

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

3 UM 1987

4 In the Matter of)
5 PORTLAND GENERAL ELECTRIC) STAFF RESPONSE TO PORTLAND
6 COMPANY,) GENERAL ELECTRIC COMPANY'S
7 Request to Update Schedule 201and) MOTION TO LIFT SUSPENSION
8 Standard Power Purchase Agreements.)
_____)

9 PGE seeks to lift the stay of Docket No. UM 1987 imposed in December 2018. PGE
10 notes that the Administrative Law Judge (ALJ) granted the stay based on the assumption that
11 Docket No. AR 631 would move at an appropriate pace and that AR 631 has not done so.¹ Staff
12 understands PGE's frustration and notes that if this motion is decided on who has been most
13 aggrieved, PGE should prevail. However, because the circumstances underlying the QFs'
14 original request for stay of UM 1987 are more complicated than suggested by PGE's motion to
15 lift the stay, Staff doubts it would be administratively efficient to lift the stay.

16 For these reasons, Staff neither supports nor opposes PGE's request to lift the stay.
17 However, as recommended by NewSun, LLC in its January 11, 2019 response to PGE's Motion
18 to Lift Suspension, if the ALJ lifts the stay, Staff asks that certain issues be culled from UM 1987
19 to prevent conflicting Commission determinations in UM 1987 and AR 631. Today Staff posted
20 its draft proposal for changes to the standard PURPA PPA terms and contracting process in
21 docket in AR 631. This document should help parties to UM 1987 identify where PGE's
22 proposed revisions conflict with or overlap matters that will be addressed in AR 631. Proposed
23 changes that do not conflict or overlap could proceed in UM 1987. However, given the previous
24 opposition to PGE's proposed changes, Staff does not necessarily assume the process to review
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26 ¹ Portland General Electric Company's Motion to Lift Stay (December 31, 2020), p. 5.

1 and litigate these proposed changes will be quick.

2 **Staff comments on PGE motion.**

3 PGE filed its Request to Update Schedule 201 and Standard Power Purchase Agreements
4 on December 7, 2018. Soon after, PGE filed a request to postpone the scheduled prehearing
5 conference “so that parties will have an opportunity to review and discuss PGE’s filing.”² On
6 February 6, 2019, PGE filed a status report stating that parties were engaged in workshops and
7 that “PGE expects to request that a prehearing conference be scheduled in the near future.”³ On
8 March 4, 2019, PGE filed another status report indicating that parties planned to continue
9 working toward settlement until the end of March and requested that a prehearing conference be
10 scheduled the second week of April [2019].”⁴ On May 1, 2019, PGE filed a third status report
11 indicating that parties continued to work toward settlement and “will request that a prehearing
12 conference be scheduled if settlement efforts are unsuccessful.”⁵

13 On October 1, 2019, PGE asked that a prehearing conference be scheduled and filed a
14 Revised Request to Update Schedule 201 and Standard Power Purchase Agreements. In its
15 revised request, PGE stated that parties had engaged in substantial settlement discussions” but
16 had been unable to agree on a final product for either Schedule 201 or the Standard PPAs.”⁶
17 PGE stated that it designed the Revised Filing so that it could be expeditiously reviewed by
18 stakeholders and the Commission, had eliminated changes that would have imposed substantive
19 responsibilities on QFs, and removed those few provisions that would have required a change in
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23 ² PGE Motion to Postpone Prehearing Conference (12/21/2018).

24 ³ PGE Status Report (February 6, 2019).

25 ⁴ PGE Status Report (March 4, 2019).

26 ⁵ PGE Status Report (May 2, 2019).

⁶ PGE Revised Request to Update Schedule 201 and Standard Power Purchase Agreements
(October 1, 2019), p. 2.

1 Commission policy.⁷ A prehearing conference was scheduled for November 13, 2019, to
2 establish a procedural schedule for PGE’s revised request.

