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July 27, 2017

***Via Electronic Mail***

Filing Center  
Public Utility Commission of Oregon  
P.O. Box 1088  
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**Re: In the Matter of Portland General Electric's Application to Lower the  
Standard Price and Standard Contract Eligibility Cap for Solar Qualifying  
Facilities  
OPUC Docket No. UM 1854**

Attention Filing Center:

Attached for filing in the above-captioned docket is an electronic version of *Strata Solar Development, LLC's Response to Portland General Electric Company's Motion for Interim Relief*.

Thank you in advance for your assistance.

Sincerely,

A handwritten signature in black ink that reads "Ken Kaufmann". The signature is fluid and cursive, with a long horizontal line extending from the end of the name.

Ken Kaufmann  
Attorney for Strata Solar Development, LLC

Attach.

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Attorney for Strata Solar Development, LLC

**BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON**

**In the Matter of Portland General  
Electric Company's (PGE) Application  
to Lower the Standard Price and  
Standard Contract Eligibility Cap for  
Solar Qualifying Facilities**

**CASE NO. UM 1854**

**Strata Solar Development, LLC's  
Response to Portland General  
Electric Company's Motion for  
Interim Relief**

On June 30, 2017, Portland General Electric Company ("PGE") filed a Motion for Interim Relief, which asks the Commission, effective immediately, to:

1. Order PGE to lower its standard contract eligibility cap for solar QFs to 3 MW (PGE's first request);
2. Declare that a solar QF project with capacity above 100 kilowatts ("kW") is not eligible for a standard contract or standard prices from PGE if any owner of the solar QF project has requested or obtained standard prices from PGE for more than 10 MW of solar QF capacity" affect Strata (PGE's second request, or "Owner Capacity Cap"); and
3. Alternatively, lower to 2 MW the eligibility cap for a solar QF project to obtain standard prices from PGE" affect Strata (PGE's third request).

Strata Solar Development, LLC ("Strata") urges the Commission to deny PGE's request for the reasons below.

## **1. PGE's Second Request for Relief is not ready for adoption.**

While the Commission has granted reductions to the standard contract eligibility size cap in the past, PGE's proposed Owner Capacity Cap is novel. According to PGE, it conceived the approach without prior precedent,<sup>1</sup> and it is currently only a "concept" that would require further Commission review and approval to implement.<sup>2</sup>

It is difficult to envision how the Commission would turn PGE's novel concept into interim injunctive relief. Typically, changes of such magnitude travel a long and deliberative process before being adopted by the Commission. In Dockets Nos. UM 1129 and 1610, policy proposals as significant as the Owner Capacity Cap were discussed at workshops with representatives of QFs, interested state agencies, NGOs, and Commission staff. Experts testified, and attorneys analyzed potential legal issues. By the time the Commission was called upon to decide a matter, it had undergone a thorough process greatly enhancing the likelihood of a settled outcome.

PGE's Owner Capacity Cap has not gone through such a process, and important questions have not yet been answered. For one, the Commission must determine if PURPA allows it to ration standard contracts based upon whether a person has requested or received standard contracts in the past. Presumably, if each of the 36 solar projects currently seeking PGE standard contracts were separately owned and unaffiliated, PGE

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<sup>1</sup> PGE Response to Strata Data Request No. 002. ("PGE is not aware of any jurisdiction that uses the precise approach to limiting the availability of standard contracts for solar QF projects that PGE has proposed in its second form of requested relief.").

<sup>2</sup> PGE Response to Strata Data Request No. 006. ("The precise language PGE may propose will depend on the details of the Commission's orders and other developments in the proceeding. If PGE's request is granted, PGE anticipates that it will propose language to capture the concept [of the Owner Capacity Cap]").

would still be seeking relief from the Commission. This suggests that common ownership of QFs is an imperfect proxy PGE is using to reduce total standard QF contracts. PGE cannot point to another jurisdiction with a working example of its Owner Capacity Cap to prove its vitality, nor has it provided a strong justification for why it is legal and necessary.

