

capacity credits are nothing more than an avoided cost calculation for a specific resource using a unique calculation method adopted for the GEAR program. As such, the GEAR credits are no different from the numerous avoided cost calculations that have been made public by state commissions throughout the region, as cited in our objection, and PGE presents no basis for special treatment here.

Therefore, the Commission should order removal of the confidential treatment of PGE's energy and capacity credits in the GEAR compliance filing.

ARGUMENT

The General Protective Order requires PGE's response to "identify the factual and legal basis of how the challenged information is protected under [applicable law]" and provides that "[b]road allegations unsubstantiated by specific facts are not sufficient."¹ Instead of meeting this standard, PGE's response makes a number of factually incorrect assertions and identifies no legitimate basis to keep the GEAR energy and capacity credits non-public.

First, PGE's primary response incorrectly theorizes that granting Calpine Solutions' objection would allow non-qualified persons to ascertain the GEAR PPA price. PGE asserts that "parties could use the energy and capacity credit values to back-solve for an approximate power purchase agreement price."² According to PGE's response, "[t]his is easily achieved since the subscription price is equal to the PPA price less credits, plus admin fee, where the admin fee is generally minimal."³ But PGE's argument is fatally flawed because the subscription price remains confidential. Calpine Solutions has not sought to make the subscription price public.

¹ General Protective Order No. 18-260 at App. A at p. 2, ¶ 9.

² *PGE's Response to Calpine Solutions' Objection*, at pp. 4-5.

³ *Id.* at 5.

An outsider with public information is currently looking at three variables with unknown values: the PPA price, the credit, and the subscription price. As a matter of basic mathematics, identifying the value of just one of those three variables (i.e., the credit) does not enable anyone to back into the value of either of the other two. And PGE provides no explanation for how anyone could do so. Instead, its argument assumes that the subscriber price is public when, in fact, it is not public. Nor would it be made public by granting Calpine Solutions' objection. Therefore, PGE's main argument justifying confidential treatment of the credits is wrong and fails to justify confidential treatment for the GEAR credit.

PGE next disputes that the GEAR credit is, in effect, a calculation of PGE's own avoided costs and, remarkably, even accuses Calpine Solutions of making a "disingenuous and inappropriate" argument to analogize to avoided costs.⁴ Despite PGE's characterizations, PGE's response lacks substance and does not refute the main points made in Calpine Solutions' objection. Most notably, PGE's own GEAR tariff, Schedule 55, specifically references the avoided cost provisions of the Federal Energy Regulatory Commission's ("FERC") rules under the Public Utility Regulatory Policies Act of 1978 ("PURPA"), 18 CFR Part 292, as the conceptual basis for the credit calculation.⁵ The referenced FERC regulations define "avoided costs" as "*the incremental costs to an electric utility of electric energy or capacity or both, which, but for the purchase from the qualifying facility or qualifying facilities, such utility would generate itself of purchase from another source.*"⁶ In addition to referencing the avoided cost provisions in Schedule 55, PGE has also described the credit in its testimony as an estimate of

⁴ *Id.* at 6.

⁵ PGE's Schedule 55 at Sheet 55-3.

⁶ 18 CFR § 292.101(6) (emphasis added).

the “*the incremental value of energy and capacity* provided by renewable resources secured for the program,” which mirrors the definition of avoided costs in the FERC regulations.⁷ It is hard to understand how Calpine Solutions could be engaging in disingenuous arguments by relying on PGE’s statements in its tariff and its description of its program in its testimony. The fact that GEAR uses AURORA and an IRP method to calculate the value for its credits instead of the same method used for standard avoided cost rates offered to qualifying facilities under PGE’s Schedule 201 does not change the fact that the GEAR credit is an avoided energy and capacity cost calculation for the incremental value of the supply to PGE.

Further, Calpine Solutions’ objection demonstrated such avoided costs for energy and capacity are not commonly treated as commercially sensitive or confidential in the industry. The objection cited decisions issued by state utility commissions throughout the region, including the states of Idaho, Montana, and Wyoming, as well as a filing in Oregon by PacifiCorp, where a utility’s avoided costs calculated based on an individual facility’s forecasted output through a modeling exercise materially analogous to that used for the GEAR credit was publicly available.⁸ In response, PGE does not rebut that such incremental cost calculations are commonly made publicly available.

PGE’s response even confirms, yet again, that its GEAR credits are an incremental cost calculation analogous to an avoided cost calculation. PGE states the GEAR credits “are calculated using bidder supplied resource-specific production information for actual resources

⁷ See PGE/200, Sims-Tinker/10 (describing the credit as follows: “subscriber customers would receive a credit for *the incremental value of energy and capacity* provided by renewable resources secured for the program” (emphasis added)).

⁸ See *Calpine Solutions’ Objection* at pp. 6-7 & nn. 16-18.

under development, PGE’s projections of hourly power prices, and the unique contribution the specific resource brings to meeting PGE’s then current capacity needs, if any.”⁹ That is a good description of how avoided costs are commonly calculated, as confirmed by materials cited in Calpine Solutions’ objection. For example, PacifiCorp calculates its non-standard avoided cost rates, as publicly provided in the indicative prices cited in Calpine Solutions’ objection,¹⁰ by running the proposed facility’s forecasted output through PacifiCorp’s GRID model to calculate a unique energy and capacity value.¹¹ Similarly, Idaho Power calculates its non-standard avoided costs through use of the AURORA power supply model and the proposed facility’s forecasted output,¹² and all final rates are publicly submitted for approval by the Idaho Public Utilities Commission.¹³ PGE’s attempt to suggest its GEAR credits are more commercially sensitive than any other avoided cost calculation is without merit.

