the change in avoided cost prices is an expected result of PGE achieving state renewable procurement milestones well ahead of schedule, thereby reducing the need for additional renewable resource capacity at this time. There is more to the story, however. While PGE's three rate modifications were in process, PGE's processing time for Schedule 201 PPA applications slowed down and, during certain periods, halted. Mandatory timelines for processing applications were ignored. The rules of the road became unpredictable.

The resulting damage to Oregon’s renewable energy community, and its perception of Oregon’s PURPA implementation, has been substantial. The damage affects all parties. Sudden, radical changes to the prices and rules contribute to surges in QF contract applications. Delays and uncertainty increase developer costs and legal disputes which threaten to bog down Commission staff and developers alike. And when developers and their investors lose faith that they will be treated fairly, they will not come back to Oregon, even when prices recover to bankable levels.

Predictability is very important to the long-term sustainability of Oregon’s standard QF rates regime, and recent events have placed that predictability in question. The Commission’s recent implementation of a monthly PGE QF contract reporting requirement is a fantastic step towards improving predictability, however, and should be extended to PacifiCorp and Idaho Power. Monitoring of QF applications will provide an early warning system that can alert utilities, developers, and the Commission of development trends before they can develop into emergencies. Early detection will minimize the need for sudden corrections. Increased transparency in non-standard contracts would also improve the climate for investors and bring Oregon practice in line with federal practices aimed at preventing market abuses.

The Commission best achieves its policy objectives over the long-term by drawing clear lines and enforcing them. Eliminating deviations (in either direction) to wait periods in the rules will serve the Commission’s goals in the long run.<sup>32</sup> Changing

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<sup>32</sup> Similar wait periods should exist for changes to the standard cap; otherwise utilities are likely to seek changes in the rate cap to circumvent the rate change wait periods.

the rules from crisis to crisis, as PGE requests, will blur the lines, encourage more disputes, and tend to undermine the Commission's policy objectives.

Clearer policies will help going forward, but will not resolve this summer's legacy of inequity. The most prescient developer would not have predicted the disastrous reduction in price and eligibility under Schedule 201 that PGE sought, and seeks. The Commission has a responsibility to consider the pending applications QF developers submitted in good faith and in reliance on a fair process, and to also consider whether the backlog of QF applications arose in part from PGE hostility to QFs and the Schedule 201 timelines. Projects that reasonably could have qualified for standard contracts under Schedule 201 timelines before the effective date of changes should be given the opportunity to do so. The costs of added projects will be small compared to the long-term benefit of a predictable and reliable system.

## **VI. CONCLUSION**

For the reasons above, Strata urges the Commission to deny PGE's Motion and to order PGE to offer standard contracts at current avoided cost prices to QFs who entered the Schedule 201 queue in time to reasonably obtain a contract prior to the effective date of PGE's pending rate change request.



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