

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1752

In the Matter of)	
)	COMMENTS ON BEHALF OF
PORTLAND GENERAL ELECTRIC)	CYPRESS CREEK RENEWABLES,
COMPANY)	LLC
)	
Revised Schedule 201 Qualifying Facility)	
Information)	
)	
)	

Cypress Creek Renewables (“Cypress Creek”) respectfully submits these comments in opposition to the request by Portland General Electric (“PGE”) to update its avoided cost prices as of January 13, 2016. PGE’s filing fails to comply with the procedural and substantive criteria established by the Commission in Order 14-058 with respect to updating avoided cost pricing. Even if the Commission’s criteria did not exist or were otherwise inapplicable here, the extremely short timeline suggested by PGE for such a significant change to its avoided cost prices is fundamentally unfair to all stakeholders. PGE’s proposed mid-cycle update should be rejected outright.

I. The Commission Established Criteria for Avoided-Cost Updates In Order 14-058

In Order 14-058, issued in docket UM 1610, the Commission announced a policy decision concerning when, how and why utilities may update their avoided costs.¹ In testimony filed in that docket, the Commission heard from renewable QF developers about

¹ Cypress Creek generally agrees with the arguments set forth by Obsidian Renewables in AR 593 that the Commission should establish its PURPA rules through a formal rulemaking proceeding. Thus, while the Commission’s decisions articulated in UM 1610 may or may not be a formal administrative “rule” for purposes of the Oregon Administrative Procedures Act, they clearly reflect the Commission’s intended policy decision with respect to the issue now before it.

the need for price and regulatory certainty through the contracting process. The Commission also heard from the utilities about the need to update avoided cost prices based on the latest information so as to avoid overpaying for QF power.

The Commission's order strikes a deliberate balance between these two competing interests. The Commission explained that "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 14-058 allows utilities to file annual updates to their avoided cost prices on May 1 of each year, to be effective within 60 days. The annual update may include the following four factors:

- (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 (emphasis in original text).

Order 14-058 also states that any change in avoided costs other than those expressly permitted in the annual update should be filed by the utility only upon the acknowledgment of its IRP. The Commission explained that "[w]e direct electric utilities to update their avoided cost rates 30 days after IRP acknowledgement" The Commission further explained that in the event that the timing of the IRP acknowledgment overlaps with the annual update, then the utility need only file the annual update. On its face, Order 14-058 does not contemplate or permit updates to avoided costs based on any IRP milestones or events other than acknowledgment.

Finally, the Commission warned that any update to avoided costs that does not fit within the framework of an annual update, or following the acknowledgment of an IRP, must be based on extraordinary circumstances. The Commission explained:

[I]n 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 acknowledgment, we caution stakeholders that the “significant change” required to warrant an out-of-cycle update will be very high. We expect the parties to use this option infrequently.

Although the Commission did not give examples of “significant changes” that would warrant a mid-cycle update, it is reasonable to infer from context that it would *not* include any of the four factors that may be updated annually.

In this case, PGE’s proposed avoided cost update does not comply with the criteria set forth by the Commission in Order 14-058. As explained below, certain components of PGE’s filing should clearly be done as part of its annual update filed on May 1. This update is not to be effective until on or before July 1. At best, therefore, PGE’s filing is premature by at least six months. Other parts of PGE’s filing should not be done until its 2016 IRP is finished and acknowledged by the Commission. Finally, PGE has not even attempted to show that it meets the high burden imposed by the Commission for a mid-cycle update.

II. Certain Components of the Proposed Update May Only Be Filed as Part of an Annual Update on May 1

In its filing, PGE summarizes the “drivers” for its avoided cost update--several of which clearly should be done as part of its annual update. For example, PGE cites the extensions of the federal Production Tax Credit as a “major driver” for change. “Production tax credits for the renewable avoided costs are assumed to be available to new wind generating projects because of current market conditions and legislative history.” Although

PGE's assumption about the extension of the Production Tax Credit may be accurate, this is still one of the four factors to be addressed by PGE in its annual filing on May 1.

