BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1854

In the Matter of	)	THE NORTHWEST AND
	)	INTERMOUNTAIN POWER
PORTLAND GENERAL ELECTRIC	)	PRODUCERS COALITION,
COMPANY	)	COMMUNITY RENEWABLE ENERGY
	)	ASSOCIATION, AND THE
Application to Lower the Standard Price and	)	RENEWABLE ENERGY COALITION'S
Standard Contract Eligibility Cap for Solar	)	JOINT RESPONSE TO PORTLAND
Qualifying Facilities	)	GENERAL ELECTRIC MOTION FOR
	)	INTERIM RELIEF

I. INTRODUCTION

Pursuant to OAR 860-001-0400 and the Administrative Law Judge's July 13, 2017 ruling, the Northwest and Intermountain Power Producers Coalition ("NIPPC"), Community Renewable Energy Association ("CREA"), and Renewable Energy Coalition (the "Coalition") (collectively "Joint QF Parties") submit this response to Portland General Electric Company's ("PGE's") motion for interim relief. The extraordinary relief requested by PGE is unwarranted, inconsistent with PGE's obligations under state and federal law, and is an unsound public policy that will lead to regulatory chaos.

The Joint QF Parties are not opposed in principle to granting PGE narrowly tailored interim relief under appropriate circumstances. PGE, however, has requested overbroad and unprecedented relief and has not presented clear and convincing evidence that more narrow relief cannot protect ratepayers. Ultimately, the Oregon Public Utility Commission (the "Commission") should grant PGE no more relief than is absolutely necessary. This is necessary to ensure a smooth transition and reduce the need to file complaints. Specifically, the Joint QF Parties recommend that the Commission:

- Temporarily lower the size threshold for solar generation to 5 MWs for eligibility for standard avoided cost rates;[1]

- Retain the 10 MW size limit for standard contract terms;

- Reject PGE's effort to impose the scarlet letters "QF" on any one owner, and reject PGE's proposal to impose a lifetime standard rate eligibility cap of 10 MW; and

- "Grandfather" all projects which have submitted a request for a power purchase agreement ("PPA") so that they are processed under the current policies, and only apply any interim relief prospectively to new PPA requests. In other words, any interim relief should only apply after the date of any Commission order adopting any such relief (if any).

The Commission should be hesitant to make any significant or radical changes in its policies under the Public Utility Regulatory Policies Act ("PURPA") through a hastily filed and considered motion for interim relief. The Commission has attempted to carefully balance the interests of utilities with those of ratepayers and QFs developers, but more frequently adopts the recommendations and proposals of the utilities. Every time the independent power producer community believes that there has been a stable Commission-established process for setting rates or entering into contracts, the utilities, including PGE, attempt to change the rules.[2] PGE's current actions, especially those in

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[1] It would also be reasonable for the Commission to defer granting any relief until the completion of any investigation, because there is already a de facto 5 MW limit in PGE's service territory due to land use restrictions, and sizes lower than 10 MW for off-system projects may be uneconomic due to high interconnection and transmission costs and limited transmission availability.

[2] Recent examples of PGE's actions to change the rules and policies in just the last two years include: 1) PGE's attempt to include inputs into its annual avoided cost rates updates inconsistent with Commission policy (Re PGE Updates to QFs Avoided Cost Payments, Schedule 201, Docket No. UM 1728, Order No. 15-206 at Appendix A at 4 (June 23, 2015)(the Commission rejected PGE's filing); 2) PGE's out of cycle avoided cost update in which PGE sought to update avoided costs based on an unacknowledged IRP claiming that it no longer needed

contract negotiations with developers seeking contracts, represent an extreme deviation from the established process and an effort to do everything PGE can to prevent projects from reaching maturity. Giving a green light to PGE's actions will not only harm ratepayers and QFs in the near term, but harms the entire regulatory process and upsets the business climate in Oregon, to the eventual detriment of ratepayers who are harmed when the monopsony utility is able to use the regulatory process to put its competition out of business.

II. LEGAL STANDARD

ORS 756.568 provides the Commission authority to rescind, suspend, or amend any order made by the Commission, but does not specify the standard for any such action. Although the Commission is exempt from certain provisions of the Administrative Procedures Act ("APA"), it has relied upon the APA standard contained in ORS 183.482 when using its authority in ORS 756.568 in past orders.[3] Pursuant to

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renewable resources at the same time it was ensuring passage of SB 1547 and planning resource acquisitions (Re PGE Revised Schedule 201 QF Information, Consistent with the 2013 Integrated Resource Plan Update, Docket No. UM 1752, Order No. 16-027 at Appendix A at 8 (Jan. 26, 2016)(the Commission rejected PGE's filing); 3) PGE's May 1, 2016 avoided cost rate update seeking an early effective date (See Re PGE Updates to QFs Avoided Cost Payments, Schedule 201, Docket No. UM 1728, Order No. 16-220 at Appendix A at 4-6 (June 8, 2016)(PGE withdrew early rate effective proposal)); 4) PGE's surprise May 1, 2017 avoided cost rate update filing seeking an early effective date (Re PGE Updates to QFs Avoided Cost Payments, Schedule 201, Docket No. UM 1728, Order No. 17-177 at 1 (May 19, 2017)(the Commission partially granted PGE's request); and 5) PGE's myriad of creative current efforts to stall PPA negotiations to prevent QFs from forming legally enforceable obligations.

[3] Re Metro One Telecommunications Petition for Enforcement of an Interconnection Agreement with Qwest Corp., Docket No. IC 1, Order No. 03-462 at 1 (Aug. 1, 2003); Re PGE Proposal to Restructure and Reprice Its Services in Accordance with the Provisions of SB 1149, Docket No. UE 115, Order No.

ORS 183.482, a party must show: 1) irreparable injury to the petitioner; and 2) a colorable claim of error in the order. The Commission has added a third element to that inquiry by indicating that it would not grant relief that would result in "substantial public harm".[4]

As explained below, the Commission should apply this three-part standard, and reject PGE's most aggressive requests for interim relief because there will not be irreparable or substantial public harm or injury, and there are no errors in prior orders if the Commission rejects PGE's proposals in their entirety. In contrast, both ratepayers and independent power producers will be irreparably harmed by retroactively imposing a 10 MW cap on any one owner's requests for PPAs.

III. RESPONSE

Instead of granting PGE's proposed interim relief, the Commission should fully consider the issues raised by PGE, as it has in previous QF proceedings, because PGE's proposal is unlike anything the Commission has ever seen. When opening Phase II of UM 1610, the Commission noted that it considered specific proposals raised by Staff and the parties and chose to "remain grounded in the policies we articulated in previous orders addressing [the rates, terms, and conditions for QF contracts] and decline to make

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01-842 at 2 (Sept. 28, 2001); Re Investigation of Universal Service in the State of Oregon, Docket No. UM 731, Order No. 01-140 (Jan. 29, 2001); see also Evans v. OSP, 87 Or App 514 (1987) (applying ORS 183.482 principles to another APA-exempt agency).

[4] Re Portland General Electric Company's Proposal to Restructure and Reprice Its Services in Accordance with the Provisions of SB 1149, Docket No. UE 115, Order No, 01-842 at 2 (Sept. 28, 2001).

changes without compelling evidence of a need for the proposed revision."[5] If this deliberate, reasoned approach from the Commission were applied here, PGE's overbroad and vague requests for interim relief would be denied pending the outcome of its application.

PGE's attempt to create a sense of urgency in its motion is highly suspect when considered in the broader regulatory context. In particular, the timing of this application, PGE's integrated resource plan ("IRP"), and the impending request for proposals ("RFP") for new resources, is suspicious. As the Commission is well aware, many stakeholders have urged PGE to consider entering into short-to-mid-term contracts to meet some of its more immediate resource need. PGE's QF queue appears to offer contracts for a mid-term period of 15 years of fixed prices. Taken in this light, PGE's motion appears to be little more than commercial interference by a monopsony utility trying to put its competitors out of business and lay the groundwork for its ownership and ratebase of new generation assets.

For these reasons, PGE's motion and its erroneous and misleading claims deserve careful scrutiny.[6] The Joint QF Parties submit that PGE is exaggerating its QF problem and requesting draconian measures that will undoubtedly thwart ongoing PURPA development in Oregon. In addition, PGE's "problem" may soon evaporate with the

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5 Re Investigation into Qualifying Facility Contracting and Pricing, Docket No. UM 1610, Order No. 14-058 at 1 (Feb. 24, 2014).

6 PGE's factual claims are essentially unreviewable. Each party was allowed to obtain answers to only 10 data requests (data request numbers are higher than 10 because this limitation was only imposed after parties submitted their first set of data requests). PGE's responses primarily included objections as well as carefully constructed answers with limited information that appear designed to obfuscate rather than educate.

significant avoided cost reductions expected after IRP acknowledgment, the lack of additional transmission for off-system QFs, and the potential increase in solar prices due to trade disputes and expiring tax credits. The Commission should ensure that any remedy does not uniformly upset the regulatory environment, or result in numerous complaints and contentious litigation. In the end, PGE has not demonstrated clear and convincing evidence that any harm will occur absent interim relief, or that it has even considered less restrictive means.

A. The "Problem" Articulated by PGE is Not Grounded in Reality

1. PGE Has Exaggerated the Actual Impact of the Current QF Queue

PGE claims that it is likely that 417.2 MW of newly requested solar QF contracts will be processed and executed before the Commission resolves PGE's request for permanent relief.[7] The likelihood all of these projects entering into PPAs and being constructed is nearly zero.[8] The typical on-line success rate for QF projects of 100% that PGE's motion assumes is baseless.[9] Each PPA request must endure a daunting negotiation process before receiving an executed PPA. Even standard contract negotiations involve an arduous process, and many QFs fail to reach this first hurdle.

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7 PGE's Motion at 3.

8 PGE, as well as PacifiCorp and Idaho Power, should be required to track and provide information regarding the number of prospective QFs that inquire about a PPA, that submit materials, that obtain a PPA, and that reach commercial operation. Then, the Commission could fairly evaluate the utilities' filings, rather than attempt to ascertain how inaccurate they are through guesswork.

9 NIPPC and the Coalition sought information on this point from PGE in discovery, but PGE's responses makes it difficult to determine how many QFs have requested PPAs and are no longer pursuing them. Attachment A (PGE Response to NIPPC Data Request Nos. 002, 003, 004; PGE Response to REC Data Request No. 012).

Receiving an executed PPA actually should be the easiest part of the development process, but it does not mean that a project will be completed, as PGE suggests in its filings. Many QFs fail to establish financing.[10] Others will not be able to successfully navigate the interconnection process of PGE or the interconnection utility.[11] Thus, the implication from PGE's motion that the every QF requesting a PPA could be built is complete fantasy.

Even applying a more typical success rate for projects that enter into PPAs would still overstate PGE's current QF "problem" because it is entirely realistic to assume that most or all of the off-system QF projects in PGE's queue will not be constructed. There appears to be almost no transmission available on PacifiCorp's system to wheel the power to PGE.[12] PGE is also refusing to accept delivery of QF output at the "PAC.W" and "Roundbutte" points of delivery, which effectively makes it impossible for new off-system QFs located on PacifiCorp's system to enter into a PPA to deliver their power with only one wheel to PGE's system. There is also limited BPA transmission

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10 One reason QFs are unable to obtain financing is utility filings like this that upset the regulatory environment in Oregon, as well as the utilities' often unreasonable actions in contract implementation.

11 Interconnection costs are determined after PPA execution, and these issues can and often do make proposed projects uneconomic. For example, BPA's system (where many of the off-system QFs are located) is almost entirely 115 kV and 230 kV, which have extremely high interconnection costs, which excludes any system upgrade costs that a utility may seek to impose on the QF.

12 NIPPC and the Coalition sought information on this point from PGE in discovery, but PGE refused to provide responsive information. Attachment A (PGE Response to REC Data Request Nos. 013, 014).

available.[13] The Commission should consider requiring PGE to demonstrate that these numerous off-system QFs will be able to deliver their power before adopting interim relief that will put those few projects that can be constructed out of business.

Moreover, the dollar amounts PGE is using are similarly exaggerated. PGE compares Schedule 201 rates to a forward market price curve, reflecting short-term day-ahead prices for undifferentiated energy without bundled renewable energy certificates sold under many QF contracts, to inflate alleged overpayments that it describes as a risk to ratepayers. But that comparison is misleading. If PGE gets what it wants, then PGE will not enter into any long-term PPAs at market rates, but at negotiated Schedule 202 rates (which are lower than Schedule 201 pricing). A comparison to Schedule 202 pricing would be a more accurate comparison because, as with the administratively set Schedule 201 prices, Schedule 202 prices should reflect PGE's incremental cost of the next avoidable long-term resource, including incremental costs of renewable resources. PGE has not, however, provided the more relevant price comparison to Schedule 202.[14] Again, PGE should be required to demonstrate the actual difference in price rather than a number that is inflated to scare the Commission into prematurely acting.