Contrary to PGE's assertions in its application, current "inaccuracies" in published avoided costs do not violate PURPA. There is a difference between (a) contract prices that exceed those approved by the Commission, and (b) avoided costs that are stale.<sup>3</sup> PGE's standard rates do not exceed those approved by the Commission. If the standard rates are stale, the remedy is not to slash eligibility for standard rates, but to refresh them.

PURPA permits some rules that result in different types of generation receiving different avoided costs based on different State-authorized procurement requirements. *California Pub. Utilities Commn. et al.*, 133 FERC ¶ 61059, 61266 (Oct. 21, 2010).<sup>4</sup> But States cannot include bonuses or adders to avoided cost rates unless it reflects a cost actually avoided. *Id.* at 61268.<sup>5</sup> *California Pub. Utilities Commn.*, while distinguishable from PGE's proposed Owner Capacity Cap, nevertheless suggests a broader principle-- that rules discriminating among QFs or QF owners must be grounded in some actual cost or other regulatory mandate. If this principal applies, PGE's proposal fails because PGE cites no such

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<sup>3</sup> See, e.g. *Southern California Edison Company*, 70 FERC P 61215, 61678 (1995) (declining to invalidate published avoided costs alleged to be far in excess of actual power replacement costs but noting concerns about their "staleness").

<sup>4</sup> "[W]here a state requires a utility to procure a certain percentage of energy from generators with certain characteristics, generators with those characteristics constitute the sources that are relevant to the determination of the utility's avoided cost for that procurement requirement." *Id.*

<sup>5</sup> We also note that, although a state may not include a bonus or an adder in the avoided cost rate unless it reflects actual costs avoided, a state may separately provide additional compensation for environmental externalities, outside the confines of, and, in addition to the PURPA avoided cost rate, through the creation of renewable energy credits (RECs). *Id.*

regulatory mandate in support of its proposal. The Owner Capacity Cap would likely hamper progress towards attaining the State's small-scale renewable energy project mandate of ORS 469A.210.<sup>6</sup>

The Owner Capacity Cap would have impacts beyond addressing the harms PGE claims it would address. Strata does not "disaggregate" large projects--something which PGE disparagingly calls "gaming the system". Nor does Strata engage in "geographic arbitrage". PGE Application at 3, 8. Assuming for the sake of PGE's argument that disaggregation and geographic arbitrage are nefarious acts in need of regulation, PGE's solution goes too far. Its Owner Capacity Cap (alternatively its 2 MW cap) would punish Strata, even though Strata is neither a Disaggregator nor a Geographic Arbitrager.

Strata has strong doubts whether the Owner Capacity Cap is permissible under PURPA and consistent with Commission rules and policies. Collateral attacks on the avoided cost rates often unnecessarily complicate the QF framework and often have undesirable, unintended consequences. There are yellow flags suggesting that PGE's proposal may be fatally flawed; it therefore does not make a good candidate to implement

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<sup>6</sup> (1) The Legislative Assembly finds that community-based renewable energy projects, including but not limited to marine renewable energy resources that are either developed in accordance with the Territorial Sea Plan adopted pursuant to ORS 196.471 or located on structures adjacent to the coastal shorelands, are an essential element of this state's energy future.  
 (2) For purposes related to the findings in subsection (1) of this section, **by the year 2025, at least eight percent of the aggregate electrical capacity of all electric companies that make sales of electricity to 25,000 or more retail electricity consumers in this state must be composed of electricity generated by one or both of the following sources:**  
 (a) **Small-scale renewable energy projects with a generating capacity of 20 megawatts or less** that generate electricity utilizing a type of energy described in ORS 469A.025; or  
 (b) Facilities that generate electricity using biomass that also generate thermal energy for a secondary purpose.  
 (c) Regardless of the facility's nameplate capacity, any single facility described in subsection (2)(b) of this section may be used to comply with the requirement specified in subsection (2) of this section for up to 20 megawatts of capacity.  
 ORS 469A.210 (2017) (emphasis added).

on an interim basis. It should be rejected outright, or investigated so that potential issues can be more carefully considered. If the Commission decides PGE has identified a problem that must be addressed, Strata suggests for consideration the possibility of security deposits as a method of controlling speculative behavior by solar developers. An appropriately sized deposit with sufficient safeguards might discourage speculative projects while permitting viable projects to move forward.

