BEFORE THE

PUBLIC UTILITY COMMISSION OF OREGON

In the Matter of PORTLAND GENERAL ELECTRIC COMPANY, Update to Schedule 201 - As-Available Rate.	))))))))))	DOCKET NO. UM 2060 JOINT COMMENTS OF COMMUNITY RENEWABLE ENERGY ASSOCIATION, RENEWABLE ENERGY COALITION, AND NORTHWEST AND INTERMOUNTAIN POWER PRODUCERS COALITION

INTRODUCTION AND SUMMARY

The Community Renewable Energy Association ("CREA"), the Renewable Energy Coalition ("REC"), and the Northwest and Intermountain Power Producers Coalition ("NIPPC") (jointly referred to herein as the "Industry Associations") hereby submit comments to the Public Utility Commission of Oregon ("OPUC" or "Commission") in the above-captioned case.

The Industry Associations support the Commission Staff Report and oppose Portland General Electric Company's ("PGE") proposal to use additional discounts to the approximation of a non-firm index price for purposes of calculating the as-available (also referred to as "non-firm") avoided cost rates paid to qualifying facilities ("QFs").[1] Instead, the Industry Associations recommend that the Commission reaffirm existing precedent in Order No. 07-360, which requires PGE to use a non-firm index for the relevant market hub for the as-available rates offered to QFs. The price to be used for this purpose should be 82.4% of the day-ahead

[1] The Industry Associations support the other revision included in PGE's Revised Request, which clarifies PGE will pay QFs the long-term avoided cost rates for deliveries in excess of nameplate capacity made solely for purposes of scheduling in whole megawatt increments. *See* PGE's Revised Request to Update Schedule 201 at 5-6 (hereinafter PGE's Revised Request).

Intercontinental Exchange ("ICE") firm Mid-Columbia ("Mid-C") index price, which PGE agrees is a reasonable approximation of a "non-firm" index price at the Mid-C. Where the Industry Associations and PGE differ is whether that non-firm index approximation should be further reduced by additional discounts proposed in PGE's Revised Request.

Specifically, PGE's Revised Request includes two additional discounts to the non-firm index approximation that the Commission should reject. First, PGE proposes to take the non-firm index approximation (which is 82.4% of the firm index prices) and to *further* reduce the non-firm index approximation by an additional 15% discount. This proposal is inconsistent with Order No. 07-360, and the Commission should reject it in this expedited proceeding where stakeholders have no opportunity to investigate the basis for the additional discount. Second, PGE proposes to cap the as-available prices at the level of the off-peak avoided cost rates for long-term power sales. The Commission should also reject that proposal because, in addition to being inconsistent with Order No. 07-360, it would place an arbitrary and unreasonable cap on the prices paid to as-available QFs.

While the issue presented may appear to have isolated importance, the Industry Associations stress that the as-available avoided cost rates could have a significant future impact on multiple Commission policies. The Federal Energy Regulatory Commission ("FERC") recently approved a final rule implementing Section 210 of the Public Utility Regulatory Policies Act of 1978 ("PURPA") that enables states to use as-available pricing in place of long-term fixed pricing for the energy component of rates offered to QFs in long-term contracts. While the new FERC rule is not yet effective and that aspect of the rule may not be allowed under Oregon law, the new FERC rule nevertheless elevates the potential importance of as-available rates. The as-available avoided cost rates could also have a significant impact on Oregon's community solar program and net metering policy, as excess energy could be priced using the as-available avoided costs.

The Commission Staff makes a similar recommendation as the Industry Associations opposing PGE's filing because: 1) the Oregon rules require PGE's non-firm energy payments must be based on PGE's non-firm energy avoided cost in effect when the energy is delivered to PGE, and PGE's approach inappropriately caps the non-firm energy price at the off-peak avoided cost for firm energy; 2) the proposed methodology ignores the regulation's requirement that as-available rates should be based on the purchasing utility's avoided costs calculated at the time of delivery; and 3) Staff has concerns regarding the additional 15% discount to the non-firm rate for scheduling and transmission. The Industry Associations share Staff's concerns and support Staff's recommendations.