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13 This is particularly the case for the South of Allston and Cross Cascades South flow gates. Transmission limitations have been exacerbated by BPA's decision not to build the I-5 transmission project.

14 Attachment A (PGE Response to REC Data Request No. 025; PGE Response to NIPPC Data Request Nos. 026, 027, and 029; PGE Response to CREA Data Request 003 and 004) (refusing to provide information comparing Schedule 202 pricing with Schedule 201 pricing for executed contracts, including the failure to reflect that Schedule 201 pricing includes the environmental benefits like renewable energy certificates that the market does not).

PGE's frequent attempts in its motion to call into question the accuracy of its Schedule 201 rates ignores that PGE *just* updated those rates. The Federal Energy Regulatory Commission ("FERC") has explained that when a state believes that a previously determined avoided cost rate is no longer an accurate measure of a utility's avoided costs, the appropriate remedy is not to take actions inconsistent with PURPA, "but instead to determine a new avoided cost rate that better reflects the utility's avoided costs".[15] PGE filed its annual update on May 1, 2017 and requested a May 18, 2017 effective date "to prevent customers from bearing the costs of QF contracts at prices much higher than market costs."[16] The Commission ultimately allowed PGE's new rates to go into effect almost a month early on June 1, 2017, which means that PGE's Schedule 201 rates are only a month old.[17]

Similarly, PGE's IRP is scheduled to conclude next month and the results of that process could be known before the Commission grants any relief (interim or otherwise) in this proceeding. If the Commission declines to acknowledge early acquisition of a renewable resource, then PGE's actual need for renewable resources may be pushed out so far into the future that PGE's avoided cost rate will drop significantly for the indefinite future. And if the Commission acknowledges PGE's need, then PGE will still lower its

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15 FLS Energy Inc., 157 FERC ¶ 61,211 at P 20, n.33 (2016).

16 Re Portland General Electric Company, Updates Qualifying Facilities Avoided Cost Payments, Schedule 201, Docket No. UM 1728, Application to Update Schedule 201 Qualifying Facility Information at 1 (May 1, 2017).

17 Re Portland General Electric Company, Updates Qualifying Facilities Avoided Cost Payments, Schedule 201, Docket No. UM 1728, Order No. 17-177 (May 19, 2017) (approving PGE's rates effective June 1, 2017).

avoided cost rates based on new renewable resource costs and assumptions.[18] In short, PGE's rates just dropped considerably in June and are inevitably going to drop again in the near future. This means that, absent *any* Commission action, many of the projects in PGE's queue that are unable to complete their PPAs now will simply not move forward, and the Commission should adopt only limited or no relief pending completion of an investigation.

The Commission should realize that PGE's QF queue could very likely "dry up" in the near future without any Commission action. As renewable prices continue to drop, so will PGE's renewable avoided cost rate.[19] Solar QF projects may soon be much less profitable simply because solar prices are too low and siting options become more limited. On the other hand, the solar industry is currently in turmoil over a trade dispute that could raise solar prices dramatically and make renewable projects uneconomic because solar panel prices are too high.[20] Exacerbating this price volatility is the fact that the federal income tax credits, which have in large part driven the growth in the solar

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18 NIPPC and REC requested information on what PGE's avoided cost rates would be based on if the Commission acknowledges PGE's renewable resource need and if it does not. Remarkably, PGE stated in had not done that analysis and refused to provide any information on this topic. Attachment A (PGE Response to REC Data Request Nos. 008, 010; PGE Response to NIPPC Data Request No. 028). In other contexts, PGE has complained that its avoided cost rates are too high and that they will be lowered after IRP acknowledgment.

19 See e.g., Re Portland General Electric Company, Updates Qualifying Facilities Avoided Cost Payments, Schedule 201, Docket No. UM 1728, Staff Report at 2 (May 18, 2017) (both PGE's renewable and nonrenewable rates decreased due to lower forward market electricity prices).

20 Diane Cardwell, Solar Trade Case, With Trump as Arbiter, Could Upend Market, THE NEW YORK TIMES (June 30, 2017), available at https://www.nytimes.com/2017/06/30/business/energy-environment/solar-energy-trade-china-trump.html (explaining the Suniva trade case and its effect on the solar market).

market, are currently set to expire.[21] At least in PGE's service territory, available land is becoming more and more scarce, and has already driven most of the projects down to the 5 MW and lower size. All of this is to say that the solar market is in a bit of a "sweet spot" that is not likely to last very long.

When considering what, if any, actions to take, the Commission should be aware that other factors are likely to lead to PGE's desired result of limiting PURPA development. This suggests that the Commission should defer consideration of most aspects of PGE's proposal until after the development of a full record (including a thorough vetting PGE's claims), and not through a motion for interim relief.

2. PGE Has Mischaracterized the Problem; It Is Not About Disaggregation

Most of the projects in PGE's queue are not 10 MW projects, but rather smaller groups of solar projects between 2 and 5 MWs.[22] Project sizing in PGE's service territory has more to do with land use restrictions than the Commission's 10 MW eligibility threshold.[23] This means that PGE is asking Commission to manage and destabilize something that other market and government forces are already effectively managing. And for the few projects in PGE's queue above 5 MW, PGE's proposal does not address the inequity of changing its QF rules on certain developers midway through

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21 U.S. DEPARTMENT OF ENERGY, Business Energy Investment Tax Credit, available at, https://energy.gov/savings/business-energy-investment-tax-credit-itc (indicating the phase-out schedule for various federal tax credits).

22 See PGE's Motion at 8 ("PGE also has 42 solar QF projects, that are 3 MW or smaller, under contract or seeking a contract").

23 Information about why contracts were "disaggregating" was requested in discovery, and PGE indicated that it does not know the real reasons or even how many projects could actually be considered disaggregated. See Attachment A (PGE Response to Renewable Northwest Data Request Nos. 005 and 006).

an established process. Each developer that submitted a PPA to PGE has been working on a business transaction with a reasonable set of expectations, and should not be forced to begin price negotiations midway through that process.

PGE supports its proposal with more feelings than facts. PGE concludes that single developers seeking multiple projects "between 4.4 MW and 30.1 MW" are actually sophisticated developers. While this argument appears plausible at first blush, it could also be incorrect, and should be subject to skepticism because PGE offers incomplete evidence to support this assertion and has refused to answer discovery on this point.[24] For example, PGE has presented zero evidence to support its assumption that one developer with two 5 MW projects is really a sophisticated developer.[25] All of these questions also ignore a fundamental point that all developers need the Commission's protection, and that there is nothing inherently wrong with sophisticated developers bringing their capital to Oregon and investing in local communities, as long the prices paid are no more than the utility's administratively determined avoided cost.

Likewise, where PGE does include facts, they are incomplete and unhelpful to the Commission. For example, PGE justifies its request to lower the size threshold by stating that 13 developers have either obtained or are currently seeking contracts with PGE that

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[24] NIPPC and REC sought this information in discovery, but the Administrative Law Judge limited their data requests so they were unable to obtain this information, which should have been presented in PGE's original application.

[25] Compare PGE's Application at 13 with Attachment A (PGE Response to Strata Data Request No. 012) (including a chart suggesting that a single developer with *two* signed 10 MW contracts and seeking *zero* additional contracts be considered as a sophisticated developer subject to PGE's cap).

are "sized to avoid the 10 MW threshold on standard prices."[26] PGE has also presented zero evidence about the proximity of the solar QF projects currently seeking PPAs with PGE.[27] For example, explaining whether these projects with the same owner are 10 MW projects that are 5 miles apart from each other or a bunch of 2 MW projects that are 20 miles apart.[28] The amount of evidence presented by PGE, or lack thereof, does not justify hasty action from the Commission.[29]

Finally, PGE also raises reliability concerns that have nothing to do with either disaggregation or the size eligibility threshold.[30] PGE seems to be arguing that as PURPA use increases, its reliability concerns become more complex. To make reliability simple again, PGE seems to be suggesting it could just thwart PURPA development. That just doesn't make any sense. Instead, PGE should just propose reliability changes in

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26 PGE's Motion at 8.

27 NIPPC sought information on this point from PGE in discovery, but PGE failed to address the proximity of any proposed projects. Attachment A (PGE Response to NIPPC Data Request No. 040).

28 NIPPC and REC sought this information in discovery, but the Administrative Law Judge limited their data requests so they were unable to obtain this information, which should have been presented in PGE's original application.

29 PGE's concerns also raise a larger underlying issue. Co-development is authorized under specific circumstances, and sometimes joint or coordinated development is the best way to manage interconnection and transmission costs.

30 Attachment A (PGE Response to NIPPC Data Request No. 054) (stating "PGE's reliability obligations continue to evolve" and that "PGE *will* propose appropriate contract terms and conditions based on the specific requirements at the time of the contract negotiation, and appropriate to the particular project, interconnection location, and resource type").

its standard contract, or request a Commission investigation into this never-before-raised issue.[31]

B. Problems with the "Solution" Proposed by PGE

1. The Commission Should Reject PGE's Proposal for a 10-MW Lifetime Limit

PGE's request for temporary relief includes the request for an extraordinary and extreme new policy to impose a lifetime limit on requests for solar QF standard contracts. Specifically, PGE requests an emergency order:

> [d]eclaring that a solar QF 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 has requested or obtained standard prices from PGE for more than 10 MW of aggregate solar QF capacity.[32]

PGE points to no other commission in the United States that has ever imposed such a lifetime bar (and Joint QF Parties are aware of none). Without providing any precedent for such action, PGE effectively asks the Commission to be *the first commission* in the country to impose such a lifetime limit on use of standard rates and standard contracts. The triggering event for the lifetime limit is the *request* for QF prices even if that request does not ever lead to contract execution, or even negotiation. Moreover, PGE asks for this novel and extreme relief on an emergency basis, retroactively effective as of June 30, 2017, without the benefit of a full record or the opportunity for Staff or any intervenors to present any evidence whatsoever on the impact of such a lifetime limitation.

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[31] For example, PGE's reliability problems could be benefited by a more diverse renewable generation resource mix as well as the geographic diversity provided by QFs.

[32] PGE's Motion at 1.

PGE's request could produce impractical and nonsensical results. For example, PGE's lifetime cap specifically subjects a QF that previously *requested* a single 10 MW project 30 years ago to renegotiate contract terms on a new 1-MW project that it requests now. PGE's proposal is also vague and ambiguous on important points: Would a tax equity investor be barred from owning more than 10 MW of projects that it seeks to fund merely to obtain the investment tax credits? Would a family-owned project be barred simply because one family member owned a portion of another project? How would the cap be applied to community-based projects with multiple owners? How would a mom and pop that successfully developed one project be treated 10 years later when they seek to build another project? PGE's application and emergency motion answer none of these questions.

In short, as explained in detail below, the 10-MW lifetime limit would be both poor policy and an unlawful implementation of federal and state law. At a minimum, there is an inadequate evidentiary record to adopt such a drastic and novel policy on an emergency basis prior to any investigation of whether it would be legal or even be possible, as a practical matter, to implement such a policy in a fair and reasonable manner.[33] Therefore, the Commission should reject PGE's proposal for a 10-MW lifetime limit.

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[33] See Attachment A (PGE Response to REC Data Request Nos. 007, 018; PGE Response to Strata Data Request No. 006) (confirming that PGE does not have a specific proposal for identifying a common owner or negotiating these new QF contracts).

a. PGE's Lifetime Limit Ignores the Purpose of Standard Rates and Contracts

The entire premise of PGE's lifetime ban is wrong. PGE asserts that a handful of "sophisticated developers" that can obtain more than one standard contract are "perfectly capable of negotiating more accurate project-specific prices for the dozens of megawatts of QF generation that they seek to add to PGE's system."[34] As noted below, PGE is simply wrong. Its Schedule 202 process has not been, and is very unlikely to become, a process that yields productive results for QFs. Nothing in PGE's filing establishes that the Schedule 202 process will allow even sophisticated QFs to obtain reasonable (or even lawful) contract terms and conditions. The results of all of PGE's recent RFPs confirm that obtaining an "arms-length" power purchase agreement with PGE is all but impossible given its drive to expand its generation rate base. Indeed, that is why standard rates and standard contracts exist.

FERC established a federally mandated minimum level for standard rates of 100 kW, but also specifically delegated states the authority to set the eligibility cap for standard rates at a level above that federally mandated minimum level.[35] Oregon law does not set a specific eligibility cap for standard rates, but it requires that the Commission go beyond just the federally mandated minimum requirements of PURPA. Oregon law specifically charges the Commission with implementing policies that will "[i]ncrease the marketability of electric energy produced by qualifying facilities located throughout the state for the benefit of Oregon's citizens" and "[c]reate a settled and

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34 PGE's Motion at 9.

