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February 25, 2021

Via Electronic Filing

Public Utility Commission of Oregon
Attention: Filing Center
P.O. Box 1088
Salem, OR 97308-1088

**Re: UM 1953 – PORTLAND GENERAL ELECTRIC COMPANY, Investigation into
Proposed Green Tariff**

Dear Filing Center:

Enclosed is Portland General Electric Company's Sur-Reply to Calpine Energy Solutions LLC's Reply to Portland General Electric Company's Designation of Protected Information.

Thank you for your assistance.

Sincerely,

A handwritten signature in blue ink that reads "Loretta Mabinton". The signature is fluid and cursive, matching the printed name below it.

Loretta Mabinton
Associate General Counsel

LM: dm

Enclosure

BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UM 1953

In the Matter of

PORTLAND GENERAL ELECTRIC
COMPANY,

Investigation into Proposed Green Tariff.

PORTLAND GENERAL ELECTRIC
COMPANY'S SUR-REPLY TO
CALPINE ENERGY SOLUTIONS LLC'S
REPLY TO PORTLAND GENERAL
ELECTRIC COMPANY'S
DESIGNATION OF PROTECTED
INFORMATION

Pursuant to Oregon Rules of Civil Procedure (“ORCP”) 36(C)(1) and General Protective Order No. 18-260 issued in this docket, Portland General Electric Company (“PGE”) submits this Sur-Reply to Calpine Energy Solutions, LLC’s (“Calpine”) Reply in Support of Objection to PGE’s Designation of Protected Information filed on February 22, 2021.

I. INTRODUCTION AND SUMMARY

On February 10, 2021, Calpine filed its Objection to PGE’s Designation of Protected Information with the Oregon Public Utility Commission (“OPUC” or “the Commission”) objecting to the designation of sensitive commercial information by PGE.¹ On February 16, 2021, PGE filed its Response (“February 16 Response”) to Calpine’s Objections. On February 22, 2021, Calpine filed its Reply to PGE’s February 16 Response. PGE files the instant Sur-Reply to Calpine’s Reply.

In PGE’s February 16 Response, PGE showed that under both the Commission’s and Oregon court interpretations of ORCP 36(C)(6), the information PGE has designated qualifies for protection under ORCP 36(C)(1).² Calpine’s Reply fails to refute PGE’s showing and provides no legal justification or authority on why the information that PGE has designated as confidential

¹ See: <https://edocs.puc.state.or.us/efdocs/HAE/um1953hae14644.pdf>; UM 1953 - Calpine’s Comments (filed February 10, 2021) at 3.

² UM 1953 – PGE’s Response at 4.

under General Protective Order No. 18-260 is not commercial information subject to protection under ORCP 36.

II. LEGAL STANDARD

ORCP 36(C)(1) obligates the Commission to protect the information if it is ‘commercial information’. As PGE pointed out in its February 16 Response, Oregon courts have interpreted confidential information in the context of ORCP 36 to “mean and include, *without limitation, any information* that concerns or relates to ... *commercial, financial, pricing, budgeting and/or accounting information, non-public information about existing and potential customers, ... confidential information about ... third parties* with whom the parties to this action have or have had business relationships...”.³ The information that Calpine has asked to be made public is commercial information deserving of the protections of ORCP 36(C)(1). PGE’s obligation to protect confidential information under the terms of its agreements with suppliers also deserves the protections of the ORCP 36(C)(1) - suppliers treat the information as commercially sensitive and expect the information to be protected and enter into confidentiality agreements to ensure their counterparty (PGE) protects the information.

III. ARGUMENT

In its Reply Calpine repeats the points raised in its Objection. In the February 16 Response PGE refuted each point in Calpine’s Objection. Calpine also makes the following points:

1. *PGE’s own GEAR tariff, Schedule 55, specifically references the avoided cost provisions of the Federal Energy Regulatory Commission’s (“FERC”) rules under the Public Utility Regulatory Policies Act of 1978 (“PURPA”), 18 CFR Part 292.*⁴

It is instructive that Calpine admits this is only “*the conceptual basis for the credit calculation.*”⁵ PGE’s Schedule 55 specifically states “[t]he bill credit amount shall be determined by the Company (subject to regulatory review) consistent with applicable Oregon

³ UM 1953 - PGE’s Response, at 4 n. 9.

⁴ UM 1953 - Calpine’s Reply at 3.

