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V. Denise Saunders
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December 18, 2015

Via Electronic Filing

Oregon Public Utility Commission
Filing Center
201 High St SE, Suite 100
PO Box 1088
Salem OR 97308-1088

RE: AR 593 Obsidian's Petition to Amend OAR 860-029-0040, Relating to Power Purchases by Public Utilities from Small Qualifying Facilities (QFs)

Attention Filing Center:

Enclosed for filing in Docket AR 593 are the Comments of Portland General Electric Company ("PGE") to be filed electronically with the Filing Center.

Thank you in advance for your assistance.

Sincerely,

A handwritten signature in blue ink that reads "V. Denise Saunders". The signature is written in a cursive, flowing style.

V. DENISE SAUNDERS
Associate General Counsel

VDS:bop

Enclosure

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 593

In the Matter of:

OBSIDIAN RENEWABLES LLC

Petition to Amend OAR 860-029-0040,
Relating to Power Purchases by Public
Utilities from Small Qualifying Facilities.

COMMENTS OF PORTLAND GENERAL
ELECTRIC COMPANY

I. INTRODUCTION

Pursuant to the November 17, 2015 Invitation to Comment issued by Rules Project Leader Diane Davis, Portland General Electric Company (PGE) submits these comments in response to Obsidian Renewables, LLC's (Obsidian) Petition for Rulemaking dated November 13, 2015 (Petition). The Public Utility Commission of Oregon (Commission) should grant Obsidian's Petition, adopt additional rules of general applicability that are necessary to fulfil the Commission's Public Utility Regulatory Policies Act (PURPA) obligations, and temporarily stay contracting under PURPA for QF projects larger than 100 kW until the Commission adopts revised rules by order.

II. BACKGROUND

The PURPA landscape in Oregon has materially changed in the last year. PGE is experiencing an unprecedented amount of requests and executed contracts from developers of qualifying facilities (QFs). Both Idaho Power Company (Idaho Power) and PacifiCorp d/b/a Pacific Power (Pacific Power) have active dockets with the Commission to lower the standard contract size eligibility threshold for solar and wind QFs and to decrease the term of QF

contracts.¹ Both utilities were granted temporary relief from the Commission in the form of a three megawatt standard contract eligibility threshold for solar QFs.² Now, unsurprisingly, PGE receives more requests for standard contracts than ever before, being the only game in town for solar QFs sized from three to ten megawatts seeking a standard contract. In fact, the amount of QF power for which PGE is currently under contract and which is pending in PGE's QF queue has nearly tripled since April of this year, when Idaho Power filed its applications to reduce the contract term and lower the standard eligibility cap. PGE's obligations to purchase power from QF developers will only increase if the Commission allows Idaho Power and Pacific Power to permanently lower the standard contract eligibility cap or shorten the contract term for solar and wind QFs. The result will be that PGE's customers will subsidize the artificially high avoided cost prices that PGE will be obligated to pay to QF developers for years to come. PGE argued in Phase I of UM 1610 that a ten megawatt standard contract threshold is too high by several orders of magnitude. Now there is more evidence than ever of the need to lower the standard contract size threshold considerably.

Despite Obsidian's assertions to the contrary, there is no need to adopt policies that encourage more renewable, particularly solar, QF development in Oregon. Obsidian claims there are no existing solar PURPA projects in Oregon.³ In fact, PGE is currently purchasing power from three solar QFs located in Oregon, and is under contract with a fourth one, currently in the testing phase, with plans to begin commercial operation soon. PGE has signed additional agreements to purchase an added 51 megawatts of solar capacity from 14 projects and an

¹ Docket Nos. UM 1725 and UM 1734.

² *In re Idaho Power Company*, Docket UM 1725, Order No. 15-199 (June 23, 2015); *In re PacifiCorp, d/b/a Pacific Power*, Docket UM 1734, Order No. 15-241 (August 14, 2015).

