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July 27, 2017

***Via Electronic Filing***

Public Utility Commission of Oregon
Attn: Filing Center
201 High St. SE, Suite 100
Salem OR 97301

Re: In the Matter of PORTLAND GENERAL ELECTRIC CO.
Application to Lower the Standard Price and Standard Contract Eligibility Cap for Solar Qualifying Facilities
**Docket No. UM 1854**

Dear Filing Center:

Enclosed please find the Comments of the Industrial Customers of Northwest Utilities in the above-referenced docket.

Thank you for your assistance. If you have any questions, please do not hesitate to call.

Sincerely,

*/s/ Jesse O. Gorsuch*
Jesse O. Gorsuch

Enclosure

**BEFORE THE PUBLIC UTILITY COMMISSION**

**OF OREGON**

**UM 1854**

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|---|---|
| In the Matter of<br><br>PORTLAND GENERAL ELECTRIC COMPANY<br><br>Application to Lower the Standard Price and Standard Contract Eligibility Cap for Solar Qualifying Facilities | COMMENTS OF THE INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES |

## I. INTRODUCTION

Pursuant to the Administrative Law Judge's ("ALJ") July 13, 2017, ruling in the above-referenced docket, the Industrial Customers of Northwest Utilities ("ICNU") submits these comments addressing Portland General Electric's ("PGE" or the "Company") June 30, 2017, Motion for Interim Relief ("Motion").

There is little doubt that the rates PGE is currently forced to pay for power from solar qualifying facilities ("QFs") are well above its avoided costs, the "maximum rate" authorized by the Public Utility Regulatory Policies Act ("PURPA").[1/] This has instigated a sudden and rapid growth in QF activity that has the potential to cost customers many hundreds of millions of dollars. Without some action to mitigate this impact, customers will not be indifferent to purchases of QF power, as PURPA intended.[2/] They will be materially harmed. ICNU represents the interests of PGE's largest customers, many of whose energy bills are among their greatest expenses. Any significant increase to the Company's power costs, therefore, has a major, and often outsized, impact on these customers' costs and their ability to compete in a

[1/] Am. Paper Inst. v. Am. Elec. Power Corp., 461 U.S. 402, 417, 103 S. Ct. 1921, 76 L. Ed. 2d 22 (1983).
[2/] Indep. Energy Producers Ass'n v. Cal. Pub. Utils. Comm'n, 36 F.3d 848, 858 (9th Cir. 1994).

global economy. For these reasons, ICNU supports PGE's Motion for Interim Relief ("Motion") to lower the eligibility cap for standard solar QF contracts to 3 MW. ICNU does not consider the Company's additional request to lower the cap to 100 kW for developers with projects that aggregate to 10 MW to be necessary for interim relief, but recommends that the Commission reconsider this request as part of its evaluation of the Company's application for permanent relief filed in this docket.

## II. BACKGROUND

PGE's Motion requests that the Commission: 1) lower the eligibility cap for a solar QF to obtain standard prices from 10 MW to 3 MW; and 2) require solar QFs to negotiate project-specific prices for facilities over 100 kW where any owner of the QF has already requested or obtained standard QF prices for more than 10 MW of solar QF output or, as an alternative to the second request, that the Commission lower the eligibility cap for a solar QF to obtain standard prices from 10 MW to 2 MW.[3/] If the Commission grants either or both of these requests, the interim measures would be in place while the Commission considers a companion request by the Company to permanently lower the eligibility cap.[4/]

## III. COMMENTS

### A. Standard for granting interim relief.

Commission statutes and rules do not explicitly address the legal standard for granting a motion for interim relief. Nevertheless, the Commission has found sufficient cause to grant interim relief in previous cases where Idaho Power Company and PacifiCorp have

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[3/] PGE Motion at 1.

[4/] Docket No. UM 1854, PGE's Application to Lower the Standard Price and Standard Contract Eligibility Cap for Solar Qualifying Facilities at 1 (June 30, 2017).



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demonstrated that significant growth in QF activity will require them "to enter into substantial long-term contracts that exceed the company's actual avoided costs."[5/]

The Public Utility Regulatory Policies Act ("PURPA") prohibits a utility from paying rates to QFs that exceed a utility's avoided costs.[6/] The Commission also has a fundamental duty to ensure that the rates charged to customers are just and reasonable.[7/] Simultaneously, Oregon law requires the Commission to "create a settled and uniform institutional climate for qualifying facilities in Oregon."[8/] To balance these obligations in previous cases where utilities sought interim relief from the Commission's eligibility threshold for standard QF contracts, the Commission concluded that such interim relief should be "narrow, targeted, and proportionate."[9/]

### B. PGE has demonstrated that interim relief in the form of lowering the eligibility cap for standard solar QF contracts to 3 MW is warranted.

PGE's request to lower the eligibility cap for standard solar QF contracts to 3 MW satisfies the Commission's criteria for granting interim relief. This request will protect customers from potentially significant cost impacts from long-term QF contracts executed above the Company's avoided costs, thereby furthering (1) PURPA's goal that ratepayers be indifferent to QF power and (2) state law requiring rates to be just and reasonable. It will also "create a settled and uniform institutional climate for qualifying facilities in Oregon" because both Idaho

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5/ Re Idaho Power Co., Docket No. UM 1725, Order No. 15-199 at 6 (June 23, 2015); see also, Re PacifiCorp, Docket No. UM 1734, Order No. 15-241 at 3 (Aug. 14, 2015).

6/ 16 U.S.C. § 824a-3(b) (prohibiting the adoption of any rule that provides "for a rate which exceeds the incremental cost to the electric utility of alternative electric energy").

7/ ORS 756.040.

8/ ORS 758.515(3)(b).