## **2. PGE's Proposed Owner Capacity Cap would cripple Oregon solar QFs.**

PGE does not know how many solar PV owners and developers would be disqualified from seeking further standard contracts from PGE if the Commission adopts its Owner Capacity Cap. At a minimum, PGE predicts that 11 developers (A, D, F, G, H, I, J, K, L, O, and R listed on page 13 of its Application) would become ineligible. PGE Response to Strata Data Request No. 012 (July 14, 2017). Notably, owners A, D, and O would become ineligible for requesting more than 10 MW of standard contracts even though they have 0 MW of solar under standard contract.

Owners affected by the Owner Capacity Cap would lose the benefit of the standard contract framework that the Commission developed over many years with thousands of hours of hard work. In its place, they would have only a process that was intended for much larger projects, and has very limited safeguards for the QF. In Docket No. UM 1725, Idaho Power presented evidence that single solar developers can enter into negotiated contracts in the 4 MW to 10 MW range. *Id.* at 6. There is no evidence this is true with respect to PGE's negotiated contract. The only solar project with an executed a negotiated agreement with PGE has a capacity of 47 MW. *See* note 7, *infra*. PGE's framework and contracts for

negotiated QF transactions is substantially unknown and should be better defined before expanding its reach to QFs under 10 MW. What is known about the contracts suggests they would not work for 4 MW to 10 MW solar projects.

Strata does not believe any of its 2 MW projects would be viable under the non-standard PGE contract. Few persons have seen a PGE Schedule 202 (non-standard contract), but Strata understands from other developers that it is much riskier and less valuable for a QF than a standard contract. One material difference between PGE's standard and non-standard contracts is their differing payment formulae. Whereas the standard contract allows the QF to elect to be paid the fixed prices in Schedule 201 for 15 years, PGE's Schedule 202 contract requires a dollar-for-dollar reduction to the purchase price whenever the hourly Market Price is negative.<sup>7</sup> This feature adds great uncertainty to power purchase agreement revenues. It also may violate a QF's right to be paid avoided costs calculated at the time the obligation is incurred.<sup>8</sup>

PGE's novel payment provision, and other non-standard provisions in PGE's Schedule 202 contracts, may never be challenged if the cap is lowered to 2 MW or 3 MW, however, because the economics of such a small project simply can't support a protracted legal dispute with a utility. This fact is born out by PGE's recent history defending Commission complaints by qualifying facilities. According to PGE, eight projects have filed

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<sup>7</sup> See summary of PGE Schedule 202 contract with Airport Solar, LLC, filed June 21, 2017 by PGE in Docket No. RE-143 (<http://edocs.puc.state.or.us/efdocs/HAQ/re143haq165856.pdf>).

<sup>8</sup> 18 C.F.R. § 292.304(d)(2) (2013) (providing that rates, at the QF's option, can be based on "[t]he avoided costs calculated at the time the obligation is incurred."). See, also *Hydrodynamics, Inc. et al*, 146 FERC P 61193, ¶34 (finding that availability of only variable, market based rate options is inconsistent with the 18 CFR §292.304(d)(2)'s requirement that QF has an option to elect forecasted avoided cost rates).

complaints since January 1, 2015, and every one has a nameplate capacity of 10 MW.<sup>9</sup> Small projects like Strata's would, effectively, have no recourse in the event of a dispute negotiating a non-standard contract with PGE.