PGE’s response additionally suggests that the GEAR credit is similar to the unique PPA bid price and bidder scores in a competitive solicitation, which are allowed to be confidential.¹⁴ But this argument overlooks the fact that the GEAR credit does not reveal commercially

⁹ *PGE’s Response to Calpine Solutions’ Objection*, at p. 6.

¹⁰ *See Calpine Solutions’ Objection* at 6 n. 17 (citing indicative pricing provided in *Declaration of Bruce Griswold In Support of PacifiCorp’s Response to Dalreed Solar LLC’s Motion for Summary Judgment*, at Attachment B, p. 3, Docket No. UM 2125 (Jan. 19, 2021)).

¹¹ *See In re Pub. Util. Comm’n of Ore.: Investigation into Qualifying Facility Contracting and Pricing*, Docket No. UM 1610, Order No. 16-174, at 21 (May 13, 2016) (describing the PacifiCorp’s avoided cost method as follows: “PacifiCorp explains the PDDRR method compares two GRID simulations to determine the system energy value of a QF resource, taking into account a QF’s specific operating characteristics and point of delivery on the company’s system. It accounts for factors such as a QF’s location, delivery pattern, and capacity contribution.”).

¹² *In re Pub. Util. Comm’n of Ore.: Investigation into Qualifying Facility Contracting and Pricing*, Order No. 16-174, at 21-23 (describing Idaho Power’s avoided cost method approved in Idaho and Oregon).

¹³ *See Calpine Solutions’ Objection* at 6-7 n. 18 (citing such an Idaho Public Utilities Commission proceeding).

¹⁴ *PGE’s Response to Calpine Solutions’ Objection*, at 7.

sensitive information of the developer as is the case with the winning bidders' scores and prices in a competitive solicitation. As noted above, and not demonstrated otherwise by PGE, the GEAR credit is merely the resulting calculation of PGE's avoided costs based on many inputs and considerations.

PGE also asserts that making the energy and capacity credits public would somehow give Calpine Solutions an unfair advantage over PGE and other entities.¹⁵ This assertion is made with no further support or explanation. In any event, there would be no unfair advantage to Calpine Solutions because the GEAR credit would be *public*, and any benefit from such knowledge would equally accrue to all interested parties. In contrast, keeping the information confidential provides an advantage uniquely to PGE (should it ever seek to propose a utility-owned resource in the program) and the other parties to this GEAR transaction because only they would possess free use of the critical benchmark of PGE's GEAR energy and capacity credits endorsed by the Commission Staff. Despite PGE's assertion that Calpine Solutions should have been able to "ballpark" the credit itself, PGE's design of the program provides a unique advantage to any previously successful supplier or party that otherwise has information related to PGE's calculation of its avoided costs under the GEAR method, even though such calculations should not be confidential. Instead, Calpine Solutions' proposal would provide this important data point to all interested parties and promote more active participation by competing suppliers and thus more competition.

¹⁵ *PGE's Response to Calpine Solutions' Objection*, at 7 (stating "data in question here falls squarely within the 'give a utility's competitors an unfair advantage' standard").

Finally, PGE appears to suggest that because no party objected to confidential treatment of the GEAR credits in PGE's prior compliance filings, the Commission should overrule the objection here.¹⁶ This argument proves nothing. The fact that no party chose to litigate PGE's designation of confidential material in a prior phase of this proceeding also means that the Commission and the administrative law judge never reviewed or endorsed such confidential treatment. Further, if PGE's prior filing were somehow precedential, PGE's current compliance filing would have additional infirmities beyond the single issue identified in Calpine Solutions' objection because PGE's treatment in the instant filing is quite different from its treatment in the prior compliance filing. For instance, unlike the instant compliance filing, the prior compliance filing, made on September 13, 2019, did not designate the subscriber agreement as highly confidential under the Modified Protective Order, which was not issued until a year later on September 16, 2020. PGE even provided the previous subscriber agreement as a public document in discovery with the customer name, subscriber price, and subscription amounts redacted.¹⁷ Calpine Solutions' instant objection does not address PGE's highly confidential treatment of the subscriber agreement, but PGE's inconsistent treatment of that issue surely demonstrates that PGE's own prior actions cannot serve as precedent for how the Commission evaluates the designation subject to the objection here.

In sum, PGE's response does not demonstrate that the GEAR energy and capacity credits warrant confidential protection under the General Protective Order.

¹⁶ *PGE's Response to Calpine Solutions' Objection*, at 5 (stating, "It is also worth noting that Calpine did not object to PGE's designation in the first of its two compliance filings for the GEAR tranche 1 subscriptions").

¹⁷ UM 1953 PGE's Response to Calpine Solutions' Data Request No. 003-A.

CONCLUSION

For the reasons explained in Calpine Solutions' objection and in this reply, the Commission should order removal of the confidential treatment of PGE's energy and capacity credits in the GEAR compliance filing.

DATED: February 22, 2021.

RICHARDSON ADAMS, PLLC

/s/ Gregory M. Adams

Gregory M. Adams (OSB No.101779)

Peter J. Richardson (OSB No. 066687)

515 N. 27th Street

Boise, Idaho 83702

Telephone: (208) 938-2236

Fax: (208) 938-7904

greg@richardsonadams.com

peter@richardsonadams.com

Of Attorneys for Calpine Energy
Solutions, LLC