BEFORE THE

PUBLIC UTILITY COMMISSION OF OREGON

In the Matter of PORTLAND GENERAL ELECTRIC COMPANY Revised Schedule 201 Qualifying Facility Information.	))))))))	CASE NO. UM 1752 COMMENTS IN OPPOSITION OF THE COMMUNITY RENEWABLE ENERGY ASSOCIATION

The Community Renewable Energy Association ("CREA") respectfully submits these comments to the Public Utility Commission of Oregon ("OPUC" or "Commission") in opposition to Portland General Electric Company's ("PGE") unplanned and unsubstantiated proposal to drastically reduce its avoided cost rates available to qualifying facilities ("QF") under the Public Utility Regulatory Policies Act of 1978 ("PURPA") in the above-captioned matter. As explained more fully herein, PGE's proposed rate decrease fails on multiple procedural and substantive grounds. Accordingly, the Commission should deny PGE's Application.

I. BACKGROUND

The Commission's policies for updating avoided cost rates are clear and well established. As the Commission explained in Order No. 14-058, "Oregon law provides that avoided cost rates shall be reviewed and approved by the Commission at least every two years, but must occur in a manner that allows for a settled and uniform institutional climate for QFs." Order No. 14-058 at 23 (citing ORS 758.515(3)(b); OAR 860-029-0040(4)(a)); *see also* ORS 758.525(1). The Commission has therefore "historically allowed utilities to update their avoided cost rates every two years coincident with the IRP process, with avoided cost updates filed 30 days after IRP acknowledgement." Order No. 14-058 at 23.

In docket UM 1610, most parties agreed that the Commission should also allow for another annual update to a limited number of readily ascertainable inputs to improve the accuracy of the rates without compromising the settled climate and predictability required by Oregon law. Ultimately, the Commission adopted "a new requirement for an annual update *on a specific day each year*, in addition to the current complete avoided cost update following each IRP acknowledgement order." Order No. 14-058 at 25 (emphasis added). Unlike the "complete avoided cost update" occurring after IRP acknowledgement every two years, the Commission specifically limited these annual updates occurring on May 1st of each year to include: "(1) Updated natural gas prices; (2) On- and off-peak forward-looking electricity market prices; (3) Changes to the status of the Production Tax Credit; and (4) Any other action or change in an *acknowledged* IRP update relevant to the calculation of avoided costs." *Id.* at 25-26 (emphasis in original).

PGE filed its last two-year "complete avoided cost update" on May 30, 2014, and after parties resolved several disputed items the Commission approved those rates on December 17, 2014. Order No. 14-435. This was the very first time that PGE's renewable avoided cost rates were made available for QFs even though the Commission had directed that PGE and PacifiCorp make renewable rates available over three years previous on December 13, 2011, in Order No. 11-505.

PGE also made its first annual update filing on May 1, 2015. *See Application*, OPUC Docket No. UM 1728 (filed May 1, 2015). But PGE ignored the Commission's directives and sought revision to at least one significant input not included on the list provided in Order No. 14-058. Accordingly, the Commission rejected PGE's May 1st update filing. Order No. 15-206. In

the Staff report recommending rejection of PGE's proposed rates, Staff explained: "that one of the main goals supported by annual updates is a predictable, streamlined process that allows for timely avoided cost updates with limited controversy and disputes." *Id.* at App. A at 4. In its subsequent compliance filing made after initial rejection of its rates, PGE again updated additional items beyond the list included for the May 1st update, and made corrections only after notified by CREA. *See* Order No. 15-251 at App. A at 2. PGE's May 1st update rates were finally corrected and put into effect on August 25, 2015. *Id.* at 1.

Incredibly, PGE has now made another noncompliant filing to update its avoided costs in a manner inconsistent with the authorized update cycles. This time PGE proposes a wholesale update to the rates to incorporate new assumptions included in PGE's *unacknowledged* IRP Update. PGE filed the IRP Update only one day prior to the proposed avoided cost rate change. *See PGE's IRP Update*, OPUC Docket No. LC 56 (filed Dec. 2, 2015). Moreover, PGE does not seek Commission acknowledgement of the underlying IRP Update. *Id.* It therefore requests approval of inputs and assumptions that will never be vetted by anyone but PGE. Not surprisingly, PGE's out-of-cycle filing proposes to drastically reduce the avoided costs.