REGULATORY BACKGROUND

The as-available avoided cost rates are one of the three rate options offered to QFs under PURPA.[2] Under PURPA, the following three rate options are offered to QFs: (1) sales made on an "as-available" basis without a contractual obligation at the utility's "avoided costs calculated at the time of delivery";[3] (2) sales made pursuant to a legally enforceable obligation with rates

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2 *See* 18 CFR § 292.304(d). As noted above, FERC recently finalized a rule that modifies 18 CFR § 292.304(d), but the rule is not yet effective and is still subject to any rehearing petitions. In any event, the new rule still requires all states to offer as-available rates to QFs as one of the options. These comments cite to the rules in effect as of the date of this filing.

3 *Id.* at § 292.304 (d)(1).

based, at the QF's election, on (i) the "avoided costs calculated at the time of delivery";[4] or (ii) the "avoided costs calculated at the time the obligation is incurred."[5]

FERC's commentary in promulgating the rule further explains that the as-available rate is an estimate that does not need to be the "actual" avoided costs at the precise moment of delivery, but that the as-available rate may include a limited capacity value. FERC's Order No. 69 states that:

> Paragraph (d)(l) provides that a qualifying facility may provide energy or capacity on an "as available" basis, i.e., without legal obligation. The proposed rule provided that rates for such purchases should be based on "actual" avoided costs. Many comments noted that basing rates for purchases in such cases on the utility's "actual avoided costs" is misleading and could require retroactive ratemaking. In light of these comments, the Commission has revised the rule to provide that the rates for purchases are to be based on the purchasing utility's avoided costs estimated at the time of delivery.[6]

The order further state: "In addition to the avoided costs of energy, these costs must include the prorated share of the aggregate capacity value of such facilities."[7]

The OPUC's administrative rules implementing PURPA require the utilities to offer as-available rates and provide further requirements. With respect to the as-available rate option, the rules provide, in relevant part:

> (3) Rates for purchases — time of calculation: Each qualifying facility has the option to:
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> (a) Provide nonfirm energy as the qualifying facility determines such energy to be available for such purchases, in which case the rates for such purchases must be based on the purchasing public utility's nonfirm energy avoided cost * * * in

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4 *Id.* at § 292.304 (d)(2)(i).

5 *Id.* at § 292.304 (d)(2)(ii); *see also* ORS 758.525(2) (containing rate options in state law).

6 *Small Power Production & Cogeneration Facilities; Reg's Implementing Sec. 210 of the PURPA of 1978*, Order No. 69, 45 Fed. Reg. 12,214, 12, 224 (1980) (to be codified at 18 CFR pt. 292) (discussing Order No. 69).

7 *Id.* at n.14.

> effect when the energy is delivered * * * *[8]

The rules define "Nonfirm energy" as "energy to be delivered by a qualifying facility to an electric utility on an 'as available' basis; or energy delivered by a qualifying facility in excess of its firm energy commitment. The rate for non-firm energy may contain an element representing the value of aggregate capacity of nonfirm sources."[9]

The rules further describe the difference in the energy costs for non-firm and firm energy as follows:

> (14) "Energy costs" means:
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> (a) For nonfirm energy, the incremental costs associated with the production or purchase of electric energy by the electric utility, which include the cost of fuel and variable operation and maintenance expenses, or the cost of purchased energy;
>
> (b) For firm energy, the combined allocated fixed costs and associated variable costs applicable to a displaced generating unit or to a purchase.[10]

Most directly, in Order No. 07-360, the Commission further directed that Oregon utilities should use a "non-firm" index price from the relevant market hub. The Commission explained:

> We adopt a market price-based approach for as available QF contracts. Specifically, as available QFs shall receive day-ahead non-firm market index rates for on-peak and off-peak energy based on the appropriate market index and market hub(s). Our decision is consistent with federal PURPA law and generally consistent with OAR 860-029-0080(4), which bases avoided cost rates for non-firm QFs on contemporary avoided costs for non-firm energy.[11]

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8 OAR 860-029-0040(3).