Strata is one example, but may be typical, of how developers will be hurt by this rule. Strata currently has applications pending with PGE for a total of 31 MW. Strata has invested nearly \$409,000 to date and has \$559,000 of committed work in Oregon on hold pending the Commission's resolution of PGE's Application and Motion. Strata's sites are located entirely within PGE's service territory. All but three of its projects are 2 MW. As such, its current proposed projects would not be greatly affected if the Commission lowered the cap to 3 MW (or even 2 MW). However, if the Commission adopts PGE's Second Request (the "Owner Capacity Cap"), all of Strata's pending projects are at risk. Strata/100, John Knight/2-5.

Strata's projects are truly separate projects, sized small in order to comply with local and state restrictions on development of farmland. Because they were never disaggregated, Strata's sites cannot be re-aggregated in order to achieve economies of scale. If Strata were forced to apply now for non-standard contracts for its projects, it would likely opt to abandon them instead. With so many other developers simultaneously disqualified from PGE's standard contract, Strata expects the assets it has developed would be worthless. This would be very harmful to Strata, but not only Strata. Local landowners would lose lease revenue, counties would lose tax revenue, and PGE would lose a

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<sup>9</sup> See PGE Response to Strata Data Request No. 005 (July 14, 2017))(UM 1784, solar, 10 MW; UM 1785, solar, 10 MW; UM 1829, solar, 10 MW; UM 1830, solar, 10 MW; UM 1831, solar, 10 MW; UM 1832, solar, 10 MW; UM 1833, solar, 10 MW; UM 1844, biomass, 10 MW).



significant source of clean, carbon-free energy located within its control area. Perhaps most harmful, from a policy maker's perspective, would be the damage to the State's reputation as a place where rules are predictable.

### **3. The balance of harms and likelihood of success dis-favors interim relief.**

When regulating Qualifying Facility contracting and prices, the Commission must "balance the need for a settled and uniform institutional climate for QFs in Oregon, while ensuring that electric utilities purchase power from QFs at rates that are just and reasonable to the utility's customers, in the public interest, and that do not discriminate against QFs, but that are not more than avoided costs." Order No. 16-129 (internal quotations omitted). However when deciding whether to grant interim relief, the Commission must also take into account the likelihood that the movant will ultimately prevail on the merits of its application.<sup>10</sup> A party seeking a preliminary injunction must establish that it is likely to succeed on the merits, that it is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in its favor, and that an injunction is in the public interest. *Giftango, LLC v. Rosenberg*, 925 F. Supp. 2d 1128, 1138 (D. Or. 2013). The party requesting a preliminary injunction must carry its burden of persuasion by a "clear showing" of the four required elements set forth above. *Id. See, also, Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997)(a 'preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion'. *Id.* at 972). The Commission's recent

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<sup>10</sup> ORCP 79; OAR 860-001-0000. *See, also, City of Portland Complainant*, Order No. 06-636, 2006 WL 3594296 (Or.P.U.C. Nov. 17, 2006)(Commission applied ORCP standard for summary judgment).

experience, in Docket No. UM 1725, illustrates why PGE has a heavy burden to justify interim relief.

In 2015, Idaho Power filed an application asking the Commission, among other requests, to lower Idaho Power's standard contract eligibility cap for solar QFs, from 10MW to 3MW, and filed a Motion for Interim Relief seeking immediate implementation. Docket No. UM 1725. The Commission granted Idaho Power's interim request to lower its eligibility cap for standard contracts *and* standard prices for solar QFs to 3 MW. Order No. 15-199 (June 23, 2015) at 7. QFs who were in the standard contract queue when Order No. 15-199 rendered them ineligible were given the option to: (a) negotiate a non-standard contract; or (b) reducing their QF's size down to under 3MW and re-start the application for standard contract and standard prices.<sup>11</sup> Order No. 15-230 (August 6, 2015) at 4. Ultimately, however, the Commission partially reversed itself, and ordered Idaho Power to offer negotiated prices *with standard contracts* for solar projects larger than 3MW, up to 10 MW. Order No. 16-129 (March 29, 2016) at 6.