II. COMMENTS IN OPPOSITION

A. PGE's Out-of-Cycle Rate Filing Fails to Comply with Commission Orders.

As noted above, the Commission is statutorily directed to provide a settled and uniform institutional climate for QFs, and has therefore developed a predictable framework within which PGE may update its avoided cost rates. This framework allows for an annual May 1st update for the *limited purpose* of updating non-controversial inputs. However, PGE proposes an update in addition to the May 1st update for inputs that would not even meet the requirements for a May 1st

update. PGE's consistent refusal to follow the Commission's orders renders them ineffective and meaningless for QF developers who need to rely on consistent policies and predictable avoided cost rate changes.

PGE incorrectly argues its rate update is proper because it mirrors aspects of PGE's newly filed IRP Update. But there are two critical restrictions on use of changes in an IRP Update. First, Order No. 14-058 emphasized that the IRP Update must be "*acknowledged*" by a Commission order prior to being used as a basis to update the rates. Order No. 14-058 at 25-26 (emphasis in original). Second, unlike the rate change that occurs within 30 days of acknowledgement of a new IRP, the rate change occurring to incorporate changes from an *acknowledged* IRP Update may only occur on the regularly scheduled May 1st update. *Id.* PGE's filing fails *both* of these requirements: (1) PGE's IRP Update is not acknowledged; and (2) PGE's request to incorporate its half-baked inputs from the unacknowledged IRP Update is made in December, not on May 1.

Although the Commission provides a limited opportunity for so-called "mid-cycle updates," it has instructed parties to "use this option infrequently." *Id.* at 26. The infrequent nature of such out-of-cycle updates reflects the requirement in Oregon law that the Commission create a settled and uniform institutional climate for QF development. The testimony of QFs in docket UM 1610 demonstrated that "[p]redictability of pricing changes is one of the most important aspects of project development." *Id.* at 25. PGE has put forth no case to depart from the Commission's well-established rate update criteria.

B. PGE's Unilaterally Developed Rates Are Grossly Inaccurate.

The Commission should reject PGE's filing on procedural grounds alone, but PGE's

filing also fails on the substantive ground that the rate assumptions are unreasonable. Oregon law states "each electric utility shall prepare, publish and file with the Public Utility Commission a schedule of avoided costs . . . . Prices contained in the schedules filed by public utilities shall be *reviewed and approved* by the commission." ORS 758.525(1) (emphasis added). This statute is clear and unambiguous. The Commission must specifically review and approve the proposed inputs and assumptions that result in the avoided cost rates. Accordingly, the Commission has explained that "avoided cost filings are already subject to suspension and the same investigatory process that any tariff filing may undergo." Order No. 05-584 at 36-37. The utility cannot simply submit its own unilateral calculation of the avoided cost rates without scrutiny and the opportunity for parties to investigate the assumptions. The Commission allows the "complete avoided cost update" to follow a fully acknowledged IRP so that the affected parties might have some opportunity to evaluate the utility's forthcoming filing. If the utility may use something other than an *acknowledged* IRP Update as the basis to update avoided cost rates, the utility will be empowered to unilaterally set the rates with absolutely no stakeholder input.

In this case, PGE has proposed to update multiple items that reduce the avoided costs and ignored elements of the rates that should be increasing. Thus, if the Commission intends to entertain this filing, it will need to suspend the filing and provide the parties the opportunity to fully investigate and conduct discovery on multiple aspects of PGE's new avoided cost rate calculations. It is not possible to identify all of the flaws in the rates without extensive discovery because PGE's Application contains a short cover letter where it merely identifies the "major drivers" of its proposed rate decrease. And even for those items, the details are sparse. However, CREA has identified several issues that necessitate further investigation if the Commission will

entertain this out-of-cycle rate case.

