

1 **BEFORE THE PUBLIC UTILITY COMMISSION**
2 **OF OREGON**

3 **UM 1854**

4 In the Matter of the
5 PORTLAND GENERAL ELECTRIC
6 COMPANY

STAFF RESPONSE TO PORTLAND GENERAL
ELECTRIC'S MOTION FOR INTERIM RELIEF

7 Application to Lower Standard Price and
8 Contract Eligibility Cap for Solar Qualifying
9 Facilities.

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11 **A. Introduction.**

12 The Public Utility Regulatory Policy Act (PURPA) requires PGE to purchase energy and
13 capacity from qualifying facilities. Under the Commission's rules and orders implementing
14 PURPA, PGE must enter into contracts with QFs that contain the terms and conditions
15 (including prices) for the purchase of the QFs' energy and capacity. QFs that want to enter into a
16 PURPA contract with PGE are entitled to a "standard contract" if the nameplate capacity of their
17 facility is 10 MW or less. A "standard contract" is one in which the prices and the other terms
18 and conditions are reviewed and approved by the Commission. QFs that are larger than 10 MW
19 are only eligible to enter into "non-standard" contracts.

20 PGE has filed an application asking the Commission to lower the eligibility cap for
21 "standard prices" for solar QFs from ten MW to three MW. PGE also asks the Commission
22 [d]eclar[e] that a solar QF with capacity above 100 kilowatts ("kW") is not eligible for a standard
23 contract or standard prices from PGE if any owner of the solar QF has requested or obtained
24 standard prices from PGE for more than 10 MW of aggregate solar QF capacity." Alternatively,
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1 PGE asks the Commission to lower the eligibility cap for standard prices for solar QFs to two
2 MWs.¹ PGE has also filed a motion for interim relief, asking the Commission to temporarily
3 grant one of the alternative forms of relief asked for in the Application, pending the
4 Commission's final decision on the Application.

5 In this Staff Response to Portland General Electric's Motion for Interim relief, Staff
6 recommends that the Commission lower the eligibility cap for standard prices to three MWs for
7 solar QFs seeking a PURPA contract with PGE, pending the Commission's final resolution of
8 the Application, subject to certain reporting requirements. Staff recommends that the
9 Commission deny PGE's other requests for interim relief.

10 **A. Standard contracts in Oregon.**

11 Standard contracts are intended to reduce market barriers for small QFs. Federal Energy
12 Regulatory Commission (FERC) rules implementing sec. 210 of PURPA require utilities to offer
13 standard "rates" to QFs with a nameplate capacity of 100 kW and less, and allow state
14 commissions to establish a higher eligibility cap for standard rates.² When implementing the
15 requirement for standard rates, FERC noted that it was "aware" that "supply characteristics of a
16 particular facility may vary in value from the average rate set forth in the utility's standard rate
17 required by this paragraph," but required standard rates for QFs of 100 kW and less due to its
18 concern that transaction costs associated with administration of the program would likely render
19 the program uneconomic for this size of qualifying facility.³

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21 ¹ PGE Application 1.

22 ² Under the FERC rules interpreting PURPA, "rates" are defined as "any price, rate, charge, or
23 classification made, demanded, observed or received with respect to the sale or purchase of
24 electric energy or capacity, or any rule, regulation, or practice respecting any such rate, charge,
25 or classification, and any contract pertaining to the sale or purchase of electric energy or
26 capacity." (18 § C.F.R. 292.101(b)(5).)

³ Order No. 69; 45 Fed. Reg. 12214 (Feb. 25, 1980).

1 In its initial orders and rules implementing PURPA, the Commission did not impose an
2 eligibility cap for standard rates that differed from the FERC-required 100 kW, but did so in
3 1991.⁴ In 1991, the Commission adopted guidelines for the use of competitive bids to acquire
4 new resources. The Commission noted that QFs could secure a contract with a utility through a
5 competitive bid, or under the contracting procedures contemplated by PURPA.⁵ The
6 Commission decided the eligibility cap for standard rates should be increased to one MW, stating
7 that "[w]ithout this change, the transaction costs associated with participation in competitive
8 bidding could disadvantage QFs."⁶

9 In 2005, the Commission increased the eligibility cap for standard contracts to ten MW.⁷
10 The Commission "continue[d] to adhere to the policy, as articulated in [1991], that standard
11 contract rates, terms and conditions are intended to be used as a means to remove transactions
12 costs" as well as other market barriers such as asymmetric information associated with QF
13 contract negotiation, when they impair QF development.⁸ The Commission noted that the need
14 to reduce market barriers must be balanced with the Commission's interest in ensuring that a
15 utility pays a QF no more than its avoided costs for the purchase of energy.⁹ The Commission
16 also noted that standard contracts do not take into account individual QFs cost characteristics that
17 result in actual avoided costs that differ from the standard avoided cost rates, and that the risk
18 that future avoided costs may differ from the fixed prices in a PURPA contract is "greater" for a
19 large QF than a small one.¹⁰

20 ⁴ See Order Nos. 81-319, 89-742.