9 OAR 860-029-0010(21).

10 OAR 860-029-0010(14).

11 *In re Pub. Util. Comm'n of Or., Staff's Investigation Relating to Elec. Util. Purchases from QFs*, Docket No. UM 1129, Order No. 07-360 at 14 (Aug. 20, 2007).

Notably, Idaho Power had proposed to use its longstanding practice in Idaho, which had allowed the utility to further discount the non-firm index price by an additional 15%.[12] But this Commission rejected Idaho Power's use of that practice in Oregon – explaining: "The company's proposed 15 percent discount applied to index prices warrants further justification."[13]

ARGUMENT

1. The Commission Should Require PGE to Follow Order No. 07-360 By Offering an Approximation of the Non-Firm Index Price Without Further Discounts

The Commission should follow its existing precedent and not implement untested and unsupported pricing discounts for as-available avoided cost rates. Applying the Commission's precedent to the current facts compels approval of an as-available rate calculated by multiplying the ICE Mid-C firm index prices by 82.4% to approximate a non-firm index price, without any further discounts.

As PGE notes in its Request, the Commission's directive in Order No. 07-360 requires Oregon utilities to use a non-firm index price as the basis for the as-available avoided costs, but in recent years the previously available non-firm index prices for Mid-C have been discontinued. The general distinction between a firm and non-firm index price is that a firm price reflects the prices for power sold with a day-ahead firm commitment with liquidated damages penalties, whereas a non-firm price is power sold without a firm commitment.[14] The formerly available Dow Jones index provided both a firm and non-firm price on a daily heavy-load and light-load

12 *Id.* at 14-15.
13 *Id.* at 15.
14 PGE's Revised Request at 3.

basis for Mid-C, but the Dow Jones index was discontinued in 2013. In a proceeding in Idaho after discontinuance of the non-firm Dow Jones index, the Idaho Public Utilities Commission ("IPUC") approved a multiparty stipulation that calculated an adjustment to the ICE day-ahead index to approximate a non-firm Mid-C index price.[15] The approved approximation of a non-firm index price was 82.4% of the monthly arithmetic average of each day's ICE daily firm Mid-C Peak Avg and Mid-C Off-Peak Avg index prices – a calculation that is easily computed at the end of each month just prior to when monthly payments are made to the QF for delivered energy.[16] PGE appears to agree that this calculation – 82.4% of the ICE firm index – is a reasonable approximation of a non-firm index price.[17]

Oregon's other two investor-owned utilities still use an adjustment to a firm index price to provide a non-firm/as-available avoided cost price. PacifiCorp uses a blend of multiple hubs (Mid-C, Palo Verde, and California-Oregon Border) and implements a discount to the day-ahead market price by calculating the firm index pricing blend by 93%.[18] As noted above, Order No. 07-360 rejected Idaho Power's proposal to discount the non-firm index by an additional 15%. To this day, Idaho Power's Oregon Rate Schedule contains no additional 15% discount beyond the

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15 *See In Re Tariff Advice No. 13-05 of Id. Power Co. for Auth. To Update Sched. 86.*, No. 33053, 2014 WL 2703260 (June 10, 2014).

16 *Id.*

17 PGE's Revised Request at 4 (proposing to calculate the ICE firm index price by 82.4% "to approximate non-firm pricing").