³ *In re Petition of Obsidian Renewables LLC for Rulemaking*, Docket No. AR 593, Petition of Obsidian at 5 (Nov. 13, 2015).

additional 73 megawatts of capacity from 17 projects of all QF generation types. In addition, developers for ten potential projects totaling 92 MW have contacted PGE seeking QF contracts. The vast majority of new potential QF projects are utility-scale solar. Out of the ten potential QFs, seven are for solar projects seeking a standard contract sized to 10 MW and one for a solar project sized to 20 MW.

With the vast increase in PGE's potential QF obligations, PGE clearly does not agree that the substantive rulemaking changes that Obsidian proposes are needed to promote the development of renewable QF power. Instead, and as discussed below, PGE believes a rulemaking is necessary to ensure that Oregon's electric utilities purchase power from QFs at rates and on terms and conditions that are just and reasonable to the utility's customers.

III. COMMENTS

A. The Commission Should Open a Rulemaking Proceeding.

Although PGE disagrees with the substantive changes that Obsidian would have the Commission adopt through a rulemaking, PGE agrees with Obsidian that the standard renewable QF contract term and cap should be generally applicable to all Oregon utilities and therefore should be established in a rulemaking proceeding. Not only is this required by the Administrative Procedures Act as Obsidian explains but it is also consistent with Oregon policy which, as articulated in ORS 758.515(b) is, in part, to create a "uniform institutional climate for the qualifying facilities in Oregon." A utility-by-utility approach to setting the cap and term could result in different terms and caps for Oregon QF contracts effective at different times for different utilities. Not only is this administratively inefficient but it also increases the burden on QFs to understand and track which requirements apply to which utilities and when. A QF developer comparing utilities currently weighs utility-specific characteristics such as price,

location and need. A non-uniform approach may result in this decision also turning on which utility has standard contracts with the most favorable terms and eligibility requirements. While price, location and need are factors which can help incent efficient development of QFs in Oregon, utility-specific terms and eligibility caps do not.

Moreover, the policy reasons that the Commission has articulated for selection of a particular cap and term for QF contracts apply generically to all Oregon utilities. For example, in Phase I of Docket UM 1610, the Commission recently concluded that the eligibility cap for standard contracts should remain at 10 MW to eliminate the barrier to entry posed by costs to negotiate non-standard contracts.⁴ In Docket UM 1129, the Commission adopted a 20 year term with prices fixed for the first 15 years in order to ensure that QFs could obtain financing.⁵ Any barrier to entry posed by a specific cap or term, if it exists, exists because of the size of the cap or length of the term and not because of the identity of the utility. In other words, it would not be reasonable to conclude that a 10 MW cap imposes a barrier to entry for QFs wishing to contract with PGE but not for those wishing to contract with PacifiCorp.

While decisions setting minimum QF contract terms and eligibility thresholds should be generally applicable to all utilities serving customers in Oregon and therefore adopted pursuant to a rulemaking proceeding, we also believe that the Commission can rely on its determinations in other dockets, including dockets UM 1725 and UM 1734, to inform its final determination in a rulemaking proceeding.⁶

⁴ *In re Public Utility Commission of Oregon*, Docket No. UM 1610, Order 14-058 at 7 (Feb 24, 2014) (Order 14-058).

⁵ *In re Public Utility Commission of Oregon*, Docket No. UM 1129, Order 05-584 at 19 (May 13, 2005).

⁶ *International Council of Shopping Centers, et al., v. Oregon Environmental Quality Commission*, 27 Or App 321, 326-327 (1976) (citations omitted).

B. The Rulemaking should Consider other Changes to Oregon’s PURPA Rules to Prevent Oregon Ratepayers from Unfairly Subsidizing Artificially High Avoided Cost Payments to QF Developers.

Oregon ratepayers are subject to a high likelihood of subsidizing artificially high avoided cost prices for QF developers that execute a contract under the current Oregon rules and orders. Many of the projects submitted to PGE are part of larger developments, proposed by sophisticated entities with national and, in some cases, international energy development experience. These are not the “mom and pop” QFs that require standard prices with no adjustments or negotiations.