9/ Order No. 15-199 at 7.



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Power and PacifiCorp currently have a 3 MW cap for standard contracts.[10/] Thus, this will ensure consistency among the State's investor-owned utilities. Finally, PGE's request is "narrow, targeted, and proportionate" because it is precisely the same interim relief the Commission granted to Idaho Power and PacifiCorp.[11/] PGE's current circumstances are similar to, if not more dire than, these utilities' when they requested interim relief.

Capacity from PGE's executed QF contracts has increased from 68 MW in 2014 to the current 467.5 MW; PGE also has pending contracts for 417.2 MW of capacity from solar QFs.[12/] At the existing rate, PGE estimates that its customers will pay approximately $3 billion in PURPA costs over the next 15 years. Costs associated with the 417.2 MW of pending solar QF contracts alone are estimated to exceed expected market prices by approximately $545 million.[13/] When Idaho Power asked that the Commission approve its request for a lower eligibility cap, its operational QF contracts had a total output of 21 MW, but its QF contracts that were not yet operational had a total output of 110 MW, and it had another 245 MW in solar QF requests.[14/] PacifiCorp's executed QF contracts had a total output of 338 MW, and it had QF requests with a total of 587 MW of output, of which 480.1 MW were from solar QF contract requests.[15/] The amount of solar capacity PGE may be required to contract for in the absence of interim relief, therefore, is comparable to, or greater than, the amount PacifiCorp and Idaho Power were facing when they were granted interim relief.

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[10/] Docket No. UM 1734, Order No. 16-130 at 5 (Mar. 29, 2016); Docket No. UM 1725, Order No. 16-129 at 5-6 (Mar. 29, 2016).
[11/] Order No. 15-199 at 6; Order No. 15-241 at 3.
[12/] PGE Motion at 2.
[13/] Id. at 2-3.
[14/] Order No. 15-199 at 7.
[15/] Order No. 15-241 at 2; Docket No. UM 1734, Exh. No. PAC/101.



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PGE's request to lower the eligibility cap for its standard QF contracts will also help to rectify another problem the Commission identified in approving PacifiCorp's request for interim relief, which was to remove developers' incentives to engage in geographic arbitrage.[16/] Geographic arbitrage occurs when a QF is connected to one utility's system, but pays to wheel power over that utility's system to another utility to take advantage of higher avoided cost rates. When the Commission granted PacifiCorp's request in 2015, the Commission recognized that lowering the eligibility cap for PacifiCorp's QF contracts was necessary to prevent developers from engaging in such geographic arbitrage, as Idaho Power's eligibility cap for QF contracts had already been lowered to 3 MW.[17/] PGE is similarly situated, if not even more exposed, as it is now the only investor-owned utility in the State with an eligibility cap exceeding 3 MW.

Indeed, there is evidence that such geographic arbitrage is occurring now. Approximately 692.5 MW of the total 824.5 MW of capacity from PGE's executed and pending solar contracts are located off PGE's system.[18/] This demonstrates that PGE's avoided cost prices and higher eligibility cap are so attractive relative to those of other utilities that developers are willing to incur the cost to wheel their power over these other utilities' systems to sell to the Company.

### C. A 100 kW threshold for developers with more than 10 MW under contract does not appear necessary for interim relief.

In addition to its request to lower the eligibility threshold for standard contracts to 3 MW, PGE further requests that the Commission reduce the standard contract eligibility threshold to 100 kW for developers who have requested or obtained standard contracts for 10

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16/ Order No. 15-241 at 3.
17/ Id.
18/ PGE Motion at 8-9.



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MW of aggregate solar QF capacity. The Company states that this relief is necessary "to prevent sophisticated developers who are proposing portfolios with dozens of megawatts of solar QF output from breaking their portfolios into 3 MW or smaller pieces …."[19/] The Company states that it has six developers who have proposed multiple projects sized at 3 MW or less that aggregate to 92.8 MW.[20/] Thus, the Company states, without this additional relief, developers can simply break up their current projects into separate 3 MW projects to continue to qualify for standard contracts.[21/] As an alternative to this request, PGE proposes that the eligibility cap for all QFs be lowered to 2 MW, rather than 3 MW.

ICNU recommends that the Commission consider the Company's proposal as part of its review of PGE's application for permanent relief from the standard contract eligibility cap. However, this request does not appear to be the type of "narrow, targeted, and proportionate" relief appropriate for interim measures. The Company's concerns about sophisticated developers breaking larger projects into 3 MW pieces if the Commission lowers the eligibility cap appear largely speculative. Were this occurring, one would expect PacifiCorp and Idaho Power, who now have 3 MW caps, to have complained about it. Further, the six developers that have multiple projects at or below 3 MW that aggregate to at least 10 MW make up less than 100 MW of the over 820 MW of solar QFs that have requested or executed PPA's with the Company.

If the Commission approves PGE's Motion to lower the eligibility cap to 3 MW and developers do in fact take the actions PGE fears, then it should be able to demonstrate this to the Commission as it considers the Company's application for permanent relief. At that time,

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19/ PGE Motion at 9.
20/ Id. at 10.
21/ Id.



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such relief may be warranted. For interim relief, however, a 3 MW cap, as was granted to Idaho Power and PacifiCorp should be presumed to be sufficient.

## IV. CONCLUSION

For the reasons stated above, ICNU supports PGE's Motion requesting that the Commission lower the eligibility caps for standard solar QF contracts from 10 MW to 3 MW, but recommends that the Commission deny the Company's additional requested relief and revisit it as part of PGE's application for permanent relief filed in this docket.

DATED this 27th day of July, 2017.

Respectfully submitted,

*/s/ Tyler C. Pepple*
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