⁵ Id. at 3.

and federal law and regulation, including 18 CFR Part 292, using the Company's IRP methodology to determine the Capacity Value.⁶ While Schedule 55 does reference 18 CFR Part 292, the GEAR credits are distinct from PGE's posted renewable avoided costs.⁷ This is made clear in the same statement in Schedule 55 which explains that the credit will use "the Company's IRP methodology". PGE acknowledges that there is a linkage to PGE's renewable avoided costs in that both methodologies make use of PGE's proxy capacity resource costs as one initial input for calculating the capacity credit, but the credit value is unique to the GEAR resource. This is made clear in Commission Order No. 19-075⁸ as the Commission summarized PGE's proposal and Staff's proposal:

PGE proposes we adopt its *QF method*, which would use the value of PGE's proxy capacity resource, the capacity contribution of the PPA resource, and PGE's sufficiency/deficiency period as determined by the Commission approved period.

Staff proposes that we adopt the *capacity methodology from PGE's IRP*. This method utilizes modeling to calculate the capacity contribution of a resource and provides a valuation based on assumptions using least cost planning. This is not PGE's proposed approach, but PGE does agree with it as an alternative to the company's preferred option.

Ultimately, the Commission directed PGE to use Staff's proposal and not PGE's "QF method":⁹

We approve PGE's proposal to offer a capacity credit as part of its VRET program, but direct PGE to utilize Staff's preferred method for determining capacity value, as outlined in Staff testimony.¹⁰

⁶ PGE Schedule 55, Original Sheet No. 55-3 [emphasis is added].

⁷ PGE's posted avoided costs in Schedule 201 are publicly available at: <https://portlandgeneral.com/energy-choices/solar-wind/solar-wind-business/sell-power-to-pge>.

⁸ UM 1953 -- Order No. 19-075 at 6.

⁹ Id. at 6.

¹⁰ Id. at 7.

As stated in our February 16 Response,¹¹ PGE's renewable avoided costs are based on the projected costs associated with a proxy renewable resource. This is publicly and readily available information. PGE's renewable avoided costs are not specific to a particular generating resource and are not derived based on PGE's market energy price forecast, as is the case for the GEAR energy credit. Similarly, the GEAR capacity credit is not PGE's Schedule 201 avoided cost capacity price. While the two calculations share a common input, which is the dollar per kilowatt-year cost of the proxy capacity resources, that input is a public number contained in PGE's IRP and is only one input used to calculate the resource-specific GEAR capacity credit.

In any event, the calculated credits rely on resource-specific information and as described below, are an instrumental part for determining the GEAR rate, which can be used to ascertain a reasonable estimate of the PPA price, if not the specific PPA price, which is commercially sensitive information that PGE is obligated to protect.

2. *Avoided costs for energy and capacity are not commonly treated as commercially sensitive or confidential in the industry.*¹²

PGE does not dispute that avoided costs, which are contained in PGE's Schedule 201, are filed with and approved by the Commission and are publicly available. However, those avoided costs follow PGE's Commission-approved avoided cost methodology and are specific to PGE's Schedule 201, not the GEAR, or GEAR resources. Again, PGE's application of confidentiality is not for the credit calculation *methodology*, which has been discussed at length in UM 1953 with examples provided in testimony¹³ and discovery,¹⁴ but rather to protect the commercially sensitive information associated with the PPA, specifically the price.

¹¹ UM 1953 – PGE's Response at 6.

¹² UM 1953 – Calpine's Reply at 4.

¹³ See for example, UM 1690, PGE Exhibit 200/Sims-Tinker/ 10-13, detailing credit methodology proposed.

¹⁴ See for example, UM 1953, PGE Response to OPUC DR No. 014 dated June 22, 2018, providing illustrative workpaper on calculation of GEAR charges as proposed.

3. *The GEAR credit does not reveal commercially sensitive information of the developer.*¹⁵

Contrary to Calpine’s assertion, the GEAR credit could in fact be used to reveal commercially sensitive information of the developer. This is commercial information because parties could use the energy and capacity credit values to back-solve for an approximate power purchase agreement price, therefore this information is subject to the protections of ORCP 36(C)(1). This information is associated with a specific resource, not a proxy resource. The commercial information related to this specific resource deserves the protection afforded by the law. Calpine states that “[a]n outsider with public information is currently looking at three variables with unknown values: the PPA price, the credit, and the subscription price. As a matter of basic mathematics, identifying the value of just one of those three variables (i.e., the credit) does not enable anyone to back into the value of either of the other two.”¹⁶ While Schedule 55 itself does not contain a specific subscription rate, because the rate varies by participant(s) and resource, the subscription rate may become public at a later date under an applicable confidentiality agreement with the subscriber. For example, in the first offering of Phase 1, the subscription fee was published in the Portland Business Journal.¹⁷ While the now public subscription rate was for the first offering of Phase 1, it provides further information such that Calpine or any other entity could solve for a reasonable estimate of the PPA price for future offerings should the credits be made public as well.¹⁸ The examples below illustrate how publicly sharing credit values would allow for entities to approximate the PPA price.

¹⁵ UM 1953 - Calpine’s Reply at 5-6.

¹⁶ Id. at 3.