35 18 CFR § 292.304(c).

uniform institutional climate for qualifying facilities in Oregon."[36] In contradiction to Oregon law, PGE's proposal to create an overall statewide cap on access to standard rates and contracts would *decrease* the marketability of QFs in Oregon and promote an individualized and *non-uniform* institutional climate that destabilizes the market and upsets the reasonable expectations of investors and developers.[37]

In Oregon, standard contracts have been the bedrock of this Commission's implementation of PURPA, under which the vast majority of QF development has occurred. The standard contract contains Commission-established rates, terms and conditions that an eligible QF can elect without any negotiation with the hostile utility with an economic disincentive to buy QF power at any price.[38] QFs overwhelmingly prefer PGE's standard contract to the non-standard contract.[39] Even if the purchase price were nominally the same, the non-standard contract can, at PGE's arbitrary whim, diverge from the Commission-approved standard contract in significant respects that dramatically lower its value compared to the standard contract.[40]

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36 ORS 758.515(3).

37 See ORS 758.515(3).

38 Re Staff's Investigation Relating to Electric Utility Purchases from Qualifying Facilities, Docket No. UM 1129, Order No. 05-584 at 12 (May 13, 2005).

39 Only two QFs have ever entered into non-standard contracts with PGE, one of which is an existing garbage waste facility whose current contract is based on market rates, which is a remarkably bad economic option.

40 Given that PGE is seeking to require dozens of projects to start negotiating Schedule 202 contracts, NIPPC and REC requested information about the prices and contract terms PGE would impose in this process. PGE refused to provide any meaningful responses. Attachment A (PGE Response to REC Data Request Nos. 010, 016, 018, 025; PGE Response to NIPPC Data Request Nos. 026, 027, 0029, 054; PGE Response to Strata Data Request Nos. 004, 007).

For example, PGE has required that a Schedule 202 QF agree to dollar-for-dollar reductions to the purchase price whenever the hourly market price is negative,[41] even though PURPA unambiguously requires PGE to offer contract prices that are fixed at the time of contract formation for all of the QF's net output.[42] Worse still, the Joint QF Parties understand that PGE now creates additional confusion and uncertainty by refusing to use the same terms used in the sole recent solar QF contract under Schedule 202 for future QFs, apparently because that contract was somehow too generous to the QF. PGE's own application states that it intends to impose curtailment provisions on QFs through the Schedule 202 process.[43] Curtailment outside of narrowly defined emergency conditions is unquestionably unlawful under PURPA, absent the QF's express agreement. FERC has repeatedly and quite unambiguously ruled as such.[44] The law has become so clear on this point that, after Idaho Power initially asked for curtailment rights in PURPA contracts in UM 1610, that the utility subsequently withdrew the issue entirely from the proceeding. PGE now openly seeks to indirectly obtain the right to curtail QFs through "negotiations" under Schedule 202 after it was made clear that no Oregon utility could obtain that right in UM 1610.

It is no wonder, therefore, that individuals and companies putting their own capital at risk in the development of a solar QF almost uniformly decide that proceeding

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41 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).

42 See 18 CFR § 292.304(b)(5), (d)(2).

43 PGE's Application at 19; PGE/100, Sims – Macfarlane/13-14.

44 See Pioneer Wind Park I, LLC, 145 FERC ¶ 61,215, PP 36-40 (2013); Idaho Wind Partners 1, LLC, 140 FERC ¶ 61,219, PP 39-41 (2012), order on reh'g, 143 FERC ¶ 61,248, PP 13-16 (2013).

through the Schedule 202 process is a waste of time, energy, and money. At least in the case of PGE's current processes, the only realistic way that *any* independent power producer of any size or sophistication may secure a long-term PPA is through standard rates and standard contract. In effect, therefore, PGE's proposed 10-MW limit on the use of standard rates and contracts is a 10-MW lifetime limit to use, or even inquire about, PURPA.

In addition to undermining the ability to ever obtain a standard contract, PGE's proposal would also undermine the viability of any future standard contract that could be obtained. The 10-MW limit would apparently apply throughout the 15-year to 20-year life of the QF contract. The owners of the QF would need to ensure that any future owner or partial owner during that timeframe does not also own or partially own or control any other solar QF selling to PGE in Oregon or that has even ever proposed to sell to PGE in Oregon. This restriction would severely limit the development and marketability of the QF project. It would undermine the viability of the Commission's standard contract by limiting the participation by institutional investors in Oregon's QF projects, and cut off critical sources of capital necessary to make small-scale solar QFs marketable and viable. Given the inability to secure Schedule 202 contracts, the impact would effectively stop QF development, especially if this new rule were to spread to Oregon's other utilities.

b. PGE's Request Is an Unprecedented Overreach; It Must Be Rejected

PGE suggests that it is merely asking for relief similar to that granted to Idaho Power and PacifiCorp under similar circumstances. Not so. Neither PacifiCorp nor

Idaho Power were granted (or even asked for) a lifetime ban on future rights to standard contracts and standard rates after a QF simply asks for a 10-MW solar contract. Moreover, PGE identifies no other commission in the entire country that has ever granted such a lifetime limit on the right to request standard rates and contracts. In discovery, PGE was unable to identify any such precedent.[45] Given its vast resources and motive to locate and present such precedent, PGE's inability to do so stands as conclusive evidence for purposes of this case that no precedent exists to support PGE's position. This Commission should not be the first in the nation to create such a draconian and unworkable policy.

For all of the reasons stated above, the Commission should reject PGE's proposal for a 10-MW lifetime limit on standard rates and contracts for solar QFs.

2. PGE's 3 MW or 2 MW Proposed Size Reductions Are Not Narrowly Tailored to The Harm Alleged by PGE

PGE has requested overbroad and unprecedented relief and has not presented clear and convincing evidence that more narrowly tailored relief cannot protect ratepayers. This is inconsistent with past Commission orders requiring "compelling evidence" to justify any changes and "narrow, targeted, and proportionate" interim relief.[46] PGE's proposal to reduce the size eligibility to either 3 or 2 MW is too harsh a remedy for the problem identified by PGE. The Joint QF Parties are not opposed in principle to the Commission granting temporary relief in extreme situations, and

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45 Attachment A (PGE Response to REC Data Request No. 023) (PGE even claimed not to understand its own proposal refusing to fully answer the question stating that "It is unclear to PGE exactly what REC means by 'limit eligibility to standard contracts or rates to a single owner.'").

46 Order No. 14-058 at 1; Order No. 15-199 at 7.

acknowledge that PGE *might* be experiencing the kind of increase that would warrant such a change. But, this does not appear to be that kind of problem. Forcing a handful of 5 MW QFs to use PGE's Schedule 202 process is not a good alternative because it is unnecessarily arduous to negotiate a Schedule 202 PPA with PGE. As mentioned above, PGE often requires negotiation based on the Edison Electric Institute sample PPA, which is for electricity sales between operating projects. PGE requires negotiations from this template, which is long, difficult, and almost always an ultimately fruitless process. The Joint QF Parties understand that these negotiations can take up to a year or longer. This kind of delay, for businesses that want to invest money in Oregon, is not reasonable without clear evidence that it is neither too strict, nor too weak, to avoid immediate and irreparable injury. PGE just has not presented this analysis.

If the Commission determines, however, that a size reduction is warranted it should require PGE to establish a specific process for QFs that would have been eligible for the standard contract rate, but for PGE's interim relief. For example, PGE should at minimum be required to file a standard new Schedule 202 contract confirming these projects are eligible for the current standard contract terms before forcing any QFs down a new QF path.

In addition, the permanent investigation in this proceeding should review improvements into Schedule 202, which would include an analysis of why the process has not been successful to date. If the Commission going to require numerous small projects to run the gauntlet of the Schedule 202 process, then Commission should adopt improvements to ensure that it is a truly workable alternative.

3. PGE Fails to Consider Less Restrictive Alternatives That Could Resolve the Harm Alleged by PGE

Even assuming *arguendo* that PGE has a QF problem, PGE has failed to consider less restrictive alternatives of furthering its interests. And there are plenty. The Commission should deny any relief that is not proportionate to the specific problem alleged by PGE. The Commission should strive for a rational basis for adopting any specific size threshold for standard contract prices. For example, 5 MWs appears to be a de facto cap due to land use restrictions in PGE's service territory, and it would be reasonable to adopt a 5 MW cap for on system projects at least.

PGE has requested a severe remedy from the Commission, and less severe action should be considered. PGE's motion presents a stark choice between two options (either a 3 MW limit with a lifetime cap or 2 MW limit) and fails to consider less restrictive alternatives. For example, PGE does not explain the rationale for selecting 2 and 3 MW limits as opposed to slightly larger numbers.[47] Parties have not had the opportunity to hear from PGE about how it believes the 3 or 2 MW limit will affect its queue. Similarly, parties have not had a chance to vet these assumptions, by comparing them to a 5 or 7 MW limit. The Commission should fully understand the implications of these policy choices before granting any relief.

Based on a cursory review of PGE's filings, the Joint QF Parties agree that it may be reasonable to lower the cap to 5 MW for solar QFs on an interim basis for access to standard contract prices, keeping the 10 MW size threshold for standard contract terms,

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[47] See e.g., Attachment A (PGE Response to NIPPC Data Request No. 040; PGE Response to REC Data Request No. 018).

with no lifetime cap. This is consistent with past recommendations made by the Coalition.[48] Given the difficulty and costs of obtaining transmission for off-system projects and the de facto 5 MW limit on project size in PGE's service territory, keeping a 10 MW size threshold pending completion of this investigation may also be reasonable. On a longer-term basis, the PUC should consider other solutions, including requiring projects to provide greater demonstration of transmission availability or to make greater, more timely pursuit of interconnections to help weed out PPAs that are merely speculative.

To be clear, the Joint QF Parties agree that having the utilities' queues filled with a bunch of hypothetical projects is causing problems for everyone in the market, especially in that they allow PGE to request extreme relief based on a paucity of evidence. The Joint QF Parties would like the opportunity to discuss solutions that do not make it harder for QF projects to come on line, but more accurately reflect a queue of projects likely to actually deliver their power to PGE. PGE's proposal, however, appears to be discriminatory and is not something that the Joint QF Parties can support.

4. PGE's Proposal Is Unlawful Because Its Purpose Is to Unlawfully Limit Off-System QF Deliveries

PGE's openly stated purpose in its application and its emergency motion is to effectively eliminate the right of QFs to sell to PGE from locations outside of PGE's

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[48] See e.g., Re Idaho Power Company Application to Lower Standard Contract Eligibility Cap and to Reduce the Standard Contract Term, for Approval of Solar Integration Change, and for Change in Resource Sufficiency Determination, Docket No. UM 1725, Coalition Response to Idaho Power Motion to Stay at 13 (June 2, 2015) (questioning whether a 3 MW or 5 MW size threshold could achieve a similar level of relief).

service territory. As PGE explains, it seeks "to prevent any further 'geographic arbitrage' where solar QFs that might otherwise seek PURPA contracts from Idaho Power or PacifiCorp seek to wheel their output to PGE in order to obtain standard prices under PGE's higher standard price eligibility threshold of 10 MW."[49] PGE complains that "84% (51 QF solar projects representing combined capacity of 692.5 MW) are located off PGE's system and will wheel power to PGE to obtain PGE's terms, including PGE's 10 MW threshold on standard prices . . . [a]nd 90% of solar QF projects currently seeking a contract from PGE are off-system projects."[50] In reality, most of these off-system QFs are located in the territory of the state's consumer-owned utilities, not PacifiCorp or Idaho Power. In any event, preventing this "geographic arbitrage" is the apparent basis for PGE's request for an emergency lifetime ban on more than 10 MW of standard rate contracts for solar QFs. For the reasons explained below, PGE's intent to thwart the use of off-system, or indirect, QF sales is contrary to federal and state law and policy.

As a preliminary matter, the entire purpose of FERC's PURPA rules is to "encourage cogeneration and small power production."[51] To that end, FERC has determined since the inception of PURPA that QFs should not be limited to selling only to a directly interconnected utility. FERC's PURPA rules unequivocally provide that PGE's purchase obligation extends to any power that is made available "[i]ndirectly to

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49 PGE's Motion at 8.

50 Id. at 8-9.

51 16 USC § 824a-3(a).

the electric utility in accordance with" the FERC's PURPA rules.[52] The rules are direct and clear:

> If a qualifying facility agrees, an electric utility which would otherwise be obligated to purchase energy or capacity from such qualifying facility may transmit the energy or capacity to any other electric utility. *Any electric utility to which such energy or capacity is transmitted shall purchase such energy or capacity under this subpart as if the qualifying facility were supplying energy or capacity directly to such electric utility*.[53]

FERC has further explained, "a QF is not obligated to sell its electric energy to the directly interconnected electric utility and the QF may instead choose which particular electric utility to sell its electric energy to."[54] "There are several circumstances in which a qualifying facility might desire that the electric utility with which it is interconnected not be the purchaser of the qualifying facility's energy and capacity, but would prefer instead that an electric utility with which the purchasing utility is interconnected make such a purchase."[55] This rule is "*intended to provide qualifying facilities some flexibility in determining which utility receives its power so that it may receive the highest rate.*"[56]

A QF possesses the same rights as any other eligible transmission customer to use open access transmission tariffs in order to facilitate indirect PURPA sales.[57] As with all

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52 18 CFR § 292.303(a)(2).

53 18 CFR § 292.303(d) (emphasis added).