18 *See* PacifiCorp's Standard Avoided Cost Rate Schedule at 4, available at https://www.pacificpower.net/content/dam/pcorp/documents/en/pacificpower/rates-regulation/oregon/tariffs/purpa/Standard_Avoided_Cost_Rates_Avoided_Cost_Purchases_From_Eligible_Qualifying_Facilities.pdf. The Industry Associations reserve the right to in the future argue that a higher percentage (e.g., 93%) rather than 82.4% is appropriate, but for the purpose of reducing disputes the Industry Associations are not advocating for a higher percentage.

discount inherent in a non-firm index price. Idaho Power's currently effective avoided cost rate schedule states: "For QFs providing energy on an 'as available' basis, avoided cost rates should be based on day-ahead market index prices for non-firm purchases."[19]

In sum, there is no basis in this proceeding to allow PGE to depart from the directive in Order No. 07-360.

2. PGE Has Not Justified the Additional Pricing Discounts to an Approximation of the Non-Firm Index

PGE's Revised Request includes two additional discounts to the non-firm index approximation that the Commission should reject – (1) the same additional 15% pricing discount that Order No. 07-360 rejected as unjustified; and (2) an additional cap on the as-available prices at the level of the applicable off-peak long-term avoided costs. The Commission should reject both discounts.

a. The Commission should reject PGE's additional 15% discount

First, PGE proposes to take the non-firm index approximation (which is 82.4% of the firm index prices) and to *further* reduce the non-firm index approximation by an additional 15% discount.[20] The Commission should reject this proposal because it already rejected this proposal when Idaho Power made it in Order No. 07-360.

PGE asserts that the additional 15% discount is needed to "account for transactional and transmission costs,"[21] but that untested assertion does not warrant departing from Order No. 07-

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19 *Investigation into QF Contracting & Pricing*, Docket No. UM 1610, Idaho Power's Application For Approval of Its Replacement Compliance Filing at Idaho Power's Schedule 85, at Sheet No. 85-12 (July 3, 2014).

20 PGE's Revised Request at 4.

21 *Id.*

360. PGE's reliance on transmission costs assumes that PGE will dump all of the as-available QF power in the market and thereby need to acquire incremental transmission to do so – a point that no party has had an opportunity to investigate. It is equally likely that the as-available QF power will allow PGE to avoid delivering power to its system from the market and thereby avoid incurring incremental transmission costs, which would justify a transmission adder to the non-firm index price. It is also possible that a full investigation would determine the two scenarios will balance each other out, justifying the use of the non-firm index approximation without an adder or a decrement for transmission. Yet, there is no opportunity to investigate the point before the proposed rates must go into effect. At this point, there is no basis to disregard the directive in Order No. 07-360.

Because the 15%-discount proposal is inconsistent with Order No. 07-360 and cannot be tested on an expedited basis in this proceeding, the Commission should reject it at this time.

b. The Commission should reject PGE's proposed price cap on as-available rates

Second, PGE proposes to cap the as-available prices at the level of the off-peak avoided cost rates for long-term power sales. This proposal is also inconsistent with Order No. 07-360, which approves no use of a price cap on the as-available rates. It is also entirely unreasonable to subject QFs to the variable market prices only when the market prices are low and to deprive QFs of the benefits of market price spikes when they supply PGE with their energy during times of market scarcity. The proposed price cap is almost certainly an unlawful application of the requirement to offer as-available QFs the avoided costs at the time of delivery of power, as opposed to an averaged and forecasted monthly rate for all hours. If PGE's as-available avoided costs are in fact reasonably approximated as the non-firm index price (as Order No. 07-360 states), then the avoided costs must still rely on the same index at the time when it exceeds the long-term avoided cost rates.

PGE asserted at a Staff workshop that the price cap was needed to account for the integration costs of variable QF output, but that argument does not justify the price cap. Integration costs are only an issue for wind and solar QFs, and therefore PGE has not even provided any explanation for the price cap for baseload and hydropower QFs.

