**BEFORE THE PUBLIC UTILITY COMMISSION**

**OF OREGON**

**UM 1752**

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | SUPPLEMENTAL COMMENTS OF |
| PORTLAND GENERAL ELECTRIC, | ) | CYPRESS CREEK RENEWABLES, |
| | ) | LLC |
| Revised Schedule 201 Qualifying Facility Information | ) | |
| | ) | |
| | ) | |

Cypress Creek Renewables, LLC ("Cypress Creek") respectfully submits these supplemental comments in opposition to Portland General Electric's ("PGE") proposed out-of-cycle changes to its Schedule 201 avoided cost rates. PGE initially submitted an application to revise its Schedule 201 rates on December 3, 2015. PGE requested an effective date for such revisions of January 13.

Cypress Creek previously submitted comments on PGE's initial application. Along with the Renewable Energy Coalition ("REC") and the Community Renewable Energy Association ("CREA"), Cypress Creek pointed out how PGE's application violates existing Commission orders allowing utilities to make annual updates to their avoided cost rates in May of each year. PGE's initial filing failed to offer evidence in the record that would substantiate the need for the Commission to either modify or depart from its prior orders. What little supporting information PGE actually provided was unverified. Further, the very aggressive timeframe suggested by PGE for approval of the out-of-cycle changes, which largely occurred over the winter holiday season, was both unrealistic and unfairly prejudicial to Staff and other stakeholders.

In response to the comments filed by Cypress Creek, REC and CREA, PGE filed a revised application on January 15. In its revised application, PGE now requests a minimal change in the proposed effective date from January 13 to January 27. In its revised filing, PGE admits that it is seeking an out-of-cycle update that is contrary to the Commission's existing orders. Nevertheless, PGE asks the Commission to exercise its discretion to allow this out-of-cycle update because there has been a "significant" change in PGE's avoided costs. If Schedule 201 is not changed immediately, PGE alleges, then its customers will overpay for pending QF projects by $155.5 million over 15 years.

PGE's revised filing remains flawed. First and foremost, PGE's initial and revised filings are both based entirely on legal pleadings. In neither case has PGE offered testimony from a knowledgeable and credible witness in support of its filings. For example, in its revised filing PGE simply concludes that its current Schedule 201 rates are 48% higher than actual avoided costs for base load QFs, 41% higher than actual avoided costs for wind QFs, and 46% higher than actual avoided costs for solar QFs. The basis of these claims remains unsubstantiated with objectively reviewed data. There is no testimony to rebut. No witness to cross-examine. There is, in short, no evidence in the record that would allow the Commission or its Staff to either verify or dispute the accuracy of these claims.

Even if PGE's revised allegations were supported by evidence in the record, they remain incomplete. Specifically, PGE's conclusory statement that the out-of-cycle change is necessary to protect its ratepayers against $155.5 million in overcharges raises many unanswered questions:

- Would that number be any different if PGE were to file an annual update to its avoided costs prices in May rather than January?

- Does that number assume that all 18 potential QF projects that have "started the contracting process" will be successfully completed? If so, is there *any* evidence that would support a 100% success rate amongst "potential" QF projects?

- What is the basis of PGE's predictions for forward market pricing a decade from now on?

- Does that number take into account any factors that might drive PGE's avoided costs *higher*—for example impending cost overruns at its Carty Generating Station or PGE-sponsored legislation that would authorize massive future investments in new renewable generating facilities?

Before the Commission contemplates granting PGE's out-of-cycle update, the Commission Staff and other stakeholders should have a fair and full opportunity to ask these and other important questions about PGE's allegations.

Aside from the paucity of evidence, PGE's revised application still raises several issues that are supposed to be addressed through an annual filing in May. For example, in its revised filing PGE changes its assumptions concerning the extension of the federal Production Tax Credit in order to track the actual legislation. Although PGE's revised assumptions about the extension of the Production Tax Credit may now be more accurate than before, the fact remains that this is one of the four factors to be addressed by PGE in its annual filing on May 1. Other "major drivers" of its proposed out-of-cycle change are forecasts of future natural gas and electricity prices. Again, these are two of the four factors that shall be addressed by PGE on May 1 of each year, and not through an out-of-cycle filing.

Finally, PGE's revised application still relies heavily on an <u>*un*acknowledged</u> update to its 2013 IRP. On December 2, 2015, PGE filed in LC 56 an "update" to its previously acknowledged 2013 IRP. The 2013 IRP Update is not subject to Commission scrutiny and acknowledgment and is therefore *not* a trigger for updating avoided cost pricing. In Order 14-058, the Commission explained—with its own emphasis—that a change in avoided cast rates

may be based on "[a]ny other action or change in an *acknowledged* IRP update relevant to the calculation of avoided costs." The Commission's emphasis on the word "acknowledged" is telling. The Commission knew that allowing changes to avoided costs based on unacknowledged IRP filings would be tantamount to giving the utilities *carte blanch* to set their own avoided costs rates based on untested, unreliable, inaccurate and self-serving information.

In its initial comments, Cypress Creek urged the Commission to reject PGE's out-of-cycle change—but in the alternative Cypress Creek suggested a compromise position. If the Commission were inclined to grant an out-of-cycle change to Schedule 201, such change should only apply to QF contract requests received *after* the effective date. As the Commission explained in Order 14-058, "Oregon law provides that avoided cost rates shall be reviewed and approved . . . in a manner that allows for a settled and uniform institutional climate for QFs." Allowing the purchasing utilities to seek out-of-cycle changes that are specifically intended to impede pending contract requests would create an unsettled and disjointed institutional climate for QFs. This would, in effect, allow the utilities to unilaterally undermine the QF contracting process at any time. At a minimum, therefore, the Commission should not approve any out-of-cycle changes to avoided cost rates and terms that are intended to raise barriers against pending contract requests.

In its revised filing, PGE mischaracterizes Cypress Creek's compromise position as an amendment to the Commission's policies regarding Legally Enforceable Obligations ("LEO"). Cypress Creek's proposal has nothing to do with the creation of a LEO. All Cypress Creek is saying is that if the Commission has the discretion to approve an out-of-cycle update to avoided costs, then the Commission must also have the discretion to

determine how and when that out-of-cycle change would become effective. The Commission should therefore exercise that discretion so as to reasonably ensure "a settled and uniform institutional climate for QFs."

Cypress Creek submits these supplemental comments because PGE's revised filing does not satisfy the objections that Cypress Creek, REC and CREA raised in their respective initial comments. The revised filing still rests solely on allegations in a legal pleading and lacks supporting testimony in the record. The revised filing still prematurely raises several issues that are supposed be addressed in PGE's annual update in May. The revised filing still relies heavily on an IRP update that has not been, and will not be, acknowledged by the Commission. The revised filing still proposes an effective date that is unreasonably short and does not afford Staff or other stakeholders an opportunity to vet PGE's allegations. Finally, PGE's revised filing is still specifically intended to undermine pending requests for standard QF contracts. As such, PGE's revised filing is at odds with Oregon law, existing Commission orders, and basic notions of good faith and fair dealing.

DATED this 22ND day of January, 2016.

/s/ Richard G. Lorenz
Richard G. Lorenz, OSB No. 003086
Cable Huston LLP
1001 SW Fifth Avenue, Suite 2000
Portland, OR 97204-1136
(503) 224-3092 (Telephone)
rlorenz@cablehuston.com

Attorney for
Cypress Creek Renewables, LLC