¹⁷ See: <https://www.bizjournals.com/portland/news/2020/02/11/pge-avangrid-team-up-on-oregons-largest-solar-farm.html>

¹⁸ UM 1953 - Calpine’s Reply at 3.

Hypothetical Credit and PPA Value Examples¹⁹

	Example 1	Example 2	Confidentiality Designation
PPA Price	\$50/MWh	\$50/MWh	Highly Confidential
(-) Energy Credit	\$20/MWh	\$30/MWh	Confidential
(-) Capacity Credit	\$20/MWh	\$30/MWh	Confidential
(+) Admin Cost	\$1/MWh	\$1/MWh	Non-Confidential ²⁰
(=) Total Subscription Rate	\$11/MWh	\$1/MWh	Confidential ²¹

In example 1, the PPA price is greater than the energy and capacity credit, so the cost to subscribers is the difference between the PPA price and the credits, plus the administrative fee. It is important to note that PGE’s administrative fee has been minimal, and it will likely continue to be, given that the administrative fee only includes the cost of operating the program itself. Given that the subscription rate has been previously publicly disclosed by a subscriber, if the credits were also public any entity could determine that the PPA price is \$50.

In example 2, the PPA price is less than the energy credit and capacity credit, and since this program does not allow for there to be a negative subscription rate,²² the subscriber pays only the administrative cost of \$1/ MWh. If the subscription rate is publicly disclosed, making the energy and capacity credits public would allow an entity to deduce that the PPA price PGE recently signed is lower than \$60. This then reveals to the developer market that \$60/MWh is likely the maximum PPA price that an entity can offer for a similar resource in a later solicitation. Assuming the PPA term length and subscriber term length are the same, an offer of \$60/MWh would not result in any additional cost to the subscriber beyond the administrative cost. This would create a price floor for bidders in future procurements, as there would be no incentive to offer a price lower than the credit value. The result of creating this price floor is

¹⁹ PGE has not assessed a risk adjustment fee under either tranche as all customers have executed agreements with a term that is aligned with the supporting PPA.

²⁰ UM 1953 – DR 010.

²¹ Under the subscription agreement, the total subscription rate is considered confidential information of the customer and PGE treats such information as provided in the applicable agreement.

²² UM 1953 – Order No. 19-075 addressed the ability of a subscriber to obtain a price that offers a savings from cost of service, noting individual customers in the customer supply option, may make a request for this allowance on a case by case basis.

that customers may end up paying more for resources than may result from a truly competitive process.

4. *Keeping the information confidential provides an advantage uniquely to PGE (should it ever seek to propose a utility-owned resource in the program) and the other parties to this GEAR transaction because only they would possess free use of the critical benchmark of PGE's GEAR energy and capacity credits endorsed by the Commission Staff.*²³

Calpine misses the point. PGE specifically articulated that “if this were in the public domain, bidders in competitive solicitations, armed with the information, would have a competitive advantage and provide PGE with a higher PPA price than they would have otherwise, leading to higher costs for cost-of-service customers.”²⁴ Contrary to Calpine's unsupported assertion, should PGE propose a resource for the GEAR, PGE would not be subject to the same consideration because the rate which PGE can charge customers is based exclusively on our incurred costs and allowable return, as determined and reviewed by the Commission. In other words, PGE does not benefit from knowing the credit because PGE only provides cost of service.

Furthermore, pending a Commission decision on Phase 2, a solicitation involving both utility-owned and third-party resources may be subject to the Commission's competitive bidding rules which have provisions addressing benchmark resources, if any, so as to avoid giving preferential information or treatment.

It is also worth noting again that Calpine did not object to PGE's designation in the first of PGE's two compliance filings for the GEAR tranche 1 subscriptions.²⁵ Nor did Calpine object when PGE provided the energy and capacity credits from tranche 1 of the PGE supplied option

²³ UM 1953 – Calpine's Reply at 6.

²⁴ UM 1953 - PGE's Response at 5.

²⁵ See: <https://edocs.puc.state.or.us/efdocs/HAD/um1953had15402.pdf>; PGE made the first compliance filing, designating the credit calculation in the accompanying workpaper, Attachment A, as confidential under General Protective Order No. 18-260, on September 13, 2019.

subscribers, in a data response to Calpine where appropriately designated the information under the Protective Orders in this docket.²⁶

IV. CONCLUSION

For the reasons articulated in PGE's February 16 Response and above, and for the continued protection of commercial information, the Administrative Law Judge should deny Calpine's objection, and protect the information pursuant to the ORCP and the protective order entered in this docket.

DATED this 25th day of February 2021.

Respectfully submitted,



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²⁶ UM 1953, PGE's Response, dated September 4, 2019, to Calpine's DR 010 which asked for the energy and capacity credits and supporting workpapers, noted that such were filed.