As another "major driver" of its proposed change, PGE explains that "[f]orward electricity price curves and gas price forecasts were updated to the most recent versions." Again, these are two of the four factors that must be addressed by PGE as part of its annual update and not through a mid-cycle filing. Under current Commission policy, PGE is not entitled to seek an adjustment to avoided costs based on either the extension of the Production Tax Credit or changes to forward price curves prior to May 1, 2016.

III. The Commission's Policy Precludes Changes to Avoided Cost Prices Based Solely on IRP "Updates."

Much of PGE's filing rest upon an "update," filed by PGE in LC 56 on December 2, 2015, to its previously acknowledged 2013 IRP. For example, PGE states that "[a]ssumed overnight capital and operational costs" for the standard and renewable proxy plants have been updated based on studies appearing in the 2013 IRP Update. PGE also proposes to push its renewable sufficiency period out until the end of 2023 based on the "use of banked Renewable Energy Credits, performed at the request of the Commission, for the 2013 IRP Update." Finally, PGE also wishes to update certain "financial and tax parameters" based also on its 2013 IRP Update.

The 2013 IRP Update is *not* a trigger for updating avoided cost pricing. In Order 14-058, the Commission already heard and rejected the PGE's argument that it should be able to change its avoided cost prices based on "updates" to its IRP. The Commission summarized PGE's position as follows: "PGE recommends annual updates to avoided cost prices. As part of this update, utilities should be able to capture the most recent gas and electricity prices,

plus any changes that occur in a Commission acknowledged IRP *or IRP update.*” (Emphasis added). In other words, PGE asked for three triggers to change avoided cost prices: (1) annual updates on May 1; (2) Commission acknowledged IRPs; and (3) IRP Updates. As explained above, the Commission resolved the issue by stating that only the first two shall apply. Order 14-058 provides that utilities may update avoided cost prices annually and upon the acknowledgment of an IRP--but the Order clearly does *not* allow for changes based solely on IRP updates as PGE requested.

PGE says in its filing that it is seeking changes based on its IRP Update “consistent with Commission policies.” PGE does not bother to say which “Commission policies” permit such an update. To the contrary, the Commission policy set forth in Order 14-058 expressly states that utilities may seek an update to avoided costs 30 days after an *acknowledged* IRP. The Commission even put its own emphasis on the word “acknowledged” so as to distinguish between the completion of the IRP process and the numerous comments, studies, assumptions, updates and other documents that may be unilaterally filed by the purchasing utility along the way.

Allowing PGE to make material changes to its avoided costs rates based entirely on an unacknowledged “update” to an older IRP would create an end-run around the criteria articulated by the Commission in Order 14-058. PGE’s 2013 IRP was acknowledged by the Commission way back in 2014. The results of that acknowledged IRP are already reflected in PGE’s current avoided cost rates. PGE is already hard at work on its 2016 IRP--which PGE says that it intends to file with the Commission during 2016. Presumably all of the studies and analyses included in the 2013 IRP Update will also be reflected in the 2016 IRP. These studies and analyses will then be vetted by stakeholders and, after that vetting process, the

IRP will be acknowledged by the Commission. Then, and only then, would PGE be entitled to request changes to its avoided cost rates based on changes to its IRP.

IV. PGE Has Not Even Tried to Meet the “Very High” Standard for a Mid-Cycle Update

Although the Commission did leave open the possibility of allowing mid-cycle updates to reflect “significant changes” to avoided cost prices, the Commission emphasized that the “significant change required to warrant an out-of-cycle update will be very high.” Order 14-058 puts the burden on PGE to show that its proposed mid-cycle update to avoided costs satisfies the “very high” bar set by the Commission. This includes showing not only that the change is factually supportable, but that it is very significant and that the annual update mechanism is insufficient to protect its ratepayers from harm.

PGE’s filing does not meet the very high bar set by the Commission. PGE simply says, in conclusory fashion, that “[w]e believe it is important for the Commission to use the best available information in setting avoided cost prices--particularly when the continued reliance on the use of outdated information could cause harm to either QF developers or the Company’s customers.” This vague generalization was already considered by the Commission in UM 1610. This is precisely why the Commission decided in Order 14-058 to allow utilities to make *annual* adjustments to their avoided cost prices on May 1. In other words, none of the “drivers” that PGE has identified in its filing fall outside the normal process for making annual updates or changes based on acknowledged IRPs.