At least nine solar QF applicants between 3 MW and 10 MW affected by Idaho Power's Motion for Interim Relief: (a) initially applied for standard contracts and standard prices; (b) became ineligible for standard contracts as a result of Order No. 15-199, and (c) became re-eligible for standard contracts nine months later as a result of Order No. 16-129. Order No. 15-230 at 2.

PGE's Application will cause great harm to solar QF developers with pending standard contract requests, even on an interim basis. Application at 13. Many developers,

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<sup>11</sup> Strata suspects most opted for a third option: abandonment.

if forced to negotiate non-standard contracts, will simply fold and will not come back, even if the Commission ultimately denies, or partially denies, PGE's Application. PGE has not clearly demonstrated its entitlement to the relief it seeks. Therefore PGE's request for interim relief should be denied.

### **Conclusion**

For the reasons above, Strata respectfully suggests that the Commission deny PGE's Motion for Interim Relief and, in the alternative, that it at least maintain standard contracts for solar QFs up to 10 MW that are ineligible for the standard prices.

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Submitted this 27th day of July 2017.




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**BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON**

**Strata Solar Development, LLC**

Complainant,

vs.

**Portland General Electric Company**

Respondent.

**CASE NO. UM 1854**

**Affidavit of John Knight in support  
of Strata Solar Development, LLC**

1 **Q. Please state your name and position.**

2 A. My name is John Knight. I am the West Regional Director for Strata Solar  
3 Development, LLC (Strata).

4 **Q. What is the purpose of your testimony?**

5 A. In Part I of my testimony, I describe Strata's Oregon solar qualifying facility  
6 development efforts. In Part II, I discuss how the actions PGE requests in its  
7 Application would affect Strata.

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**Part I**

2

**STRATA'S OREGON QF DEVELOPMENT EFFORTS**

3 **Q. Can you please provide a brief history of Strata Solar Development, LLC?**

4 A. Strata is a leading developer of turn-key, utility scale, solar photovoltaic generation  
5 in the United States. With 150 utility-scale projects successfully developed across  
6 the country, Strata offers years of experience working with major utilities and a  
7 keen understanding of what makes solar development projects successful.

8 **Q. Can you please describe Strata's operations in Oregon?**

9 A: Strata currently has PPA applications pending for projects under development in  
10 Oregon. All of them are located Within Portland General Electric's service territory  
11 and are seeking a standard PGE Schedule 201 renewable standard contract.

12 **Q. Why did Strata decide to invest in Oregon?**

13 A: Strata believed that the regulatory framework for PURPA solar projects in Oregon,  
14 specifically the fixed price, long-term standard contracts, provide a predictable  
15 market for new projects.

16 **Q. Does Strata dis-aggregate large sites in order to qualify for the standard**  
17 **contract?**

18 A. No, Strata does not dis-aggregate large sites. Strata is developing smaller sites  
19 because of Oregon land use laws (see OAR 660-033-0130). Most of our project sites

1 are high value or arable farmland, therefore we can only impact up to 12 or 20  
2 acres, respectively.

3 **Q. Has Strata made a profit selling power in Oregon?**

4 A. No. To the contrary, Strata has invested over \$409,000 in project development with  
5 no return so far. Strata has more than \$559,000 additional planned expenditures  
6 committed to tasks that are currently on hold pending the Commission's resolution  
7 of PGE's Application and its Motion for Interim Relief.

8 **Q. What types of costs has Strata incurred in reliance on the standard contract?**

9 A. Strata's major expenditures include site leases, site purchase options, surveys, title  
10 reports, interconnection studies, environmental diligence, land use permits,  
11 attorneys, consultants, travel and engineering work.