First, PGE has made changes to its plans for compliance with the renewable portfolio standard ("RPS") that appear to serve no purpose other than to push the renewable deficiency period out four years further from that assumed in its current rates. The Commission requires the renewable deficiency period rates to be made available at the time that the utility plans to acquire its next major RPS resource in its acknowledged IRP. Order No. 11-505 at 6. PGE's approved rates based upon its acknowledged IRP assume PGE will acquire another large wind farm in 2020, but its newly proposed rates are based on a new assumption from the unacknowledged IRP Update that PGE will not acquire such a resource until 2024. PGE's Application states that this new assumption is based upon new "analysis of PGE's use of banked Renewable Energy Credits." However, this "analysis" has not been acknowledged by the Commission or any other party as valid. Indeed, there is nothing contained in the IRP Update that explicitly binds PGE to delaying acquisition of another major renewable resource until 2024. *See PGE's IRP Update* at 49-60. PGE appears to have merely updated its analysis to push the renewable deficiency date out four years for purposes of reducing the avoided cost rates.

Next, PGE proposes to reduce the renewable avoided costs based on incorrect assumptions about the wind energy production tax credit. PGE's currently effective rates assume the tax credit will not be available at the time that the renewable deficiency period rates take effect in 2020 because at the time the IRP was acknowledged and the rates were put into effect the tax credit had already expired for projects coming online in 2020. *See* 26 U.S.C. § 46(d) (2014). PGE's Application argues that the production tax credit of 2.3 cents per kilowatt-hour ("kWh") for wind facilities is now "assumed to be available" for PGE's wind proxy resource –

thus resulting in a major reduction to the renewable deficiency period rates based on a wind plant proxy.

However, Order No. 14-058 only permits PGE to update the production tax credit assumption as part of the May 1st update or during a "completed avoided cost update" following acknowledgment of a new IRP, and in any event PGE's assumption regarding the production tax credit has proven wrong in the weeks since PGE's filing. On December 18, 2015, the production tax credit was extended as part of the Consolidated Appropriations Act of 2016, H. R. 2029, but the credit is now set to step down in magnitude and permanently expire by January 1, 2020.[1] Unlike the prior versions of the production tax credit, codified at 26 U.S.C. § 46(d), the new version includes an express step down and complete "phase out" of the credit for wind facilities. If construction begins in 2017, the credit is reduced by 20 percent; if construction begins in 2018, the credit is reduced by 40 percent; and if construction begins in 2019, the credit is reduced by 60 percent. Thus, even if PGE's 2020 proxy wind plant were to begin construction in 2019, it would be eligible for only 40 percent of the full production tax credit. If the facility begins construction after January 1, 2020, it will be eligible for no production tax credit. At most, PGE's 2020 wind plant may be able to time construction in a manner that would entitle it to a tax credit equal to only 40 percent of the credit assumed in PGE's newly proposed rates. And if PGE is allowed to push the renewable deficiency period out to 2024, the rates cannot assume the production tax credit will be available because it will be phased out well prior to that time.

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[1] The full text of the Consolidated Appropriations Act of 2016 is available online at: https://www.gpo.gov/fdsys/pkg/BILLS-114hr2029enr/pdf/BILLS-114hr2029enr.pdf. The wind energy production tax credit phase out is included in Section 301, and the corresponding wind energy investment tax credit phase out is included in Section 302.

PGE also proposed massive decreases in the assumed capital costs for its proxy resources. These include a 32 percent reduction in the capital costs of its proposed wind facility, as compared to the assumption in the currently effective rates. *See PGE's IRP Update* at 26-27. Such a drastic drop is immediately suspect – particularly when PGE's proposed overnight capital costs of a wind plant in the Columbia River Gorge of $1,555/kw are far below the estimated cost of $2,240/kw contained in the draft of the Northwest Power and Conservation Council's Seventh Power Plan.[2]

Several additional items PGE listed as a basis to reduce the avoided costs lack sufficient explanation to even discuss at this point. For example, PGE simply lists the following items in its Application:

> • Financial and tax parameters were updated consistent with the 2013 IRP Update (See Table 2-8 Financial Assumptions on page 28 of the 2013 IRP Update).
> • Contingency reserve costs were removed because these costs cannot be avoided with the acquisition of new generation.
> • Shaping of the renewable avoided costs, based on the fully allocated cost of a wind plant, into on- and off-peak prices has been removed to reduce complexity and align the avoided cost prices closer to true avoided costs.
> • Forward electricity price curves and gas price forecasts were updated to the most recent versions.