54 Morgantown Energy Assoc., 140 FERC ¶ 61,223, at P 23 n. 48 (2012).

55 Small Power Production and Cogeneration Facilities; Regulations Implementing Section 210 of the Public Utility Regulatory Policies Act of 1978, 45 Fed. Reg. 12,214, 12,219 (Feb. 25, 1980).

56 Florida Power & Light Co. et al., 29 FERC ¶ 61,140, 61,293-61,294 (1984) (emphasis added).

57 See Pub. Serv. Co. of N.H. v. N.H. Elec. Coop., Inc., 83 FERC ¶ 61,224, 61,998 - 62,000 (1998), reh'g denied, 85 FERC ¶ 61,044, at 61,133 (1998).

of PURPA's requirements, Section 210(f) of PURPA requires each state utility commission to implement the QFs' right to make indirect sales to each utility for which it has ratemaking authority, including in this case PGE.[58] This rule makes good sense, given that PURPA directs FERC to develop rules that encourage QFs and the directly connected utility may have low avoided costs.

This right is even included in Oregon's own PURPA statute. Although it does not recite all of FERC's PURPA rules, Oregon's PURPA statute firmly reinforces the Oregon legislature's goal of facilitating off-system sales, stating as follows: "An electric utility shall offer to purchase energy or energy and capacity whether delivered directly *or indirectly* from a qualifying facility."[59] The Oregon statute even requires all of the state's utilities, including consumer-owned utilities, to make a good faith effort to transmit QF output to another electric utility to facilitate off-system sales to a utility with the highest rates.[60] This state legislation demonstrates that the right to make off-system sales is a necessity in a state where the best renewable resources are located in rural areas primarily served by consumer-owned utilities with access to low-cost federal hydropower that keeps their avoided costs much lower than the state's investor-owned utilities.[61]

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58 16 USC § 824a-3(f); FERC v. Mississippi, 456 U.S. 742, 751, 759-61 (1982).

59 ORS 758.525(2) (emphasis added).

60 ORS 758.545.

61 The legislative history makes this intent even more clear. See Audio Recording, Senate Committee on Energy and Environment, H.B. 2320, June 15, 1983, Tape 168, Side A (comments of Representative William Bradbury) (stating, in support of the wheeling and indirect sale provisions, we "often times will find that the avoided cost for a public utility, like a coop or a municipality or a PUD will be considerably lower than an avoided cost for a privately owned utility because the publicly owned utilities are preference customers to Bonneville.").

Without a robust right for QFs to make off-system sales, it is difficult to imagine how PGE could ever meet its share of the eight percent requirement for small-scale renewable generators under 20 MW found in ORS 469A.210.[62] Thus, instead of being evidence of a problem, the fact that QFs are selling renewable energy to PGE from off-system is the result of clear and unambiguous legislative intent.

Additionally, PGE's entire attack on "geographic arbitrage" by QFs is contradicted by PGE's own resource decisions for its own generation rate base. Virtually all of PGE's power plants engage in "geographic arbitrage," including Boardman coal plant, Bigelow Wind Farm, Tucannon Wind Farm, and Cary Generating Station. In fact, the proxy plants for both the renewable and non-renewable rates from PGE's currently effective Integrated Resource Plan are also plants that are off-system and thus engage in hypothetical "geographic arbitrage." PGE's resource decisions not to build power plants in the Portland area that PGE serves are perfectly rational since the plants can be constructed and operated more economically elsewhere. However, until PGE starts building and operating large thermal plants and wind or solar farms in Portland, the geographic arbitrage argument should have no meaning or relevance and, in any event, can never provide support for draconian QF policies.

The simple fact is that, for PGE to meet its RPS and community renewable energy requirements, the best way to do that is with off-system projects, whether utility or independent power producer owned. The significant transmission and interconnection

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62 See Attachment A (PGE Response to Strata Data Request No. 007) (indicating that PGE does not track the percentage of its capacity from renewable energy projects under 20 MW, pursuant to ORS 469A.210).

costs, especially for the majority of the QFs which are or will be located in BPA's service territory needing to interconnect at transmission voltages, make it extremely difficult to reach commercial operation. This is true even under a 10 MW size threshold. The unique aspects of PGE's urban service territory warrant a larger size threshold than PacifiCorp and Idaho Power, which are more closely situated to good sites for the development of wind, solar, and geothermal generation.

In sum, therefore, the Commission cannot adopt PGE's proposal or its reasoning because doing so would exhibit an intent to undermine the right to make indirect QF sales to the utility with the highest avoided costs, which at this time is PGE. Instead of encouraging QF development, PGE's attempt to prevent off-system QF sales would discourage QF development in contradiction to federal and state law. PGE's arguments cannot be the express or implicit basis of any lawfully issued OPUC order.

5. Retroactive Relief is Not Appropriate

Any interim relief adopted by the Commission should only apply after the date of any order on a prospective, rather than a retroactive, basis to not violate FERC policies regarding permissible changes to state legally enforceable obligation standard and to avoid needing to rule on dozens of complaints regarding PGE's effort to prevent QFs from finalizing PPAs. Specifically, all PPA requests that were made prior to any order adopting interim relief should be timely processed according to the Commission's currently effective policies regarding legally enforceable obligations. The Commission should save itself from the trouble of determining the exact boundaries of when a legally enforceable obligation exists by ensuring that any changes only apply prospectively. In the event that the Commission does not clearly conclude that its policies only apply on a

going forward basis, the Commission should allow QFs that requested but did not receive executable PPAs prior to the date of the Commission's order to seek a determination of whether those requests created a legally enforceable obligation in a separate proceeding.

FERC has not established a bright line for the establishment of a legally enforceable obligation in all circumstances, but has provided some clear guidance. FERC's policies are based on the foundational principles that the QF determines the date of its legally enforceable obligation by committing to sell its net output, and that a state utility commission cannot adopt or change its policies in a manner that limits a QF's ability to create a legally enforceable obligation.

FERC has long held, and recently strongly reaffirmed, that a QF has the right to receive a legally binding offer to establish a power sale to a utility pursuant to a contract or a legally enforceable obligation.[63] The purpose of a legally enforceable obligation is to ensure that a QF can require a utility to purchase its power even if the utility has refused to enter into a contract. Both FERC and the Oregon Court of Appeals have explained that a QF can enter into a legally enforceable obligation when it has committed itself or is otherwise ready to sell power.[64] A legally enforceable obligation is broader than simply a contract between a utility and a QF, and may exist without a contract, and a

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63 18 CFR § 292.304(d); Order No. 69, FERC Stats. & Regs. ¶ 30,128, 45 Fed. Reg. 12,214 at 12,224 (Feb. 25, 1980); FLS Energy Inc., 157 FERC ¶ 61,211 at P 23 (2016).

64 Cedar Creek Wind, LLC, 137 FERC ¶ 61,006 at P. 36, 39 (2011); Snow Mountain Pine Co. v. Maudlin, 734 P.2d 1366, 1371, 84 Or. App. 590 (Or. App. 1987).

QF can require a utility to purchase its power even if the utility has refused to enter into a contract.[65]

FERC's recent specific holdings have been that a state utility commission cannot impose a requirement to execute a PPA or interconnection agreement in order to form a legally enforceable obligation.[66] The underlying purpose is to prevent a utility from refusing to sign a contract, or a commission from approving a utility's actions or adopting policies, that have a practical result of making only a later and lower avoided cost applicable. Key for the Commission's determination regarding PGE's motion for interim relief is FERC's general principle that a state utility commission cannot adopt new rules that impose limitations requiring a the legally enforceable obligation to be formed prior to the date of new policy.[67]

FERC's decision to seek enforcement action against the Idaho Public Utilities Commission ("Idaho Commission") is illustrative. On November 5, 2010, Idaho Power Company, Avista Corporation, and PacifiCorp filed an application, requesting, inter alia, that the Idaho Commission to lower the published avoided cost rate eligibility cap for a QF from 10 aMW to 100 kW effective immediately.[68] The Idaho Commission opened an investigation on December 3, 2010, and provided notice on December 10, 2010 that any

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65 Snow Mountain Pine Co., 734 P.2d at 1370-71; Murphy Flat Power, LLC, 141 FERC ¶ 61,145 at P. 24 (2012); Grouse Creek Wind Park, LLC, 142 FERC ¶ 61,187 at P. 38 (2013).

66 FLS Energy Inc., 157 FERC ¶ 61,211 at PP 23-26 (2016).

67 Murphy Flat Power, LLC, 141 FERC ¶ 61,145 at PP 6, 24-25 (2012); see Rainbow Ranch Wind, LLC, 139 FERC ¶ 61,077 at P 24 (2012).

68 Murphy Flat Power, LLC, 141 FERC ¶ 61,145 at P 6 (2012).

order would be retroactive to December 14, 2010.[69] The Idaho Commission ultimately lowered the size threshold on February 7, 2011, retroactive to December 14, 2010.[70] A number of QFs had sought to obtain contracts and form legally enforceable obligations prior to December 14, 2010.[71]

FERC found that many QFs had formed legally enforceable obligations. This included Rainbow Ranch, which had requested a PPA from Idaho Power on November 5, 2010 prior to the new rules going into effect, and had executed a PPA prior to the December 14, 2010 cut-off date, even though Idaho Power had not counter-signed the agreement.[72] FERC also found that at least two QFs that had been unable to themselves execute PPAs prior to December 14, 2010, had created legally enforceable obligations by unambiguously demonstrating their intent to do so.[73] Therefore, at a minimum the Commission cannot adopt a new policy that prevents those QFs that requested and partially executed PPAs prior to the date of its order adopting new policies, even if the utility (i.e., PGE) has requested immediate relief.

6. All QFs Seeking PPAs Prior to the Date of the Commission's Order Should Be Grandfathered

The Commission should exclude developers attempting to enter into contracts with PGE from any changes to PGE's QF processes. The Commission has the authority to grandfather these developers under Oregon's min-PURPA, and should use that

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69 Rainbow Ranch Wind, LLC, 139 FERC ¶ 61,077 at PP 3-4 (2012).
70 Id. at P 5.
71 Id. at P 10.
72 Id. at P 24.
73 Grouse Creek Wind Park, LLC, 142 FERC ¶ 61,187, at PP 37-43 (2013).

authority to avoid harm to both developers and ratepayers by adopting retroactive polices that significantly undermine the development and investment market.[74]

The Commission has a long history of grandfathering existing projects when it comes to PURPA. In 1981, when the Commission first implemented PURPA, it expressly exempted existing QFs, including those under construction, on PURPA's effective date.[75] After a significant avoided cost rate drop in 1983, the Commission allowed existing facilities to renew their contracts under either their original contract rate or to sign a short-term renewal contract under the previous year's rate.[76] The Commission has also recognized the "validity of the concerns over foot-dragging on the part of a utility negotiation a contract" when avoided costs are declining and promised to "propose an additional administrative rule to resolve this problem."[77] The Commission's

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74 ORS 758.515 provides the state's policy to create settled, uniform institutional climate for QFs in Oregon, and to promote diversity in the energy resources in the market.

75 Re Investigation into Electric Utility Tariffs for Cogeneration and Small Power Production Facilities, Docket No. R-58, Order No. 81-319 at 7 (May 6, 1981); see also Re Investigation into Electric Utility Tariffs for Cogeneration and Small Power Production Facilities, Docket No. R-58, Order No. 81-755 at Appendix A at 1 (Oct. 29, 1981) (stating that OAR 860-29-005 shall apply to QFs, but "these rules shall not supersede contracts existing prior to the effective date of this rule").

76 Re Proposed Amendments to Rules Relating to Cogeneration and Small Power Production Facilities, Docket No. AR 102, Order No. 84-742 at 3-4 (Sept. 24, 1984) (describing grandfathering as "a reasonable balancing of ratepayer, operator, and utility interests for existing small facilities").

77 Re Adoption of Administrative Rules Relating to Cost-Effective Fuel Use and Resource Development, Docket No. AR 112, Order No. 85-010 at 22 (Jan. 8, 1985) (responding to ODOE's recommendation that QFs be permitted to lock-in rates during negotiations with the utility).

history with grandfathering complements its current policy of implementing changes to QF contracts prospectively.[78]

Grandfathering is also consistent with other state commission decisions adjusting their PURPA requirements. For example, in Colorado grandfathering was permitted during a moratorium on QF contracts for any QF that had requested a PPA before the utility's request was filed.[79] Similarly, when Idaho repealed its entire set of PURPA rules (shortly after they were established), it grandfathered projects that were entitled to contracts up to the date of its order.[80] The Idaho Commission explained that freezing PURPA contracting would provide "a vehicle and source of potential and unintended injustice" unless the avoided cost rate is found unreasonable, void or otherwise absent a rational basis.[81] To that end, FERC permitted a complete stay in California after finding that the process to set avoided cost rates was unlawful.[82]

Idaho Power has argued that the obligation to provide certainty in setting QF rates makes retroactive adjustments to avoided cost rate inappropriate.[83] Idaho Power is somewhat unique because the Idaho Commission approves PPAs before they become

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78 See e.g., Order No. 14-058.