In fact, PGE’s filing does not even *try* to meet the Commission’s “very high” evidentiary burden for mid-cycle updates. PGE’s filing is not accompanied by any testimony explaining the basis for the proposed amendments. It is not accompanied by any testimony explaining the “harm” that may be caused to its customers. Most important, PGE simply

offers no testimony as to why or how there has been such a “significant change” in its avoided that PGE cannot wait for its annual update on May 1 and the acknowledgment of its 2016 IRP in due course. PGE has not met its evidentiary burden in this case.

V. At A Minimum, Contracts Already Requested Should Receive Current Avoided Cost Rates

For the reasons set forth above, Cypress Creek strenuously objects to PGE’s untimely and procedurally flawed filing. In the event that the Commission were to grant part or all of PGE’s proposed avoided cost adjustment at this time, however, then the Commission should state that it applies only to any QF contract requests received *after* the effective date. For standard QF contracts that are already pending, developers should be entitled to receive the avoided cost pricing that existed at the time the contract request was submitted.

Not only is PGE’s proposed update contrary to Order 14-058, it would also be fundamentally unfair to the Commission Staff, QF developers and other stakeholders. PGE made the filing on December 3, 2016 and asked for an effective date of January 13. Given both the technical complexity of the filing and the magnitude of the change sought by PGE, this is an unreasonably short timeframe. This is particularly true in light of the fact that the timeframe overlaps with the holiday season in which employees and consultants are likely to be unavailable. Stakeholders must be afforded a reasonable opportunity to review and, as appropriate, to rebut the information submitted by PGE. Again, if the proposed mid-cycle update is not rejected outright--as it should be--then an exception ought to be made for QF projects that have already initiated the contracting process.

As the Commission noted in Order 14-058, setting avoided cost prices is not simply a race to the bottom in which the purchasing utilities may push the prices down as far and as fast as possible. Rather, the avoided cost prices reflect a careful balance between the accuracy

of inputs, avoiding under or overcompensating QFs, and creating a stable regulatory environment in which QFs can actually do business. 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.” Unless an exception is made for contracts requested prior to the effective date, PGE’s proposed mid-cycle update would create an unsettled and unpredictable institutional climate for QFs.

VI. Conclusion

PGE demands that any QF developer strictly comply with all applicable contractual and administrative requirements. Even where the requirements are ambiguous, PGE requires strict compliance with *its own interpretation* of the requirements. Unfortunately, PGE does not hold itself to the same rigorous standard. PGE’s proposed mid-cycle update to its avoided cost pricing does not satisfy the criteria established by the Commission in Order 14-058. In fact, PGE’s filing fails to acknowledge even the existence of the criteria in Order 14-058.

None of the “drivers” of PGE’s proposed update reflect an emergency. They can and should be addressed in the normal course of business either in PGE’s upcoming annual filing or upon the acknowledgment of PGE’s 2016 IRP. PGE previously asked the Commission in UM 1610 for the ability to amend avoided cost prices as a matter of right based on “IRP updates.” The Commission rejected this request. Although the Commission did leave open the possibility of a mid-cycle update, the Commission “caution[ed] stakeholders” that this would require a “significant change” and would only be entertained “infrequently.” PGE has not offered any evidence, or any compelling reason, upon which the Commission could conclude that PGE has met the “very high” standard for such mid-cycle updates. Cypress Creek respectfully asks the Commission to reject PGE’s proposed filing in its entirety.

Notwithstanding the Commission's criteria, PGE also proposes an unreasonably short effective date--over the winter holiday--that is fundamentally unfair to all stakeholders. Even if the Commission were to find a compelling reason to ignore its prior Order, then the Commission should at least make an exception for those QF projects that have already requested contracts prior to the effective date of the update.

DATED this 28th day of December, 2015.

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