Additionally, even for wind and solar QFs, there is a better solution. PacifiCorp applies its normally applicable wind integration charges to the as-available wind QFs,[22] which is consistent with existing Commission precedent and a better approximation of integration costs than PGE's proposed price cap. The Industry Associations would not object to applying PGE's integration costs to as-available wind and solar QFs in lieu of the proposed price cap, but the Commission should not approve the price cap.

c. PGE's reliance on Idaho Power filings is misplaced

PGE's Revised Request incorrectly relies on a provision in Idaho Power's standard contract as a basis to establish precedent to overrule the Commission's determination in Order No. 07-360, requiring the use of a non-firm index without an additional discount. Review of the record demonstrates that the Commission has not approved – and CREA, NIPPC, and REC never agreed to – use of the 15% discount or the price cap for purposes of paying as-available QFs for all of their net output.

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[22] *See* PacifiCorp's Standard Avoided Cost Rate Schedule at 4, available at https://www.pacificpower.net/content/dam/pcorp/documents/en/pacificpower/rates-regulation/oregon/tariffs/purpa/Standard_Avoided_Cost_Rates_Avoided_Cost_Purchases_From_Eligible_Qualifying_Facilities.pdf (stating: "The NonFirm Market Index Avoided Cost Price for Wind Qualifying Facilities will reflect integration costs.").

The provision in Idaho Power's standard contract at issue was approved in 2014 during compliance proceedings after Order No. 14-058. In the Order No. 14-058 Compliance filing, Idaho Power substituted a new calculation to determine an approximation of a non-firm index price, through an amendment to the definition in the standard contract of "Mid-Columbia Market Energy Cost," which utilized the 82.4% discount to the ICE Mid-C firm index.[23] Elsewhere in the contract forms, in Section 7.2, Idaho Power had redefined the "Surplus Energy Price" to include a 15% discount to the non-firm index approximation as well as a cap at the otherwise applicable off-peak avoided cost rates to determine the "Surplus Energy Price" to be used in the standard contract. The 15% discount and the price cap were changes to Idaho Power's standard contract that had formerly used the Dow Jones non-firm index price without any deduction as the Surplus Energy Price. However, the Surplus Energy Prices only apply in the Idaho Power contract to start-up test energy and deliveries in excess of nameplate capacity. While Idaho Power's explanatory document with its "Revised Compliance Filing" explained that the change to the Mid-Columbia Market Energy Cost was necessary due to discontinuance of the non-firm index, there appears to be nothing in the record explaining Idaho Power's justification of the additional 15% discount to Surplus Energy Prices or any indication in Idaho Power's filing that it would apply as an "as available" rate paid for all net output delivered by as-available QFs.

Additionally, and most significantly, this Idaho Power compliance filing did not amend the rate schedule's description that the as-available avoided costs would be a non-firm index

23 *See* Docket No. UM 1610, Idaho Power's Application For Approval of Its Replacement Compliance Filing at § 1.14 of the Redline Copy of the Standard Contract.

price and would be offered for purchases from as-available QFs.[24] The rate schedule has had this same description since Order No. 07-360. It contains no reference to a 15% discount or a price cap on the non-firm index prices used for payments to as-available QFs for all of their delivered net output.

During the 2014 compliance proceedings, CREA had filed comments objecting to many problems with Idaho Power's *initial* compliance filing made on April 25, 2014, including very significant issues such as harmful curtailment and network resource procedures.[25] Among these issues, CREA also objected to using a new 15% discount to the Surplus Energy Price in the standard contract. At the time, this was not identified by CREA as an issue of properly calculating the as-available rates, which were not proposed for revision in the rate schedule, but instead a revision to the payments by Idaho Power for start-up test energy under the standard contract.[26] According to the Staff Report filed on July 31, 2014, parties had conferred after Idaho Power made its Revised Compliance Filing, and no party voiced further objections due to the changes Idaho Power made in the Revised Compliance Filing.[27] The Staff Report does not specifically address the 15%-discount or price cap issues for "Surplus Energy Price" in the standard contract. The Commission approved the Revised Compliance Filing in Order No. 14-278 without any discussion of the 15% discount or the price cap.