79 Colorado Dec. No. C87-1690 (Dec. 16, 1987).

80 Re Review of the Idaho PUC's Policies Establishing Avoided Costs under PURPA, IPUC Case No. U-1500-170, Order No. 21332, at 1 (July 13, 1987).

81 Id. at 1-2.

82 Southern California Edison Co., 70 FERC ¶ 61,215 at pp 26-27 (1995).

83 Re Investigation Related to Electric Utility Purchases from Qualifying Facilities, Docket No. UM 1129, Order No. 05-1061 at 3 (Oct. 04, 2005).

effective, which has presented them with the opportunity to address grandfathering directly.[84] That said, the issues are analogous to those presented by PGE's Motion.

PGE's Motion would inflict substantial harm to nearly all of the individual QF developers currently attempting to sell power to PGE under a standard contract. The vast majority of the developers doing or attempting to do business with PGE have invested substantial amounts in Oregon to develop their QF projects. These investments were made in reliance of existing Commission policy, which sets out very clear expectations as to timing and price.

Since the legality of PGE's motion is unclear, if the Commission undermines developers' reasonable reliance, it should expect a flood of new LEO litigation. The changes PGE has requested are so severe that developers may have little choice. In fact, for developers that are unable or unwilling to abandon their projects, establishing a LEO may be their *only* option.

The acute harm to developers extends to ratepayers by denying PGE's customers the opportunity to benefit from solar power at PGE's avoided cost. Contrary to PGE's

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[84] Re Idaho Power Temporary Suspend PURPA Obligation Re Wind Power, Idaho PUC Order No. 29872, Case No. IPC-E-05-22, at 8 (Sep. 21, 2005) (adopting criteria to determine the date on which a "legally enforceable obligation" arose under PURPA, such criteria including (1) whether the QF had submitted a signed power purchase agreement to the utility prior to the date on which the eligibility cap changed, and (2) whether the QF had demonstrated "other indicia of substantial progress and project maturity," such as (i) wind studies, (ii) signed contract for wind turbines, (iii) arranged financing for the project, and/or (iv) documented progress on facility permitting and licensing). Idaho PUC abandoned it in Ceder Creek, which was overruled on other grounds in Ceder Creek by FERC; see also Idaho PUC Order No. 32104, Case No. IPC-E-10-22, at 12-13 (Nov. 2, 2010) (approving a contract executed on July 28, 2010, and grandfathering rates in effect prior to March 16, 2010).

claims, foreclosing the opportunity for PURPA projects to beat PGE's avoided cost could lead to *more* costly solar development by PGE, and exposes rate payers to all of the risks associated with long-term utility resource investment.[85]

7. PGE is Not Entitled to Equitable Relief Because PGE Has Acted in Bath Faith

PGE should not be provided retroactive interim relief because bad actors are not entitled to equitable relief. PGE has been planning its filing for months,[86] delayed negotiations with QF developers, and failed to serve QFs with its application. All of these actions are part of an effort to obtain relief prior to QFs being able to timely execute their PPAs.

One of the most deeply rooted legal notions is that those seeking equitable relief demonstrate their own equitable conduct. The Supreme Court of Oregon has explained than one must not only come to court with clean hands to receive equitable relief, but must keep their hands clean during the pendency of the case.[87] Additionally, for

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85 See Re Portland General Electric Company 2016 Integrated Resource Plan, Docket No. LC 66, NIPPC's Comments at 31-39 (Jan 24, 2017) (detailing risks associated with utility owned generation),

86 PGE refused to provide a date of when it decided to prepare this filing, other than stating it was sometime in the second quarter of 2017. Attachment A (PGE Response to REC Data Request No. 016; PGE Response to NIPPC Data Request No. 044; PGE Response to Strata Data Request Nos. 001, 003) (suggesting that PGE notified QFs by posting a "courtesy notice" of its June 30, 2017 filing in this docket on its QF webpage on July 6, 2017); see also Re Portland General Electric Company, Updates Qualifying Facilities Avoided Cost Payments, Schedule 201, Docket No. UM 1728, Application to Update Qualifying Facility Information at 1 (May 1, 2017) (failing to notify parties that it intended to make any additional filings).

87 McKee v. Fields, 187 Or 323, 327, 210 P.2d 115 (1949); Enloe v. Lawson, 146 Or 621, 633, 31 P.2d 171 (1934).

inequitable conduct to be relevant, it must be related to the subject matter of the proceeding.[88]

PGE's actions are different from Idaho Power and PacifiCorp. Idaho Power and PacifiCorp provided notice to all parties in UM 1610 in an effort to ensure that their applications were widely disbursed. PacifiCorp sought interim relief only on an "prospective basis" and a month and a half after seeking to change the size threshold.[89] Idaho Power's filing was not a surprised because it informed all QF parties in Docket No. UM 1610 that it intended to seek such relief months prior to filing. While Idaho Power requested that the stay be made effective on the date it filed the applications,[90] the Commission explained that QFs "that requested but did not receive ESAs prior to that date may seek a determination of whether those requests created a legally enforceable obligation."[91] PGE was a party to UM 1610, and aware of the more responsible actions of the other Oregon utilities.

In addition to hiding its actions and attempting to surprise QF developers, PGE has also taken egregious actions in the negotiation process to delay PPA requests past the date of any Commission order. Some illustrative examples of PGE's creative efforts to delay the contract negotiation process and demanding unnecessary information include

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88 North Pacific Lumber Co. v. Oliver, 286 Or 639, 651, P.2d 931 (1979); see also Osborne v. Nottley, 206 Or. App. 201, 204-05, 136 P.3d 81 (2006).

89 Re PacifiCorp, dba Pacific Power, Application to Reduce the QF Contract Term and Lower the QF Standard Contract Eligibility Cap, Docket No. UM 1734 PacifiCorp Motion for Interim Relief at 4 (July 9, 2015); Re PacifiCorp, dba Pacific Power, Application to Reduce the QF Contract Term and Lower the QF Standard Contract Eligibility Cap, Docket No. UM 1734 PacifiCorp Application (May 21, 2015).

90 Order No. 15-199 at 3.

91 Id. at 7.

refusing to answer phone calls or return voice messages; returning contracts with completed information different than what the QF developer included; requiring developers to wait an additional 15 business days to obtain the next draft of a PPA after PGE mistakenly inputted basic information;[92] requiring developers to submit exactly the same information multiple times to obtain PPAs;[93] rejecting applications that included exactly the same information that it used to previously execute PPAs;[94] requiring projects to agree to metering requirements typically included in the interconnection process;[95] including requesting types of information that it never previously requested;[96] refusing to accept requests for PPAs based on its self-imposed limitations;[97] requiring projects to

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92 E.g., PGE mistakenly inserted "Lane" instead of "Linn" county and incorrectly copied and pasted the project's nameplate, and then required the QF to wait 15 business days to obtain the next draft.

93 PGE requires developers to fill out an Initial Information Request Excel ("IIR") file with project specific information before it will count the 15 days to provide a draft PPA. Idaho Power and PacifiCorp place substance over form and will respond with a draft PPA after the QF actually provides all the required information. This can produce absurd results as PGE is constantly changing its IIR. In one example, PGE "updated" its IIR to include a new name for a specific Excel "cell", but did not request any additional information. PGE rejected a developer's request for a PPA because they used the previous IIR Excel file, and was required to re-submit it with exactly the same information, but with the single Excel cell given a name.

94 E.g., PGE may enter into a PPA with certain information regarding nameplate capacity or generation or points of delivery, only to raise concerns about the same exact type of information in a subsequent PPA request.

95 E.g., PGE is now requiring on-system projects to agree to new communications equipment that PacifiCorp identifies in the interconnection process.

96 PGE now requires exhaustive and voluminous information in order to obtain a basic draft contract. PGE previously requested less than 20 pieces of information, Idaho Power requests 18, and PacifiCorp only 11. PGE now requests over 100 pieces of information, which seems to grow every day.

97 E.g., PGE has rejected emailed applications above 10 MB, without providing notice to the developer. PGE then refused to respond to inquiries, or count receipt

include voluminous and unnecessary details in their PPAs;[98] challenging the nameplate capacity of projects that previously sold power to PacifiCorp;[99] raising entirely new issues late in the contracting process and immediately before contract execution;[100] making numerous mistakes when filling out PPAs that represent either extreme sloppiness or intentional delay; incorrectly calculating the dates for responding with draft, final and executable PPAs or requests for additional information; asking developers to fill in information to locked Excel files; PGE stopping the entire negotiation process if a QF disagrees with PGE or attempts to correct a PGE mistake, inserting different commercial operation dates without notifying the developer, and often taking more than the required time to respond.[101] In addition, many projects were unaware that PGE was planning on this filing, and would have more expeditiously processed their applications or not

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when informed that the information was submitted, but instead only after it was re-submitted.

98 E.g., PGE is requiring projects to include all the voluminous details included in the IIR as an attachment to the PPA. PGE did not previously require this detailed information. Much of this information is of the type that typically changes between project design and completion, and QFs are uncertain whether PGE will claim breach of contract if actual installations or operations depart from this attached information. PGE's change is causing concern among developers, none of whom to date have been willing to risk filing a complaint on this issue, and potentially losing their right to current prices.

99 E.g., Evergreen Biopower, LLC v. PGE, Docket No. UM 1844, Complaint (May 31, 2017).

100 E.g., Harney Solar I LLC v. PGE, Docket No. UM 1784, Complaint (June 21, 2016) (PGE required submission of a new list of information immediately prior to contract execution); Riley Solar I LLC v. PGE, Docket No. UM 1785, Complaint (June 21, 2016) (same); Blue Marmot V, VI, VII, VIII, and IX, Docket Nos. UM 1829, 1830, 1831, 1832 and 1833, Complaints (April 28, 2017) (PGE raising issue with point of delivery after sending executable PPA).

101 PGE does not always respond within the required 15 business days.

objected to PGE's unreasonable requests, if they knew that PGE would seek to bar any project from executing a PPA if their contract was not executed by June 30.

Most egregious, despite the Commission not having ruled on its motion, PGE has violated FERC's, the Commission's rules and policies and its own tariff by explicitly stating that it will not provide any executable PPAs pending the Commission's resolution of its motion. A party that requests equitable relief cannot take unilateral action as if the judicial or administrative body has already granted its relief.[102] In sum, PGE has raised an unprecedented series of creative and illegal objections with the sole purpose of delaying the PPA process.

C. Problems with the Interim Relief Granted to Idaho Power and PacifiCorp

PGE is not entitled to Idaho Power and PacifiCorp's relief simply because Idaho Power and PacifiCorp were.[103] Idaho Power and PacifiCorp are very different utilities which faced different problems.

Idaho Power's relief was, for example, premised in part on establishing consistency with Idaho state policy.[104] The Commission has routinely adopted different policies for Idaho Power, but PGE is wholly in Oregon and is not facing any such problems.[105] Idaho Power's relief was also based upon concerns with the accuracy of

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102 See supra note 30 and accompanying text.

103 See Lower Ridge Windfarm LLC & High Plateau Windfarm LLC, Docket No. UM 1596, Order No. 12-188 (May 23, 2012) (requiring "unique circumstances" to waive PURPA requirements).

104 Order No. 15-199 at 4 (noting the changes made by the Idaho Commission).

105 See Order No. 05-584 (allowing Idaho Power to use the SAR model that it uses in Idaho); Re Investigation Related to Electric Utility Purchases From QAs, Docket No. UM 1129, Order No. 07-360 (allowing Idaho Power to use the avoided cost

Idaho Power's avoided cost rate. As discussed above, PGE updated its avoided cost rate a mere few weeks ago and will be updating them again when its IRP concludes next month.[106] Additionally, Idaho Power did not receive the more extreme relief it sought. The Commission declined Idaho Power's request to limit the QF contract term to two years, grant solar integration charge, and change its sufficiency period.

And PacifiCorp has a very unique service territory that has historically resulted in substantially more QF requests. It asked only for the relief that was actually granted to Idaho Power. PGE, however, which has had only 2 QF projects above the size threshold for standard rates and contracts, asks not for the same form of relief the Commission granted to Idaho Power and to PacifiCorp, but rather a much more extraordinary form.

PGE implicitly argues that its problem is that PacifiCorp and Idaho Power have managed to use the regulatory processes to avoid their PURPA requirement, which is making all of the QFs in Oregon attempt to sell to PGE rather than the other utilities. There is some evidence supporting PGE's theory. For example, PacifiCorp's avoided cost rates are extremely low, and significantly lower than PGE's; and although both utilities are issuing RFPs this year, only PGE's rates reflect that reality. As such, QFs may try to wheel their output for an indirect sale to PGE instead of to PacifiCorp. If there is a problem, however, it is not geographic arbitrage, but instead is that PacifiCorp's 3-MW cap on standard solar rates and unrealistically low avoided costs rates in general are artificially incenting QFs to attempt only to sell only to PGE.

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methodology approved by the Idaho Commission as the starting point for its non-standard avoided cost negotiations).

