ITEM NO. 2

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: January 26, 2016

REGULAR X **CONSENT** ____ **EFFECTIVE DATE** **January 27, 2016**

DATE: January 19, 2016

TO: Public Utility Commission

FROM: Brittany Andrus *BA*

J *J for AA*

THROUGH: Jason Eisdorfer and Aster Adams

SUBJECT: PORTLAND GENERAL ELECTRIC: (Docket No. UM 1752) Revises Schedule 201, Qualifying Facility 10 MW or Less Avoided Cost Power Purchase Information.

STAFF RECOMMENDATION:

Staff recommends that the Commission not approve Portland General Electric's (PGE or Company) changes to Schedule 201, Qualifying Facility 10 MW or Less.

ISSUE

Should the Commission approve PGE's update to avoided cost payments to Qualifying Facilities (QF) contained in Schedule 201? Staff recommends against approval.

RULES, STATUTES AND APPLICABLE ORDERS

Under Oregon rules, avoided cost updates are required in two circumstances: 1) following acknowledgment of the utility's Integrated Resource Plan (IRP, also known as "least-cost plan"), and 2) passage of two years since the utility's last avoided cost filing.

1. OAR 860-029-0040(4)(a): "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."

2. OAR 860-029-0080(8): "At least every two years, the public utility must file with the Commission the data described in OAR 860-029-0040(4) and 860-029-0080(3)."

In addition, OAR 860-029-0080(7) allows avoided cost updates due to significant changes in circumstances and allows the revisions to become effective 90 days after filing. Changes under this rule may also be referred to as an "out-of-cycle" or "mid-cycle" update,

> 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.

A third requirement relevant to this filing is OAR 860-027-0400(8) relating to Integrated Resource Plan (IRP) updates:

> (8) Each energy utility must submit an annual update on its most recently acknowledged IRP. The update is due on or before the acknowledgment order anniversary date. The energy utility must summarize the annual update at a Commission public meeting. The energy utility may request acknowledgment of changes, identified in its update, to the IRP action plan. The annual update is an informational filing that:
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> (a) Describes what actions the energy utility has taken to implement the action plan to select best portfolio of resources contained in its acknowledged IRP;
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> (b) Provides an assessment of what has changed since the acknowledgment order that affects the action plan to select best portfolio of resources, including changes in such factors as load, expiration of resource contracts, supply-side and demand-side resource acquisitions, resource costs, and transmission availability; and
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> (c) Justifies any deviations from the action plan contained in its acknowledged IRP.

In 2014, the Commission ordered that utilities would update an additional four elements making up avoided cost prices in the annual update.[1] In that order, the Commission also addressed the mid-cycle updates permitted under OAR 860-029-0080(7).

> ...we adopt 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. We direct electric utilities to update their avoided cost rates 30 days after IRP acknowledgement, and on May 1 every year. In the event that an IRP is acknowledged within 60 days of May 1 in a particular year, the Commission will use its discretion at that time to direct a utility to waive its 30-day post IRP update.
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> Annual updates, filed every May 1, will 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.
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> Electric utilities' annual updates will be presented at a public meeting, with a rate effective date within 60 days of the May 1 filing. 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 out-of-cycle update will be very high. We expect the parties to use this option infrequently.

ANALYSIS

PGE's Filing

PGE filed its application to revise Schedule 201 on December 3, 2015, with a requested effective date of January 13, 2016. On December 18, 2015, Staff notified parties in Docket UM 1610, Investigation into QF Contracting and Pricing, of PGE's filing. Five sets of comments were submitted between December 28, 2015 and January 5, 2016. On January 6, the Company requested a two-week delay in the requested effective date, which moved it to January 27. On January 15, PGE made two filings: 1) comments in response to those filed by other parties, and to "provide an explanation and support to show that PGE's filing reflects a significant change in avoided cost

[1] Docket UM 1610, Order No. 14-058 at 25-26.

pricing,"[2] and 2) updated avoided cost prices reflecting the recent extension and future phase-out of the Production Tax Credit (PTC).[3]

PGE's filing does not provide a citation to a specific statute, rule or order under which it filed this avoided cost update; rather, the Company submitted the filing "pursuant to ORS 758.525; OAR 860-029-0001 through 860-029-0100; Order No. 11-505; and Order No. 14-058." The Company states, "PGE requests this pricing update to incorporate significant changes to several key drivers of avoided cost prices in light of PGE's 2013 IRP Update," which was submitted one day prior to this avoided cost update filing.[4] PGE did not request acknowledgment of the IRP update.[5]

The most recent mid-cycle avoided cost update prior to this filing was initiated by PGE in Docket UM 1664. That update was triggered by the award of the engineering, procurement and construction (EPC) contract for the Carty generating station. The Commission granted the avoided cost update, with a-four month delay in the effective date.[6]

The significant changes to key drivers as enumerated by PGE are as follows:

1. Inclusion of production tax credits [PTC] for renewable avoided costs;
2. Updated capital and operational costs for proxy resources: SCCT, CCCT and wind;
3. Change to renewable sufficiency period from ending 2019 to ending 2023 based on an analysis of banked RECs;
4. Updated financial and tax parameters;
5. Removed contingency reserve costs;
6. Removed on-peak and off-peak differential for renewable avoided costs; and
7. Updated forward electricity and gas prices.