21 ⁵ Order No. 91-1383 (1991 WL 501921).

22 ⁶ *Id.* (1991 WL 501921 at 10).

23 ⁷ Order No. 05-584 at 15.

24 ⁸ Order No. 05-584 at 15.

25 ⁹ *Id.*, at 16.

26 ¹⁰ *Id.*

1 The Commission addressed the eligibility for standard contracts again in 2014, again
2 concluding that a ten MW cap is appropriate:

3 Standard contract rates, terms and conditions are intended to be used as a means to
4 remove transaction costs associated with QF contract negotiation, when such costs act as
5 a market barrier to QF development. If a QF is not eligible for a standard contract, a utility
6 is still obligated to purchase a QF's net output at the utility's avoided cost, but the QF
7 must negotiate the rates, terms and conditions of a power purchase contract with the
8 purchasing utility. The eligibility cap of 10 MW is intended to address the challenges
9 smaller QFs face in entering our market, including the transaction costs incurred in
10 negotiating an agreement, and other market barriers such as asymmetric information and
11 an unlevel playing field, all of which complicate the negotiation of non-standard QF
12 contracts. These kinds of market barriers can render certain QF project uneconomic to get
13 off the ground if an individual contract must be negotiated."¹¹

14 Since the Commission issued Order No. 14-058 excerpted above, both Idaho Power and
15 PacifiCorp have asked the Commission to lower the eligibility cap for standard contracts. In
16 both cases, the Commission lowered the eligibility cap for standard "prices" for solar QFs to
17 three MW but specified that solar QFs of ten MW or less are still eligible for the non-price terms
18 and conditions of a standard contract.¹² In both cases, the Commission noted that developers
19 were developing multiple QFs sized to meet the eligibility cap for standard contracts that in
20 aggregate would not be eligible for standard contracts. The Commission concluded that the
21 potential harm that ratepayers will pay avoided cost prices that exceed the utility's actual avoided
22 costs warranted reducing the eligibility cap for standard prices.¹³

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26 ¹¹ *In the Matter of Staff of the Public Utility Commission of Oregon Investigation into Qualifying Facility Contracting and Pricing* (Docket No. UM 1452), Order No. 14-058 at 7, quoting Order No. 05-584 at 16.

¹² Order No. 15-129 (Docket No. UM 1725); Order No. 16-130 at 4-5 (Docket No. UM 1734).

¹³ *Id.*

1 **B. PGE's request.**

2 PGE asks that the Commission lower the eligibility cap for standard prices for solar QFs
3 to either three MW or two MW. If the Commission reduces the eligibility cap for standard prices
4 to three MW, PGE asks that the Commission also limit the availability of standard contracts by
5 [d]eclaring that a solar QF with capacity above 100 kilowatts ("kW") is not eligible for a
6 standard contract or standard prices from PGE if any owner of the solar QF has requested or
7 obtained standard prices from PGE for more than 10 MW of aggregate solar QF capacity."¹⁴
8 PGE alleges that,

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10 [t]hirteen developers are seeking or have obtained standard contracts for multiple solar
11 QF projects sized between 2.2 MW and 10 MW (with one exception at 1.5 MW). These
12 requests represent 91 solar QF projects with combined output of 541.3 MW. This is more
13 than 95% of all the solar QF activity facing PGE. In other words, 13 sophisticated
14 developers are taking advantage of standard contracts and standard prices intended to
15 support small-scale development and using such contracts to propose the large-scale
16 development of hundreds of megawatts of aggregate QF output. These developers treat
17 their multiple projects as a single, unified proposal. They typically propose four to ten
18 projects at the same time with identical project configurations and nameplate capacities.¹⁵

19 PGE states that "[g]iven these dynamics and the tremendous magnitude of QF output
20 being proposed by a handful of sophisticated developers, PGE is requesting that the Commission
21 revise its existing orders implementing PURPA to allow PGE to negotiate prices and contracts
22 with a larger portion of solar QF projects."¹⁶

23 **C. Staff recommendation.**

24 Staff agrees with PGE that it appears a few developers that are capable of developing
25 large, multi-megawatt projects are instead developing multiple small projects in order to obtain

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¹⁴ PGE Application, pp. 16-20.

¹⁵ PGE Application, pp. 8-9.

¹⁶ PGE Application, p. 10.

1 standard rates. None of the projects proposed by the thirteen developers discussed in PGE's
2 application seek to develop a solar QF that exceeds ten MWs. The result is that these developers
3 are entitled to "standard" prices even though the aggregate size of their investments is of the type
4 that is only be eligible for non-standard prices.

5 The circumstances described above (and in PGE's Application) are similar to those
6 presented by PacifiCorp and Idaho Power in their applications to lower the eligibility cap for
7 solar QFs.¹⁷ Accordingly, Staff supports lowering the eligibility cap for standard prices to three
8 MW pending the Commission's final decision regarding the Application.