12 **Q. Would Strata have invested in Oregon sites if there were no standard  
13 contract?**

14 A. No. Projects like ours depend on reasonable and predictable costs of development  
15 and predictable revenue from a power purchase agreement. A standard contract  
16 with no negotiation and known prices provides the requisite predictability for  
17 projects of this size.

18 **Part II**

19 **HOW PGE'S REQUESTED CHANGES WOULD AFFECT STRATA**

1   **Q. Are you familiar with the actions PGE asked the Commission to take, in its June**  
2       **30 Application?**

3   A. Yes.

4   **Q. When and how did you become aware of PGE's Application?**

5   A. We learned of the Application via an email on July 3 from our attorney who is  
6       helping us with our standard contract applications.

7   **Q. How would PGE's request to lower its standard contract eligibility cap for**  
8       **solar QFs to 3 MW affect Strata (PGE's first request)?**

9   A. Strata has 4 MW solar projects in PGE's queue for a Schedule 201 standard contract  
10       that would potentially become ineligible if the Commission granted PGE's first  
11       request. Strata requests that, if the Commission grants PGE's first request, it will  
12       require PGE to offer standard contracts to projects that were in the queue prior to  
13       the Commission's order.

14   **Q. How would PGE's request to "Declare that a solar QF project with capacity**  
15       **above 100 kilowatts ("kW") is not eligible for a standard contract or standard**  
16       **prices from PGE if any owner of the solar QF project has requested or obtained**  
17       **standard prices from PGE for more than 10 MW of solar QF capacity" affect**  
18       **Strata (PGE's second request)?**

19   A. Although Strata does not have any fully executed standard contracts, it has  
20       requested more than 10 MW, in aggregate. PGE's second request arguably would

1 authorize PGE to require Strata to try to negotiate non-standard contracts for all of  
2 its projects because it has requested more than 10 MW of solar QF capacity.

3 **Q. What would happen if PGE disqualified Strata from non-standard solar**  
4 **contracts?**

5 A. If the process for non-standard solar contracts was too burdensome, Strata would  
6 likely abandon its development work in Oregon.

7 **Q. Would there likely be a market for such projects?**

8 A. No. According to PGE's Application, at least 33 other projects and 10  
9 developer/owners would also be ineligible. We think the project assets we have  
10 acquired to date would be worthless.

11 **Q. How would PGE's request to "Alternatively, lower to 2 MW the eligibility cap**  
12 **for a solar QF project to obtain standard prices from PGE" affect Strata (PGE's**  
13 **third request)?**

14 A. This would disqualify some of our projects currently in PGE's Schedule 201 queue.  
15 Strata requests that the Commission require PGE to offer standard contracts to  
16 projects that were in the queue prior to the Commission's order.

17 **Q. Would enacting PGE's requests affect Strata's investment in Oregon?**

18 A. Yes. Strata is reluctant to invest money in projects in states deemed to have a risky  
19 regulatory climate. If Strata loses money in Oregon as a result of sudden and un-



1 expected dramatic changes to the regulatory framework--such as those proposed by  
2 PGE--it will be hesitant to invest money in Oregon in the future.

3 **Q. Does this conclude your testimony?**

4 A. Yes.

5 **Q. Do you swear your testimony is truthful to the best of your knowledge?**

6 A. Yes.

Dated this 22 day of July 2017.



John Knight  
West Regional Director  
Strata Solar Development, LLC

Strata/Exhibit 100  
Affidavit of John Knight/7

STATE OF Utah )  
County of Grand ) ss.

On this 26 day of July 2017, before me, a Notary Public in and for the State of Utah, personally appeared John Knight, known or identified to me and who subscribed said name to the foregoing instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I hereunto set my hand and affix my official seal the day and year first above written.

Jamie Kim Reidhead, Notary Public for Utah

Residing 248 Hillside Dr. moab, UT 84532 at:

My commission expires: July 12, 2020