However, PGE provided no further discussion or explanation for the basis or impact of these changes. There is no explanation, for example, of why PGE believes it is now appropriate to eliminate shaping of renewable avoided costs into higher on-peak and lower off-peak prices. On its face, this appears to be an attempt to undermine the economics of the renewable rate for solar resources that only generate during the on-peak hours each day.

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[2] Available online at https://www.nwcouncil.org/media/7149691/7thplandraft_appndxh_genresorcs_20151020.pdf, at Appendix H-26.

Not surprisingly, PGE neglected to update factors that should work to *increase* the avoided cost rates for certain QFs. PGE should not be allowed to update its rates in an unauthorized piecemeal fashion that ignores the factors that would significantly increase the rates.

For example, PGE has neglected to conduct further analysis on whether it is still reasonable to assume that a solar QF's contribution to capacity is only five percent, as is assumed in the currently acknowledged IRP and currently effective avoided cost rates. On its face, PGE's assumption is not reasonable. PGE's assumption is particularly unreasonable for an off-system QF located in a sunnier part of Oregon than PGE's service territory. The Commission opened docket UM 1719 to address the utilities' inconsistent capacity contribution calculations after complaints were made in PGE's 2013 IRP proceeding. In response, PGE has now completed a professional study that completely undermines the assumptions used in PGE's 2013 IRP and the currently effective avoided cost rates. *See* UM 1719 PGE/100, Albi-Macfarlane/21; PGE/200. PGE's new method increases in a new solar generator's contribution to capacity value to 42 percent annually, and up to 55 percent during summer months. UM 1719 PGE/200, Olson/25. However, PGE did not revisit this analysis in the IRP Update or propose to update the five-percent assumption in its avoided cost rates. The failure to do so during what is in effect a "complete avoided cost update" is simply unreasonable.

As noted above, Oregon law requires the Commission to "review and approve" PGE's avoided cost rates to ensure that PGE is offering to buy QF output at its full avoided costs. PGE's conclusory statements in its filing hardly allow for such review or approval. At a

minimum, therefore, the Commission must suspend the rate filing and conduct further investigation.

C. PGE's Filing Contravenes Oregon's Policy Objectives.

As noted above, Oregon law declares that it is "the policy of the State of Oregon to . . . [i]ncrease the marketability of electric energy produced by qualifying facilities located throughout the state for the benefit of Oregon's citizens" and to "[c]reate a settled and uniform institutional climate for qualifying facilities in Oregon." ORS 758.515(3). Oregon's RPS additionally mandates that the Commission implement policies and procedures to achieve the goal of serving at least eight percent of load with community-based renewable energy projects with generating capacity of 20 MW or less by 2025. ORS 469A.210.

The framework that the Commission has established for *one* predictable and uncontroversial avoided cost update on May 1st of each year with a "complete avoided cost update" after a fully acknowledged IRP creates the type of settled climate the legislature envisioned. It even provides cost-effective small generators a theoretical chance to contribute to Oregon's renewable energy needs. But PGE's filing undermines these policies.

PGE appears to complain in this docket and in docket AR 593 that for the first time it is actually being required to sign PURPA contracts. However, that is so because of reduced costs to construct renewable facilities and the final implementation of policies promoting QFs' right to sell at the full avoided costs to PGE, such as PGE's newly available renewable avoided cost rates. The fact that PGE is for the first time ever facing an uptick in PURPA contracting interest provides no basis to pull the rug out from underneath developers that are currently relying upon state and federal policies. PGE is still far short of being on track to meet its share of Oregon's

goal that eight percent of load be served by projects of 20 MW or less in size – which would require PGE to purchase the output from *at least* 200 aMW of projects sized no larger than 20 MW.[3] The Commission should not allow PGE to undermine the federal and state renewable energy policies that have finally made it possible for such projects to enter into contracts to sell to PGE.

III. CONCLUSION

For the reasons expressed herein, the Commission should reject PGE's proposed avoided cost rate update.

RESPECTFULLY SUBMITTED this 28th day of December, 2015.

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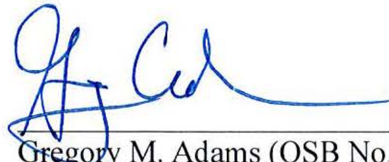

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[3] *See* UM 1610 Phase I CREA/100, Hilderbrand/6 (based on PGE's load forecast of at least 2,500 aMW in 2021).