9 Notably, the reduction to the standard prices still results in the elimination of the barrier to entry
10 posed by the need to negotiate a contract and the transaction costs. Instead, solar QFs under ten
11 MW would still be eligible for the standard contract terms and conditions, including the more
12 expedited process for obtaining a contract.

13 Staff does not support PGE's other requests for interim relief, which are limiting the
14 amount of solar capacity any one developer can develop under a standard contract or lowering
15 the eligibility cap for solar QFs to two MW. Staff does not believe that PGE's request for
16 interim relief is the appropriate vehicle in which the Commission should consider adopting a new
17 policy regarding PURPA contracting or lowering the eligibility cap below that previously
18 established for solar QFs contracting with PacifiCorp and Idaho Power. Staff believes that these
19 departures from Commission policy should occur only after parties have had more than the
20 expedited process allowed for PGE's request for interim relief.

21 To ensure that PGE adheres to the contracting and timing requirements in Schedules 201
22 and 202, Staff recommends that the Commission require PGE to file a **monthly** report on QF
23 contracting activity. The report should include a list of every QF that has sought indicative

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25 ¹⁷ Order No. 15-129 and Order No. 16-130.

pricing or otherwise indicated that it would like to enter into a PURPA contract with PGE, but that does not have an executed contract, and for each QF the report should show:

1. The date of the initial request for a contract and each of the other milestones listed under the heading "Guidelines for 10 MW or Less Facilities Electing Standard PPA," in PGE's Schedule 201, i.e., the date the draft standard PPA is provided to QF.

2. The date of the initial request for indicative pricing and each of the other milestones listed under the heading "Procedures To Develop a Negotiated Agreement" in PGE's Schedule 202, i.e., the date a developer submitted a written request for draft Negotiated Agreement.

3. The status of the contracting process, i.e., within the 15-day period the Company has to provide a draft standard PPA after the QF has submitted a written request for a final draft standard PPA under Schedule 201, or within period after developer has submitted written notice of intend to proceed with negotiations under Schedule 202, etc.

4. What information in addition to that specifically listed in the standard PPA form or in Schedule 202 that PGE has required the QF to provide.

Requiring PGE to report to the Commission on the progress of the contracting process for each QF will help to ensure PGE is acting within the parameters of Schedules 201 and 202, which provides some protection to QFs. Requiring PGE to report on the information it requires from each QF is important because PGE's obligations to provide indicative pricing, a draft negotiated agreement and a final executable agreement are all contingent on the QF providing PGE project information that the Company reasonably determines to be necessary. It is important to monitor whether the information requirements are imposed consistently among the QFs and also, that they comply with the requirements of Schedules 201 and 202.

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1 Finally, if the Commission grants interim relief, Staff recommends that the Commission
2 clarify that the new eligibility cap is not retroactive. Staff is concerned that PGE may not be
3 adhering to the timing requirements of Schedules 201 and 202. In a response to a data request
4 issued by Strata Solar Developments, PGE states that it does not intend to provide executable
5 standard PPAs prior to the Commission ruling on PGE's Motion for Interim Relief.¹⁸ However,
6 Staff does not believe that PGE is authorized to unilaterally disregard the contracting parameters
7 outlined in Schedules 201 and 202. Accordingly, it is not until after the Commission issues
8 interim relief (if it chooses to do so) that PGE can discontinue offering standard prices to all
9 solar QFs that are ten MW and smaller.

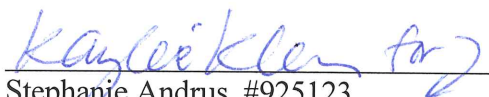
10 II. Conclusion

11 Staff recommends that the Commission lower the eligibility cap for standard prices for
12 solar QFs to three MWs pending the final resolution of PGE's Application, and impose the
13 monthly reporting requirements recommended by Staff. Staff recommends that the Commission
14 deny PGE's other requests for interim relief.

15 DATED this 27th day of July 2017.

17 Respectfully submitted,

18 ELLEN F. ROSENBLUM
19 Attorney General

20 
21 Stephanie Andrus, #925123
22 Of Attorneys for Department of Revenue,
23 State of Oregon, Defendant

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25 ¹⁸ See Staff Attachment, PGE Response to Strata Solar Developments DR No. 10.

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. 010
Dated July 14, 2017**

Request:

Is PGE currently processing Schedule 201 standard contract requests from solar facilities in accordance with the Schedule 201 timelines? If not, please explain.

Response:

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

PGE is currently processing Schedule 201 standard contract requests from solar facilities in accordance with the Schedule 201 timelines. PGE has requested changes in eligibility criteria, including interim changes, effective June 30, 2017. PGE does not expect to provide executable Standard PPAs prior to Commission ruling on PGE's motion for interim relief.

Attachment