[106] Order No. 17-177 (approving PGE's rates effective June 1, 2017).

The appropriate regulatory response is not to find a regulatory vehicle to also discourage PURPA sales to PGE. Rather, if the Commission is concerned, it would be more appropriate to make a more holistic change to all three utilities' eligibility limits, and increase PacifiCorp's avoided cost rates to reflect that they are seeking to build and own over 1,100 MW of new wind. PGE's argument may even establish that the Commission overcorrected when setting the 3 MW size limit for solar QFs for PacifiCorp and Idaho Power. And now is the time to consider raising that threshold at least to 5 MW for solar.

The Commission's stated role in implementing PURPA supports adjusting all three utilities' contracts to put all three utilities back on equal footing without discouraging QF development. According to the Commission,

> Our role in implementing PURPA is to promote QF development while also ensuring that ratepayers pay no more than a utility's avoided costs. To that end, we must balance our duty to create a settled and uniform institutional climate for qualifying facilities 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. Accordingly, we consider both the impact on PURPA development and the impact on [the utilities'] Oregon customers in our decision.[107]

Granting PGE's proposal would not promote QF development. The relief granted to PacifiCorp and Idaho Power demonstrates that the 3 MW size limit acts as a barrier to new and renewed solar QF development. PGE asks for a policy that would more aggressively undermine PURPA than the policy the Commission has established for the other two utilities in Oregon. If the Commission allows PGE to up the ante with a

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[107] Order No. 15-199 at 6.

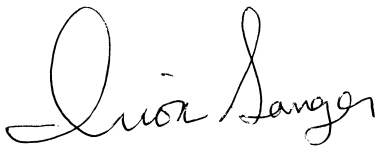
lifetime cap, PacifiCorp will almost certainly be before the Commission complaining about geographic arbitrage and asking for the same relief PGE received.

IV. CONCLUSION

For the reasons discussed above, the Joint QF Parties respectfully request the Commission deny PGE's motion for interim relief. Should the Commission determine that interim relief is warranted, it should adopt the least restrictive form of relief necessary, and set PGE's size eligibility for avoided cost rates at 5 MW for solar QFs only. Finally, the Commission should consider raising the size eligibility for PacifiCorp and Idaho Power to 5 MW for solar QFs.

Dated this 27th day of July 2017.

Respectfully submitted,



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Of Attorneys for the Community Renewable Energy Association

Attachment A

PGE Responses to
NIPPC, REC, CREA, RNW and Strata Solar Data Requests

July 25, 2017

TO: Gregory M. Adams
Community Renewable Energy Association (CREA)

FROM: Patrick Hager
Manager, Regulatory Affairs

PORTLAND GENERAL ELECTRIC
UM 1854
PGE Response to CREA Data Request No. 003
Dated July 20, 2017

Request:

PGE states: "PGE estimates that under a standard solar QF contract with current standard prices fixed for 15 years, PGE is required to pay approximately $30/MWh more than market for solar QF output. PGE is facing requests for standard PURPA contracts from 41 solar QF projects with combined output of 417.2 MW or approximately 13.2 million MWh over 15 years. Unless the Commission grants the relief requested in this application and authorizes PGE to negotiate project-specific prices with these projects, PGE's customers are at risk of paying approximately $545 million more than market prices over 15 years12 for the 417.2 MW of solar QF output currently seeking contracts from PGE." Please provide a similar comparison with all supporting workpapers to the non-standard negotiated rates that would be available to these QFs instead of "market for solar QF output."

Response:

PGE objects to this request on the grounds that it is duplicative, irrelevant, requires speculation, is unduly burdensome and would require PGE to develop information or prepare a new study or analysis. Without waiving its objections, PGE responds as follows:

Regarding "non-standard negotiated rates that would be available to these QFs," such prices will be negotiated on a project-specific basis consistent with PGE's Schedule 202, adjusting for the unique characteristics and configuration of each project, and therefore, no pre-determined Schedule 202 pricing or "non-standard negotiated rates" are available.

July 25, 2017

TO: Gregory M. Adams
Community Renewable Energy Association (CREA)

FROM: Patrick Hager
Manager, Regulatory Affairs

PORTLAND GENERAL ELECTRIC
UM 1854
PGE Response to CREA Data Request No. 004
Dated July 20, 2017

Request:

PGE states: "PGE estimates that under a standard solar QF contract with current standard prices fixed for 15 years, PGE is required to pay approximately $30/MWh more than market for solar QF output. PGE is facing requests for standard PURPA contracts from 41 solar QF projects with combined output of 417.2 MW or approximately 13.2 million MWh over 15 years. Unless the Commission grants the relief requested in this application and authorizes PGE to negotiate project-specific prices with these projects, PGE's customers are at risk of paying approximately $545 million more than market prices over 15 years for the 417.2 MW of solar QF output currently seeking contracts from PGE." Please explain how PGE determined what the "market" price is for bundled renewable power, including the value associated with the environmental attributes.

Response:

PGE did not provide a market value for the environmental attributes associated with renewable power.

July 21, 2017

TO: Irion Sanger
Robert Kahn
Northwest and Intermountain Power Producers Coalition (NIPPC)

FROM: Patrick Hager
Manager, Regulatory Affairs

PORTLAND GENERAL ELECTRIC
UM 1854
PGE Response to NIPPC Data Request No. 002
Dated July 14, 2017

Request:

Please provide in electronic Excel format: 1) each QF that has requested a power purchase agreement; 2) whether the QF entered into a power purchase agreement; 3) whether the QF became commercially operational; 4) the scheduled commercial operation date; 5) the actual commercial operation date; and 6) the size, resource type, location and name of each QF.

Response:

PGE objects to this request on the basis that it is overly broad and unduly burdensome and on the basis that the names of QF projects that have not yet entered into a fully executed power purchase agreement (PPA) are irrelevant to the issues in this case. Without waiving its objection PGE states that it has signed non-disclosure agreements (NDAs) with some of the QF applicants. PGE is in the process of collecting and reviewing the NDAs to determine whether, and on what conditions, it can provide the information requested. For each QF that has requested a PPA but does not yet have a fully executed PPA, PGE has provided a generic identifier (e.g., Qualifying Facility 120). For each QF that has requested a PPA and entered into a fully executed PPA, PGE has identified the name of the QF project. Without waiving its objections, PGE responds as follows:

See Attachment 002-A for the requested information (subject to the above identified objections and limitations). The attached list includes QF requests up to June 5, 2017 (the date used as the basis for data provided by PGE in its application, motion for interim relief and testimony), and all QF requests for PPAs submitted to PGE after June 5, 2017 until July 14, 2017.

July 25, 2017

TO: Irion Sanger
Robert Kahn
Northwest and Intermountain Power Producers Coalition (NIPPC)

FROM: Patrick Hager
Manager, Regulatory Affairs

PORTLAND GENERAL ELECTRIC
UM 1854
PGE's First Supplemental Response to NIPPC Data Request No. 002
Dated July 14, 2017

Request:

Please provide in electronic Excel format: 1) each QF that has requested a power purchase agreement; 2) whether the QF entered into a power purchase agreement; 3) whether the QF became commercially operational; 4) the scheduled commercial operation date; 5) the actual commercial operation date; and 6) the size, resource type, location and name of each QF.

Response (Dated July 21, 2017):

PGE objects to this request on the basis that it is overly broad and unduly burdensome and on the basis that the names of QF projects that have not yet entered into a fully executed power purchase agreement (PPA) are irrelevant to the issues in this case. Without waiving its objection PGE states that it has signed non-disclosure agreements (NDAs) with some of the QF applicants. PGE is in the process of collecting and reviewing the NDAs to determine whether, and on what conditions, it can provide the information requested For each QF that has requested a PPA but does not yet have a fully executed PPA, PGE has provided a generic identifier (e.g., Qualifying Facility 120). For each QF that has requested a PPA and entered into a fully executed PPA, PGE has identified the name of the QF project. Without waiving its objections, PGE responds as follows:

See Attachment 002-A for the requested information (subject to the above identified objections and limitations). The attached list includes QF requests up to June 5, 2017 (the date used as the basis for data provided by PGE in its application, motion for interim relief and testimony), and all QF requests for PPAs submitted to PGE after June 5, 2017 until July 14, 2017.

PGE's first Supplemental Response (July 25, 2017):

See updated Attachment 002-A (Supp 1) for a revised attachment identifying by name each QF that has requested a power purchase agreement (as well as the developer and Seller name). One developer has a non-disclosure agreement with PGE that precludes PGE from identifying the developer by name. PGE is in the process of attempting to obtain consent of the developer to identify the projects, developer, and Seller by name. PGE will further supplement as appropriate.

July 21, 2017

TO: Irion Sanger
Robert Kahn
Northwest and Intermountain Power Producers Coalition (NIPPC)

FROM: Patrick Hager
Manager, Regulatory Affairs

PORTLAND GENERAL ELECTRIC
UM 1854
PGE Response to NIPPC Data Request No. 003
Dated July 14, 2017

Request:

In addition to the information requested in REC/NIPPC data request 1, for QFs that have not become commercially operational, please identify: 1) whether the PPA has been terminated; 2) what the expected commercial operation date is based on the best available information (e.g., communications with the QF, interconnection timelines, PPA amendment, etc.); and 3) whether PGE expects the QF to ultimately become commercially operational.

Response:

PGE objects to this request on the basis that it is unduly burdensome, overly broad, and may seek irrelevant or confidential information. PGE objects to this request to the extent it requires PGE to develop information or prepare a study or analysis for NIPPC. Without waiving its objections, PGE responds as follows:

The electronic Excel file provided in response to NIPPC DR 002 includes information responsive to NIPPC DR 003. In general, and unless otherwise noted, the expected commercial operation date for each QF is the commercial operation date selected by the QF in the PPA. Unless otherwise noted, PGE expects each QF with a PPA to become commercially operational.

July 21, 2017

TO: Irion Sanger
Robert Kahn
Northwest and Intermountain Power Producers Coalition (NIPPC)

FROM: Patrick Hager
Manager, Regulatory Affairs

PORTLAND GENERAL ELECTRIC
UM 1854
PGE Response to NIPPC Data Request No. 004
Dated July 14, 2017

Request:

In addition to the information requested in REC/NIPPC data requests 1-2, for each QF that has requested a non-standard power purchase agreement, please identify: 1) the date upon which the request was made; 2) the total length of time for negotiations; 3) the date upon which the negotiations ended; 4) the time spent and costs incurred by PGE in the negotiations; 5) copies of PGE's draft power purchase agreements; and 6) the final power purchase agreement.

Response:

PGE objects to this request on the basis that it is unduly burdensome, overly broad, and may seek irrelevant information. PGE objects to the request to the extent it requires PGE to develop information or prepare a study or analysis for NIPPC. Without waiving its objections, PGE responds as follows:

(1) The electronic Excel file provided in response to NIPPC DR 002 provides the date upon which the request was made.
(2) PGE does not track the total length of time for negotiations
(3) For executed contracts, the date upon which negotiations ended is the date of execution. PGE does not track the date upon which negotiations concluded for proposals that have been withdrawn.
(4) PGE does not track the time spent and costs incurred by PGE in the negotiations.
(5) PGE objects to this request on the grounds that it seeks information subject to attorney-client privilege.

(6) PGE objects to this request on the grounds that it seeks information that is commercially-sensitive and not relevant nor calculated to lead to the discovery of relevant information. Alternatively, the information sought is more prejudicial than it is probative. Without waiving this objection, PGE states that it has filed summaries of all executed non-standard power purchase agreements that it has executed with QFs in OPUC Docket No. RE 143.

July 21, 2017

TO: Irion Sanger
Robert Kahn
Northwest and Intermountain Power Producers Coalition (NIPPC)

FROM: Patrick Hager
Manager, Regulatory Affairs

PORTLAND GENERAL ELECTRIC
UM 1854
PGE Response to NIPPC Data Request No. 026
Dated July 14, 2017

Request:

Please provide copies of all Schedule 202 contract prices that PGE has provided to any QF that has requested Schedule 202 prices, including a comparison of then then applicable Schedule 201 rates to the Schedule 202 prices PGE proposed. Please provide an explanation for all differences between the Schedule 201 and Schedule 202 price.

Response:

PGE objects to this request on the basis that it seeks information that is irrelevant to the issues in the case, requires PGE to develop new information or prepare a new study or analysis, and seeks confidential and commercially sensitive information that is more prejudicial than probative and which would not be adequately protected by the terms of the protective order. Without waiving its objections, PGE responds as follows:

Each price offered to a Schedule 202 applicant is derived using the factors set forth in PGE's Schedule 202, using the prices in Schedule 201 as a starting point, and adjusted based on the unique characteristics and configuration of each project.

July 21, 2017

TO: Irion Sanger
Robert Kahn
Northwest and Intermountain Power Producers Coalition (NIPPC)

FROM: Patrick Hager
Manager, Regulatory Affairs

PORTLAND GENERAL ELECTRIC
UM 1854
PGE Response to NIPPC Data Request No. 027
Dated July 17, 2017

Request:

Please provide a revised PGE/106, and 107 including a column showing the relevant Schedule 202 pricing for each year, totals, and a comparison to the other columns. Please provide all supporting documents and workpapers.