PGE states, "[t]he effect of these changes on PGE's avoided cost prices is significant, and any delay in adopting them will result in harm to PGE's customers..."[7]

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[2] Docket UM 1752, supplemental filing, cover letter, January 15, 2016.
[3] Consolidated Appropriations Act, 2016, extending the PTC through 2019, at declining payment amounts.
[4] Docket LC 56, PGE 2013 Integrated Resource Plan Update, December 2, 2016.
[5] Id., transmittal letter, "No Commission action is requested at this time."
[6] Order No. 13-378, p. 1.
[7] PGE filing, Revised Schedule 201 Qualifying Facility Information, p. 2.

Staff Review

Staff's analysis comparing current and proposed avoided costs indicates that the Company's proposed changes for all seven of the factors above reduces nonrenewable avoided costs by approximately 12 percent, and reduces renewable avoided costs by approximately 35 percent, for baseload QFs.[8,9]

Staff does not believe that a mid-cycle update is warranted for PGE. Contrarily, Staff believes the factors PGE wants to update are factors that PGE should update in its annual update filed on May 1 and after IRP acknowledgment, rather than in a mid-cycle update, which is supposed to be used "infrequently."

Of the seven factors listed above, items numbered 1 and 7 will be included in the upcoming annual avoided cost update on May 1, 2016. This limited annual update will be effective within 60 days of filing, or by July 31, 2016, assuming no contested issues regarding the application of the factors arise.

Changes to the other factors, financial and tax parameters, contingency reserve costs, proxy costs, strategy for use of banked RECs, and on- and off-peak differential should be updated subsequent to an IRP acknowledgment as contemplated by the Commission's orders to allow Staff and stakeholders to vet them. For example, for capital and operational costs of proxy resources, PGE says the nonrenewable and renewable avoided costs cost have been "updated in studies conducted on behalf of PGE by Black and Veatch and DNV GL, respectively," as discussed in the 2013 IRP Update.[10] None of the studies or inputs associated with this filing have been reviewed by Staff or by parties. PGE filed its IRP update only one day ahead of this filing, and the Company did not request acknowledgment. As an example of the magnitude of these input changes, the renewable resource (wind) "overnight capital cost" decreases by 16 percent.

A second significant input change is the lengthening of the renewable resource sufficiency period. PGE states that it made this change "[c]onsistent with the results of an analysis of PGE's use of banked Renewable Energy Credits, performed at the request of the Commission, for the 2013 Update, the renewable sufficiency period was extended from the end of 2019 to the end of 2023."[11] Again, this analysis has not been vetted by parties or Staff, and is a component that should be evaluated after IRP acknowledgment. According to Staff's analysis, the extension of the renewable

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[8] Staff selected baseload resources for this comparison due to the varying factors applied to wind and solar nonrenewable and renewable avoided costs, including relative capacity contributions.
[9] Nominal dollars, levelized using PGE authorized rate of return.
[10] PGE filing, Revised Schedule 201 Qualifying Facility Information, p. 1.
[11] PGE filing, Revised Schedule 201 Qualifying Facility Information, p. 2.

sufficiency period contributes approximately seven percent of the 35 percent reduction to QFs receiving renewable avoided cost prices.

To ensure that all interested parties were informed of PGE's filing, Staff notified the service list in Docket UM 1610 (Investigation into Qualifying Facility Contracting and Pricing) that Staff would make a recommendation regarding PGE's application at the January 12, 2015 public meeting. Below is a brief summary of comments received.

Community Renewable Energy Association (CREA): CREA opposes PGE's proposed avoided cost decrease on "multiple procedural and substantive grounds." CREA states that PGE's out-of-cycle filing does not comply with Commission orders because the IRP Update has not been acknowledged, any avoided cost changes resulting from an acknowledged IRP Update are to be included in the annual May 1 update, and PGE has not put forth a case for an out-of-cycle avoided cost update. CREA further states that the assumptions used by PGE in calculating the avoided costs are "grossly inaccurate." CREA adds, "if the Commission intends to entertain this filing, it will need to suspend the filing and provide the parties with the opportunity to fully investigate and conduct discovery on multiple aspects of PGE's new avoided cost rate calculations." CREA specifically challenges PGE's change to RPS compliance that lengthens the sufficiency period, PTC assumptions, wind resource capital cost decreases, and the change to the shape of renewable avoided cost prices. CREA also notes PGE does not include updated assumptions that would increase avoided costs, and gives the example of the Company's updated analysis of the contribution to peak of solar resources.