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24 *See* Docket No. UM 1610, Idaho Power's Schedule 85, at Sheet No. 85-12, *see also* Idaho Power's website, containing the currently offered rate schedule in Oregon titled "Cogeneration and Small Power Production Rates", https://www.idahopower.com/about-us/company-information/rates-and-regulatory/oregon-special-agreements/ (stating at Sheet 85-12: "For QFs providing energy on an 'as available' basis, avoided cost rates should be based on day-ahead market index prices for non-firm purchases.").

25 Docket No. UM 1610, CREA's Comments in Objection.

26 *Id.* at 5-6.

27 Docket No. UM 1610, Staff Report (July 31, 2014).

In reviewing the record of the Idaho Power compliance filing upon which PGE now relies, it appears that one of two things occurred. First, it is possible CREA and other parties overlooked Idaho Power's failure to correct the 15% discount in the definition of "Surplus Energy Prices" in Idaho Power's Revised Compliance Filing, which is certainly possible given the somewhat confusing presentation of the issue in the Idaho Power contract. (Indeed, CREA's comments did not even mention the additional problem of the price cap on the Surplus Energy Price.) Second, it is equally possible that CREA and other parties decided not to further pursue Idaho Power's changes to its Surplus Energy Prices in the standard contract after Idaho Power agreed to revise many other more significant flaws in its contracts and rate schedule without further litigation and expense. This scenario is equally possible given the relatively limited applicability of "Surplus Energy Prices" in Idaho Power's standard contract and given the fact that there was no change proposed for the as-available prices paid to as-available QFs in the rate schedule. The agreement (if one was ever consciously made) was that Idaho Power could use this additional 15% discount and price cap solely for two very limited purposes in its standard contract – payment for start-up test energy and energy delivered in excess of nameplate capacity.

PGE now appears to point to parties' non-objection to the "Surplus Energy Prices" in Idaho Power 2014 Revised Compliance Filing as a basis for a change in Commission policy from Order No. 07-360 that would allow PGE to now use the 15% discount for the price it pays to as-available QFs for all energy they deliver. There is no basis for this assertion. No party ever agreed that the 15% discount and the off-peak price cap could apply to the as-available prices paid for all energy delivered by as-available QFs. The Idaho Power compliance filing regarded only a relatively minor pricing provision with very limited applicability and impact in

Idaho Power's standard contract. Furthermore, there is no explanation approved by the Commission in any order to our knowledge that justifies using an additional 15% discount or a price cap.

In sum, the precedent on point here is Order No. 07-360, and that order proscribes using the 15% discount and off-peak price cap proposed by PGE in its Revised Request.

CONCLUSION

For the reasons explained above, the Industry Associations recommend that the Commission should reaffirm existing precedent in Order No. 07-360, which requires PGE to use a non-firm index for the relevant market hub for the as-available rates offered to QFs without any discounts. The price to be used for this purpose should be 82.4% of the day-ahead ICE firm Mid-C index price, which PGE agrees is a reasonable approximation of a "non-firm" index price at the Mid-C.

RESPECTFULLY SUBMITTED this 27th day of July 2020.

RICHARDSON ADAMS, PLLC

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Gregory M. Adams (OSB No. 101779)
515 N. 27th Street
Boise, Idaho 83702
Telephone: 208-938-2236
Fax: 208-938-7904
greg@richardsonadams.com

Of Attorneys for the Community Renewable Energy Association

Sanger Law, PC

____
Irion A. Sanger
Sanger Law, PC
1041 SE 58th Place
Portland, OR 97215
Telephone: 503-756-7533
Fax: 503-334-2235
irion@sanger-law.com

Of Attorneys for the Renewable Energy Coalition and the Northwest and Intermountain Power Producers Coalition