Response:

PGE objects to this request on the grounds that it requires speculation, is unduly burdensome and would require that PGE to develop information or prepare a new study or analysis. Without waiving its objections, PGE responds as follows:

Schedule 202 pricing is negotiated on a project-specific basis adjusting for the unique characteristics and configuration of each project, and therefore, no pre-determined Schedule 202 pricing is available for PGE to add to PGE/106 and PGE/107.

July 21, 2017

TO: Irion Sanger
Robert Kahn
Northwest and Intermountain Power Producers Coalition (NIPPC)

FROM: Patrick Hager
Manager, Regulatory Affairs

PORTLAND GENERAL ELECTRIC
UM 1854
PGE Response to NIPPC Data Request No. 028
Dated July 17, 2017

Request:

Please provide a revised PGE/106 and 107 including a column showing PGE's Schedule 201 prices that it will file assuming the Oregon PUC acknowledges its IRP, and each year, totals, and a comparison to the other columns. Please provide all supporting documents and workpapers.

Response:

PGE objects to this request on the grounds that it is irrelevant, unduly burdensome, seeks speculative information, and because it requires PGE to develop information or prepare a study or analysis that PGE has not performed. Without waiving its objections, PGE responds as follows:

PGE has not conducted an analysis to determine what 201 prices it will file assuming the Oregon PUC acknowledges its IRP.

July 21, 2017

TO: Irion Sanger
Robert Kahn
Northwest and Intermountain Power Producers Coalition (NIPPC)

FROM: Patrick Hager
Manager, Regulatory Affairs

PORTLAND GENERAL ELECTRIC
UM 1854
PGE Response to NIPPC Data Request No. 029
Dated July 17, 2017

Request:

Please refer to PGE/101. For each project, please provide the annual and levelized estimated payments, and the estimated annual and levelized payments at Schedule 202.

Response:

PGE objects to this request on the grounds that it is irrelevant, unclear, unduly burdensome, seeks speculative information, and seeks to require PGE to develop new information or prepare a study or analysis that PGE has not performed. Without waiving its objections, PGE responds as follows:

See the "Price Calc" worksheet provided in Attachment 029-A for the annual payments for each project based on Schedule 201 pricing. Attachment 029-A is PGE's work papers for all numbers and figures in PGE's application. It is unclear what NIPPC seeks when it requests "levelized estimated payments" for each project listed on PGE/101; PGE does not have such information and has not conducted any study or analysis on "levelized estimated payments."

It is unclear what NIPPC requests when asking for "the estimated annual and levelized payments at Schedule 202." PGE cannot estimate annual and levelized payments under Schedule 202 as prices are negotiated on a project-specific basis and are not pre-determined.

July 21, 2017

TO: Irion Sanger
Robert Kahn
Northwest and Intermountain Power Producers Coalition (NIPPC)

FROM: Patrick Hager
Manager, Regulatory Affairs

PORTLAND GENERAL ELECTRIC
UM 1854
PGE Response to NIPPC Data Request No. 044
Dated July 17, 2017

Request:

When did PGE first consider making its filing in UM 1854, when did PGE decide to make its filing in UM 1854, and how long did it take to prepare the filing in UM 1854?

Response:

PGE objects to this request on the grounds that information concerning PGE's decisions about the timing of its filing are attorney work product and attorney-client privileged and are not relevant to the issues in this docket. Without waiving its objections, PGE states as follows:

Please see PGE's response to Strata Data Request No. 001. PGE did not track how long it took to prepare the filing in UM 1854.

July 21, 2017

TO: Irion Sanger
Robert Kahn
Northwest and Intermountain Power Producers Coalition (NIPPC)

FROM: Patrick Hager
Manager, Regulatory Affairs

PORTLAND GENERAL ELECTRIC
UM 1854
PGE Response to NIPPC Data Request No. 054
Dated July 17, 2017

Request:

Please refer to PGE/100, Sims-Macfarlane/13-14. PGE states that it will need to negotiate appropriate terms and conditions in order to avoid adverse impacts on system reliability. Please identify all contact terms and conditions PGE intends to propose or has proposed to avoid adverse impacts on system reliability in Schedule 202 contracts. For each provision, please explain why such a term or condition could not be included in a Schedule 201 contract.

Response:

PGE objects to this request on the basis that it is overly broad and that it requires PGE to speculate about the precise terms and conditions that it would offer to a QF developer in the future.

PGE's reliability obligations continue to evolve with system conditions and changing WECC/NERC compliance obligations. PGE will propose appropriate contract terms and conditions based on the specific requirements at the time of contract negotiation, and appropriate to the particular project, interconnection location, and resource type. Some examples of reliability terms and conditions that PGE has proposed in the past, and may incorporate into future agreements include:

For example, terms related to curtailment provisions are important for ensuring system reliability. Any negotiated agreement on curtailment provisions will impact the following additional terms: pricing, REC treatment, communications procedures, communications or

control equipment, and transmission scheduling obligations. These terms will be unique to each project and are not suitable to include in a Schedule 201.

Another example of a term that will address system reliability is participation in Remedial Action Schemes (RAS). Depending on a QF's characteristics and geographic location, it may be required to participate in a RAS program. These provisions are unique to each project and are not suitable to include in a Schedule 201.

July 21, 2017

TO: Irion Sanger
John Lowe
Renewable Energy Coalition (REC)

FROM: Patrick Hager
Manager, Regulatory Affairs

PORTLAND GENERAL ELECTRIC
UM 1854
PGE Response to REC Data Request No. 007
Dated July 14, 2017

Request:

PGE requests that the PUC: "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." Please explain how PGE will determine whether a project has the same "owner", and provide PGE's draft language that would be incorporated into any rate schedule and/or power purchase agreement to implement this new policy.

Response:

PGE objects to this request to the extent that it asks PGE to declare the precise language that PGE may ultimately propose to implement the requirements of any Commission orders on PGE's motion for interim relief or application. The precise language PGE may propose will depend on the details of the Commission's orders and other developments in the proceeding. Without waiving its objection, and without waiving its right to propose any language that PGE might deem appropriate as this proceeding advances, PGE responds as follows:

If PGE's request is granted, PGE anticipates it will propose language to capture the concept that each developer's access to standard contracts and standard prices for solar QF projects larger than 100 kW is limited to the first 10 MW of solar QF capacity for which the developer seeks standard contracts or standard prices. Determining whether multiple projects have the same "owner" will involve issues similar to those associated with determining common ownership for purposes of the Oregon PUC's existing five-mile rule or FERC's existing one-mile rule. Because many solar QF projects seek standard contracts before the projects are constructed and

operational, the critical question is likely to be whether multiple projects are owned or controlled by the same entity or developer at the time the developer is seeking standard contracts for one or more of the solar QF projects. If PGE's request is granted it will attempt to make use of the existing definitions of "Person(s) or Affiliated Person(s)" in Schedule 201 to the extent possible. However, any language adopted by PGE will need to make it clear that, for the purposes of the proposed 10 MW aggregate cap, two projects will be considered to be "owned or controlled" by the Same Person(s) or Affiliated Person(s) if they are proposed or developed by the Same Person(s) or Affiliated Person(s). See also PGE's response to Strata Data Request No. 006.

July 21, 2017

TO: Irion Sanger
John Lowe
Renewable Energy Coalition (REC)

FROM: Patrick Hager
Manager, Regulatory Affairs

PORTLAND GENERAL ELECTRIC
UM 1854
PGE Response to REC Data Request No. 008
Dated July 14, 2017

Request:

If the Commission acknowledges PGE's integrated resource plan as filed, please provide the Company's estimated avoided cost rates for renewable and non-renewable solar QFs. Please provide all supporting documentation in Excel format.

Response:

PGE objects to this request on the grounds that it is irrelevant, unduly burdensome, seeks speculative information, and because it seeks the results of an analysis that PGE has not performed. Without waiving its objections, PGE responds as follows:

PGE has not conducted an analysis to determine what 201 prices it will file assuming the Oregon PUC acknowledges its IRP.

July 21, 2017

TO: Irion Sanger
John Lowe
Renewable Energy Coalition (REC)

FROM: Patrick Hager
Manager, Regulatory Affairs

PORTLAND GENERAL ELECTRIC
UM 1854
PGE Response to REC Data Request No. 010
Dated July 14, 2017

Request:

If the Commission acknowledges PGE's integrated resource plan as filed but with a 2028 renewable resource deficiency date, please provide the Company's estimated avoided cost rates for renewable and non-renewable solar QFs. Please provide all supporting documentation in Excel format.

Response:

PGE objects to this request on the grounds that it is irrelevant, unduly burdensome, seeks speculative information, and because it seeks to the results of an analysis that PGE has not performed. Without waiving its objections, PGE responds as follows:

PGE has not conducted an analysis to determine what 201 prices it will file assuming the Oregon PUC acknowledges its IRP.

July 21, 2017

TO: Irion Sanger
John Lowe
Renewable Energy Coalition (REC)

FROM: Patrick Hager
Manager, Regulatory Affairs

PORTLAND GENERAL ELECTRIC
UM 1854
PGE Response to REC Data Request No. 012
Dated July 14, 2017

Request:

PGE states 124 QF projects have obtained or requested a PURPA contract from PGE with combined output of 954.9 MW. Please identify: 1) the name, size and location of each QF; 2) the project's scheduled commercial operation date; 3) whether the project is operational; and 4) if not operational, the project's expected commercial operation date.

Response:

See PGE's response to NIPPC Data Request No. 002, Attachment A. In addition, executed QF PPA's are posted on the Commission's website under Docket RE 143.

For each QF that has requested a PPA and entered into a fully executed PPA, PGE has identified the name of the QF project. PGE objects to this request on the grounds that the names of QF projects that have not yet entered into a fully executed power purchase agreement (PPA) are irrelevant. Without waiving its objection PGE states that it has signed non-disclosure agreements (NDAs) with some of the QF applicants. PGE is in the process of collecting and reviewing the NDAs to determine whether, and on what conditions, it can provide the information requested. For each QF that has requested a PPA but does not yet have a fully executed PPA, PGE has provided a generic identifier (e.g., Qualifying Facility 120). PGE will supplement its response if it determines that it can provide developer names consistent with any NDAs.

July 21, 2017

TO: Irion Sanger
John Lowe
Renewable Energy Coalition (REC)

FROM: Patrick Hager
Manager, Regulatory Affairs

PORTLAND GENERAL ELECTRIC
UM 1854
PGE Response to REC Data Request No. 014
Dated July 14, 2017

Request:

Given existing transmission availability, please estimate the number of additional QFs that could deliver power to PGE at each of the points of delivery that PGE will accept deliveries.

Response:

PGE objects to this request on the basis that it is unclear, unduly burdensome, overly broad, may seek irrelevant, confidential or privileged information, and PGE objects to the request to the extent it requires PGE to develop information or conduct a study or analysis that PGE has not performed. Without waiving its objections, PGE responds as follows:

PGE cannot estimate the number of additional QFs that could deliver power to PGE at each of the points of delivery that PGE will accept deliveries because a response depends upon the nameplate capacity of each additional proposed QF project, the time frame in which it intends to make deliveries and whether there are any changes in the available transfer capability at the projected times of deliveries (e.g., changes, including but not limited to, system upgrades, changes in amounts acquired under existing reservations or, acquisition of ATC by other entities, etc.).

July 21, 2017

TO: Irion Sanger
John Lowe
Renewable Energy Coalition (REC))

FROM: Patrick Hager
Manager, Regulatory Affairs

PORTLAND GENERAL ELECTRIC
UM 1854
PGE Response to REC Data Request No. 016
Dated July 14, 2017

Request:

Please identify the date upon which PGE informed each of QF that PGE had made its filing in UM 1854 or otherwise sought to lower the size eligibility for solar QFs. Please explain why PGE did not inform any QFs prior to the date upon which they were ultimately notified.

Response:

PGE objects to this request on the basis that it is unclear, unduly burdensome, overly broad, requests a legal conclusion, and may seek irrelevant, confidential or privileged information. Without waiving its objections, PGE responds as follows:

PGE filed an application to lower the standard price and standard contract eligibility cap for solar qualifying facilities on June 30, 2017. At the same time, PGE filed a motion for interim relief. The Public Utility Commission of Oregon assigned the application and motion to Docket No. UM 1854. PGE did not serve any parties with the application and motion when it filed because there were not yet any parties to the proceeding. PGE filed its application and associated motion consistent with ORS 756.500. PGE expected the Commission would provide appropriate notice of the application pursuant to ORS 756.512, which it did through a notice of pre-hearing conference entered July 7, 2017. On July 6, 2017, PGE posted a courtesy notice of the UM 1854 proceeding on PGE's QF web page. Following the June 30, 2017 filing of the application and motion, PGE has discussed the filing with applicants for PURPA contracts as PGE has engaged in the regular exchange of information under its Schedule 201 or Schedule 202 processes.