Renewable Energy Coalition (REC): REC submitted comments "strongly recommending" that the Commission reject PGE's filing because it is an out-of-cycle update that violates established QF policy, and because the proposal "completely upsets the careful balance regarding avoided cost updates that the Commission recently adopted in UM 1610."[12] While opposing avoided cost updates based on an IRP Update filing, REC states that if the Commission does not reject the filing, "...the parties should be allowed to investigate and challenge inputs and assumptions before they are effective."[13] "Unless the utilities are penalized or their behavior otherwise stopped, they will continue to ignore the Commission's directions, waste resources, and harm QFs and customers."[14]

Cypress Creek Renewables (Cypress Creek): Cypress Creek also opposes PGE's filing, citing violations of policy and process defined in Order No. 14-058 that specify when and how utilities are to file avoided cost updates, and the lack of acknowledgment

[12] REC comments, submitted December 28, 2015, p. 5.
[13] Id., p. 7.
[14] Id., p. 1.

of the Company's IRP Update. "The commission established criteria for avoided cost updates in Order 14-058." Certain components of the proposed updated may only be filed as part of an annual update on May 1. The Commission's policy precludes changes to avoided cost prices based solely on IRP Updates. PGE has "not even tried" to meet the "very high" standard for a mid-cycle update. Cypress Creek also states that, at a minimum, contracts already requested should receive current avoided cost rates.

NewSun Energy Holdings Oregon LLC (NewSun): NewSun urges the Commission to reject PGE's proposed avoided cost price changes, stating that the changes are "radical,"[15] and that PGE is attempting to avoid scrutiny of the "selective and omissive"[16] assumptions from an IRP update that has not undergone sufficient regulatory review. NewSun states that PGE's extension of its renewable compliance date by four years "undermines any non-PGE project development...for the next five to eight years," and "PGE's attempts to make changes out-of-cycle, out of process frighten me, and undermine my willingness to invest in Oregon."[17]

Obsidian Renewables (Obsidian): Obsidian opposes the changes to Schedule 201, and supports comments filed by REC, CREA, and Cypress Creek. Obsidian also supports REC's recommendation that there should be consequences for "willfully ignoring or otherwise violating their PURPA obligations," and states that PGE's actions "further highlight the need for the Commission to adopt clear and legally enforceable administrative rules to implement PURPA."[18]

PGE: On January 15, 2016, PGE made a supplemental filing to its original filing and submitted comments in response to those filed by other parties. PGE clarifies that while analyses in the IRP Update were the source of certain inputs to the revised avoided costs, the Company is requesting this change because once those inputs were used, "PGE's actual renewable avoided costs are significantly lower than current pricing...and therefore merit a mid-cycle update..."[19] The comments go on to describe the magnitude of the changes in percentage terms asserting that without the updates, PGE's avoided costs are: 48 percent higher than actual renewable avoided costs for baseload QFs, 41 percent higher for wind QFs, and 46 percent higher for solar QFs.[20] PGE adds that it has 18 potential QF projects that have started the contracting process, and that if all of

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[15] NewSun Energy Holdings comments, submitted January 3, 2016, p. 1.
[16] Id., p. 2.
[17] New Sun Energy Holdings Oregon LLC Jan. 3, 2016 Objections to "PGE Filings".
[18] Docket AR 593, Obsidian filed a Petition to Amend OAR 860-029-0040,Relating to Small QFs, on November 13, 2015.
[19] PGE's Comments on Avoided Costs 1.
[20] PGE's Comments on Avoided Costs 2.

these PPAs are executed, PGE's customers would pay an additional $155.5 million over 15 years that would be higher than the proposed avoided cost prices.[21]

Conclusion

The set of events that trigger avoided cost updates have been clearly defined and consistently explained by the Commission:

> It is the policy of the Oregon Public Utility Commission that federal and state laws and regulations will be carried out in a manner that encourages the economically efficient development of qualifying facilities in Oregon. It is the goal of the Commission to ensure desired qualifying facility development through stable and predictable actions by the Commission, accurate price signals, and full information to developers and the public regarding power sales requirements.[22]

This goal of balancing stable and predictable actions with accurate avoided costs has been cited in multiple orders regarding QF policies in Oregon. Staff finds no language in an order, rule, or statute that changes this overarching goal.

Staff concludes that the factors enumerated by PGE in this filing do not meet the threshold set forth in OAR 860-029-0080(3), nor do they meet the "very high" bar for out-of-cycle changes the Commission set in Order No. 14-058. The examples in rule for "significant changes in circumstances" are "the acquisition of a major block of resources or the completion of a competitive bid." PGE has stacked multiple factors, several of which are derived from an IRP update that will not be acknowledged and therefore cannot be vetted by stakeholders, to arrive at a price impact that it considers to be significant. Staff does not believe that the Commission intended for a collection of miscellaneous factors to be added together to justify a mid-cycle update, particularly when stakeholders do not have opportunity to review other miscellaneous factors to see if these factors may result in a change to avoided cost prices in the opposite direction. Therefore, Staff recommends that the Commission not approve PGE's revisions to Schedule 201.

PROPOSED COMMISSION MOTION:

PGE's avoided cost price revisions to Schedule 201 not be approved.

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[21] PGE's Comments on Avoided Costs 2.
[22] Order No. 05-584 and Order No. 14-058, citing the 1988 report to the Oregon Legislature.