The QF developers are able to take advantage of a significant timing lag inherent in the way Oregon utilities are required to set avoided cost prices. The initial lag starts with the IRP process which identifies the avoided resource and inputs on which the avoided cost pricing is based. By the time the IRP is acknowledged, prices and inputs are more than a year old. The utility is then required to use those avoided cost prices for at least two years. While there is an annual update for the electric forward curves and gas prices, the updates to electric forward curves only affect sufficiency period prices and the updates to gas prices have no effect on the avoided cost prices for renewable resources. Therefore, the annual updates do nothing to update the prices of an avoided renewable resource during the deficiency period. Nor are utilities permitted to update capital costs to reflect the capital costs used in the IRP.⁷

Further compounding this issue, the annual update filing includes an update for the status of the production tax credit (PTC). However because the federal government often extends the tax credit at the last minute, it is difficult for a utility to include the PTC in calculating the cost of

⁷ *In re Portland General Electric Company*, Docket UM 1728, Order No. 15-206 at Appendix A, 3-4 (June 23, 2015).

an avoided resource. The result is that a utility's retail customers pay avoided costs for a resource with pricing that is much higher than the cost that is avoided.

The pricing lag is exacerbated because the standard QF contracts permit developers a gap of at least three years between the date of execution when avoided cost pricing is locked-in and the date of commercial operation when the utility is obligated to begin paying the avoided costs.⁸ The result of Oregon's process for establishing avoided cost pricing is that utilities sometimes pay developers prices that were established more than five years earlier. Because the recent pattern is for the cost of renewable avoided resources to decrease over time, Oregon utility customers end up subsidizing QF projects at artificially high avoided costs.

In order to ensure that the avoided costs paid for QF projects are as close to true avoided costs as possible, the Commission should open a rulemaking to address contracts terms and eligibility thresholds. The rulemaking should also establish rules to allow annual update filings to include updates to capital costs and calculations based on an assumed continuation of the PTC. These are issues of general applicability to the contract terms and calculation of avoided costs of all Oregon utilities and they are necessary to ensure that electric utilities purchase power from QFs at rates that are just and reasonable to the utility's customers and are not more than avoided costs.⁹

C. The Commission should temporarily suspend PURPA contracting pending resolution of the rulemaking.

On November 13, 2015 Obsidian filed motions to hold Docket Nos. UM 1725 and UM 1734 in abeyance pending the resolution of Obsidian's petition for rulemaking. In response, Commission Staff indicated, in part, that it would recommend that the Commission temporarily

⁸ The standard contracts allow developers an additional year to cure any failure to achieve commercial operation by the date required under the contract.

⁹ 18 CFR 292.304(a) and (b); Order 14-058 at 3.

suspend PURPA contracting until after the Commission has reached a final resolution of Obsidian’s rulemaking petition. Commission Staff stated that the utilities’ obligation to enter into future PURPA contract under terms and conditions that are not in rule is uncertain. PGE supports a temporary suspension. As indicated above, PGE and its customers are currently harmed because of PGE’s obligation to enter into long term fixed price contracts at prices that do not affect true avoided costs. The harm will continue and will likely worsen until the uncertainty surrounding the application of contract terms and conditions is resolved. Accordingly, PGE urges the Commission to implement Staff’s suggestion and temporarily suspend the PURPA contracting obligations for developments larger than 100 kW.¹⁰ If the Commission does not grant such interim relief, the Commission should make the interim relief it granted to Idaho Power and PacifiCorp in dockets UM 1725 and UM 1734 generally applicable to all Oregon utilities.

IV. CONCLUSION

For the reasons set forth above, PGE respectfully requests that the Commission open a rulemaking proceeding to adopt rules shortening the contract term and lowering the eligibility threshold for QF contracts and allowing for updated capital costs and the inclusion of the PTC to be considered in annual avoided cost pricing updates. We also ask that the Commission implement Staff’s suggestion and temporarily suspend the PURPA contracting obligations of Oregon utilities for QF developments larger than 100 kW pending adoption of new rules or,

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¹⁰ Federal law explicitly requires that standard avoided cost prices be available to QFs that are 100 kW and less. 18 C.F.R. §292.304(c)(1).

alternatively, apply the interim relief it granted to Idaho Power and PacifiCorp in dockets UM 1725 and UM 1734 to all Oregon utilities.

DATED this 18th day of December, 2015.

Respectfully submitted,



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