July 21, 2017

TO: Irion Sanger
John Lowe
Renewable Energy Coalition (REC)

FROM: Patrick Hager
Manager, Regulatory Affairs

PORTLAND GENERAL ELECTRIC
UM 1854
PGE Response to REC Data Request No. 018
Dated July 14, 2017

Request:

Please confirm that PGE is seeking to require any owner of a solar project that has requested or obtained standard prices from PGE more than 10 MW to no longer be eligible to obtain standard contract terms from PGE.

a. If confirmed, please provide the draft power purchase agreement form that PGE will provide to a QF that is no longer eligible to obtain standard contract terms.

b. Will PGE use the Edison Electric Institute form contract as the starting point for negotiations or its Commission approved standard contract form for a QF that is no longer eligible to obtain standard contract terms?

c. Please identify which standard contract terms in PGE's Commission approved standard contract form would or would not apply to a QF that is no longer eligible to obtain standard contract terms.

d. Will any of the answers to the above questions differ depending on the size of the project (e.g., will PGE use the Commission approved standard contract form as the starting point for negotiations with QFs 4 MW in size, but the Edison Electric Institute form for negotiations with QFs 9 MWs in size?)?

Response:

PGE objects to this request on the basis that it is unclear, unduly burdensome, overly broad, calls for speculation, requests a legal conclusion, and may seek irrelevant or confidential information. PGE further objects to this request to the extent that it asks PGE to declare the precise language that PGE may ultimately propose to implement the requirements of any Commission orders on PGE's motion for interim relief or application. PGE further objects to the request to the extent it requires PGE to develop information or prepare a study or analysis for REC. Without waiving the foregoing objections, PGE responds as follows:

PGE has requested that the Commission declare that a solar QF project with nameplate capacity above 100 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. PGE intends for this limitation to apply to any developer who seeks standard prices and standard contracts for more than 10 MW of solar QF capacity.

Regarding sub-part (a) of the request, a QF or developer who is not eligible for a standard contract must negotiate a contract with PGE pursuant to Schedule 202. PGE does not have a draft power purchase agreement form that it uses with all applicants for a negotiated contract under Schedule 202. Rather, PGE negotiates a project-specific PPA with each QF seeking a contract under Schedule 202.

Regarding sub-part (b) of the request, PGE has previously used an Edison Electric Institute form contract as a starting point upon which to develop a proposed PPA under Schedule 202, but there is no set form required by Schedule 202 and PGE reserves the right to propose a negotiated PPA that is based on an Edison Electric Institute form contract, based on PGE's approved standard contracts, based on a mix of elements from both or these sources, or based on none of these sources.

Regarding sub-part (c), each non-standard contract is negotiated on a project specific basis and PGE cannot pre-determine which terms that are currently contained in PGE's approved standard contracts might also be appropriate in a non-standard contract for a particular project. The specific terms and conditions of each non-standard contract would be negotiated in compliance with the guidance and requirements established by Order No. 07-360.

Regarding sub-part (d), each non-standard contract is negotiated on a project specific basis and the size of the project, like any other project specific fact, may impact the terms and conditions negotiated by the parties. PGE does not currently have any proposal to use a certain set of terms and conditions for all projects below a certain size threshold and a different set of terms and conditions for all projects above a certain size threshold.

July 21, 2017

TO: Irion Sanger
John Lowe
Renewable Energy Coalition (REC)

FROM: Patrick Hager
Manager, Regulatory Affairs

PORTLAND GENERAL ELECTRIC
UM 1854
PGE Response to REC Data Request No. 023
Dated July 14, 2017

Request:

Please provide any Federal Energy Regulatory Commission, state public utility commission, other administrative or judicial decisions, opinions or orders that allow a utility or state commission to limit eligibility to standard contracts or rates to a single owner.

Response:

PGE objects to this request on the basis that it is unclear, unduly burdensome, overly broad, seeks a legal conclusion, seeks irrelevant information, and request that PGE develop information for REC. Without waiving its objections, or limiting its ability to present any precedent or authority at any stage of this proceed, PGE responds as follows:

FERC's regulations require standard prices for QF projects with nameplate capacity of 100 kW or less. PGE is not aware of any state or federal law or regulation that requires the Oregon PUC to make standard prices or standard contracts available to any QF project with nameplate capacity greater than 100 kW. PGE is not aware of any state or federal statute or regulation that prevents the Oregon PUC from adjusting its eligibility criteria for standard prices or standard contracts provided standard prices remain available to QF projects with nameplate capacity of 100 kW or less. It is unclear to PGE exactly what REC means by "limit eligibility to standard contracts or rates to a single owner."

July 21, 2017

TO: Irion Sanger
John Lowe
Renewable Energy Coalition (REC)

FROM: Patrick Hager
Manager, Regulatory Affairs

PORTLAND GENERAL ELECTRIC
UM 1854
PGE Response to REC Data Request No. 025
Dated July 14, 2017

Request:

Please provide copies of all Schedule 202 contracts (including prices) that PGE has entered into, including a comparison of then then applicable Schedule 201 rates to the Schedule 202 prices in the contract. Please provide an explanation for all differences between the Schedule 201 and Schedule 202 price.

Response:

PGE objects to this request on the basis that it requires PGE to develop information or prepare a study or analysis for REC. PGE further objects to this request on the basis that it is overbroad and seeks irrelevant information, on the basis that it seeks information that is confidential and commercially sensitive, and on the basis that the probative value of the information is outweighed by the prejudicial impact of releasing commercially sensitive information and that the existing protective order is not sufficient to protect such commercially sensitive information Without waiving its objections, PGE responds as follows:

PGE has entered into one Schedule 202 contract, a summary of which is filed in Commission Docket RE 143. PGE does not post or disclose Schedule 202 contracts or prices because of their commercially sensitive nature. PGE believes that the terms of its one Schedule 202 contract are not relevant to the resolution of UM 1854 and that disclosure of such commercially sensitive information is more prejudicial than probative. See also PGE's response to NIPPC Data Request No. 026.

July 26, 2017

TO: Silvia Tanner
Renewable Northwest

FROM: Patrick Hager
Manager, Regulatory Affairs

PORTLAND GENERAL ELECTRIC
UM 1854
PGE Response to Renewable NW Data Request No. 005
Dated July 21, 2017

Request:

In PGE/100, Sims-Macfarlane/4, Brett Sims and Robert Macfarlane state that "developers are disaggregating projects in order to get around the Commission's five mile rule and executing multiple standard QF contracts." Similarly, in PGE/100, Sims-Macfarlane/9, Mr. Sims and Mr. Macfarlane state that "[i]n PGE's experience, solar and wind QFs have attempted to disaggregate in order to satisfy the eligibility requirements for PGE's Schedule 201 standard rates and contract." Please provide all supporting evidence for these statements.

Response:

PGE objects to this request on the basis that it is unduly burdensome and overly broad. Without waiving its objections, PGE responds as follows:

The statements quoted from Sims-Macfarlane/4 and 9 are intended to indicate that numerous developers have disaggregated significant quantities of aggregate QF generation into projects scaled at or below 10 MW and located five miles apart in order to avoid the need to negotiate prices or contract terms notwithstanding that many such developers are sophisticated and capable of negotiating both price and other contract terms. The information provided with the filing and in PGE's First Supplemental response to NIPPC Data Request No. 002 clearly demonstrates that many developers are behaving in this manner. Also, see PGE Exhibit 100, pages 10 and 11 and PGE's response to Renewable NW Data Request No. 007. PGE reserves its right to assemble and provide additional evidence supporting the statements in question and will supplement its response to this data request as necessary.

July 26, 2017

TO: Silvia Tanner
Renewable Northwest

FROM: Patrick Hager
Manager, Regulatory Affairs

PORTLAND GENERAL ELECTRIC
UM 1854
PGE Response to Renewable NW Data Request No. 006
Dated July 21, 2017

Request:

Please refer to PGE/104. For each developer with multiple projects, please identify the location of each project, and the distance from other projects with the same developer. Please only identify developers consistently with the format used in PGE/104.

Response:

PGE objects to this request on the grounds that it asks for information not relevant to the issues in the docket, that it is unduly burdensome, and that it seeks information or an analysis that PGE has not completed. Without waiving its objection, PGE responds as follows:

See PGE's First Supplemental response to NIPPC Data Request No. 002, Attachment A for the project locations. PGE does not have a record of the distance between projects. See also PGE's Response to CREA Data Request No. 006.

July 19, 2017

TO: Ken Kaufmann
Strata Solar Development, LLC

FROM: Karla Wenzel
Manager, Pricing & Tariffs

PORTLAND GENERAL ELECTRIC
UM 1854
PGE Response to Strata Data Request No. 001
Dated July 14, 2017

Request:

Please explain how and when PGE came to have concerns whether owners should be subject to an aggregate capacity cap eligibility criterion for standard contracts.

Response:

PGE objects to this request on the basis that it seeks irrelevant information, seeks information that may be privileged, and is unduly burdensome. Without waiving its objection, PGE responds as follows:

PGE became concerned about the eligibility criterion for solar QF projects in 2016 when PGE began to experience a significant increase in solar QF activity. PGE began to develop an application to lower the eligibility cap in the second quarter of 2017. As it did so, PGE realized that there are a number of experienced developers with significant expertise and capability who are seeking or have obtained contracts to sell dozens of megawatts of solar QF capacity to PGE under standard prices and standard contracts. PGE believes such developers have as much expertise and capacity to negotiate project-specific prices and terms as any developer proposing a QF project with nameplate capacity above 10 MW.

July 19, 2017

TO: Ken Kaufmann
Strata Solar Development, LLC

FROM: Karla Wenzel
Manager, Pricing & Tariffs

PORTLAND GENERAL ELECTRIC
UM 1854
PGE Response to Strata Data Request No. 003
Dated July 14, 2017

Request:

Did PGE provide notice to potentially affected parties that it would ask the Commission to impose a lifetime limitation on solar capacity one owner can sell to PGE under a standard contract? Please provide the method of notice and the date when such notice was provided:
a. to *potential* standard contract solar applicants
b. to *current* standard contract solar applicants
c. to *persons with current and/or expired* solar standard contracts

Response:

PGE objects to this request on the basis that it assumes facts not in evidence and seeks irrelevant information. Without waiving its objection, PGE responds as follows:

PGE has not asked the Commission to impose a lifetime limitation on solar capacity one owner call sell to PGE under a standard contract. PGE filed its application to lower the standard price and standard contract eligibility cap for solar qualifying facilities and its related motion for interim relief on June 30, 2017. This filing was made consistent with the requirements of ORS 756.500. As a courtesy to qualifying facility developers, PGE posted notice of the filing on PGE's qualifying facility webpage on July 6, 2017.

July 19, 2017

TO: Ken Kaufmann
Strata Solar Development, LLC

FROM: Karla Wenzel
Manager, Pricing & Tariffs

PORTLAND GENERAL ELECTRIC
UM 1854
PGE Response to Strata Data Request No. 004
Dated July 14, 2017

Request:

How many complaints filed with the Commission by a Schedule 201 or Schedule 202 contract applicant has PGE received in the last three calendar years (2015, 2016, and 2017)?

Response:

PGE objects to this request on the basis that it seeks irrelevant information. Without waiving its objection, PGE responds as follows:

There have been eight complaints filed with the Commission by Schedule 201 applicants. Five were filed by the same applicant and have been consolidated into one proceeding. Two complaints were dismissed by the complainant shortly after filing.

July 19, 2017

TO: Ken Kaufmann
Strata Solar Development, LLC

FROM: Karla Wenzel
Manager, Pricing & Tariffs

PORTLAND GENERAL ELECTRIC
UM 1854
PGE Response to Strata Data Request No. 006
Dated July 14, 2017

Request:

Does PGE have proposed language to implement its second request on page 1 of its Application (the same owner aggregate capacity limit)?

a. If the answer to the question, above, is "Yes", please provide a copy of the proposed language.

b. If the answer to the question, above, is "No" how does PGE propose such rules should come to be written and in effect, and when would they become effective?

Response:

No. 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 that a standard contract under Schedule 201 is not available to a solar QF project with nameplate capacity greater than 100 kW if the project is owned or controlled by any party that has requested or obtained standard prices from PGE for more than 10 MW of aggregate solar QF capacity.

July 19, 2017

TO: Ken Kaufmann
Strata Solar Development, LLC

FROM: Karla Wenzel
Manager, Pricing & Tariffs

PORTLAND GENERAL ELECTRIC
UM 1854
PGE Response to Strata Data Request No. 007
Dated July 14, 2017

Request:

Refer to ORS 469A.210 (mandate that by 2025 8% of aggregate Oregon electrical capacity be from renewable energy projects under 20 MW). Does PGE track the percentage of its capacity from renewable energy projects under 20MW? If so, please provide all such data and analyses thereof.

Response:

PGE objects to this request on the basis that it seeks information not relevant to the docket. Without waiving its objection, PGE responds as follows:

No. The goal defined in ORS 469A.210 is a state goal, not a utility-specific goal. PGE does not currently track the percentage of its capacity from renewable energy projects under 20 MW.