3 If all parties had agreed with PGE’s characterization of PGE’s revised request, UM 1987
4 would likely have proceeded at the conclusion of 2019. Instead, a coalition of parties, the
5 Renewable Energy Coalition, Northwest and Intermountain Power Producers Coalition, and
6 Community Renewable Energy Association (hereinafter “QF Parties”) filed a motion to stay the
7 proceedings in UM 1987. The QF Parties strongly disagreed with PGE’s characterization of its
8 revised request. The QF Parties stated that they “strongly oppose PGE’s Proposal, because
9 contrary to PGE’s claims, it contains substantive and numerous changes adverse to the status quo
10 and in PGE’s favor as compared to PGE’s currently-effective standard power purchase
11 agreement (“PPA”).”⁸

12 The QF Parties urged the ALJ to stay UM 1987 to allow the process in AR 631 to go
13 forward because the rulemaking “would address some of the same exact legal, policy, factual and
14 contract language issues that are raised in PGE’s filing.”⁹ Evergreen BioPower, LLC filed a
15 response in support of the Motion for Stay and PGE filed a response in opposition. Ultimately,
16 the ALJ granted the stay, ordering Staff to file a Status Report when ruled are adopted in AR 631
17 or six months after the Order allowing the stay, whichever came first.¹⁰

18 PGE’s frustration with Staff’s lack of progress in AR 631 is understandable. The ALJ
19 stayed UM 1987 to allow parties to focus their efforts on AR 631 and Staff did not advance the
20 docket as planned. And, as PGE asserts, Staff counsel repeatedly told PGE that she believed a
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22 ⁷ PGE Revised Request to Update Schedule 201 and Standard Power Purchase Agreements
23 (October 1, 2019), p. 2.

24 ⁸ Motion to Staff of Northwest and Intermountain Power Producers Coalition, Renewable Energy
25 Coalition, and Community Renewable Energy Association (November 12, 2019), p. 2.

26 ⁹ Motion to Staff of Northwest and Intermountain Power Producers Coalition, Renewable Energy
Coalition, and Community Renewable Energy Association (November 12, 2019), p. 3.

¹⁰ UM 1987 Ruling (December 23, 2019).

1 Staff proposal would be forthcoming, but such a proposal did not materialize. Staff’s counsel
2 should have communicated more clearly with PGE. Staff counsel’s flawed communications with
3 PGE aside, Staff does not believe “floundering” is the appropriate characterization of Staff’s
4 efforts in this docket.

5 PGE fails to note that Staff met with a small group of industry representatives, including
6 representatives from PGE, in late 2019 and January 2020 to discuss changes to the PPA standard
7 PPA and contracting issues. Staff intended that these discussions would inform Staff’s
8 understanding of the practical ramifications of different policies and hoped they might reveal
9 some coalescence between utilities and QFs that Staff may have capitalized upon in Staff’s
10 ultimate proposal to all stakeholders in the AR 631 process. The meetings were in fact very
11 informative to Staff and did reveal certain areas where utility positions and QF positions may
12 coalesce.

13 Staff’s failure to issue a draft proposal for AR 631 in 2020 was also not due to
14 floundering. Events transpired in 2019 and 2020 that were pertinent to the Staff position and
15 PURPA implementation in Oregon. Most notably, FERC issued a Notice of Proposed
16 Rulemaking in 2019, an order adopting rules in July 2020,¹¹ and issued Final Rules and a
17 clarifying order in November 2020.¹² FERC’s rules directly impact Oregon’s implementation of
18 PURPA and informed Staff’s draft proposal for AR 631.

19 Second, Staff proposed and received Commission approval of certain eligibility criteria
20 for Community Solar Program Project pre-certification that Staff has incorporated into its AR
21 631 proposal. The Commission adopted the criteria in 2019, but the CSP implementation has
22 been ongoing and has informed Staff’s AR 631 proposal. Third, PacifiCorp asked for and was

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24 ¹¹ *Qualifying Facility Rates and Requirements Implementation Issues Under the Public Utility
25 Regulatory Policies Act of 1978*, Order No. 872, 85 FR 54638 (Sep. 2, 2020), 172 FERC ¶ 61,
26 041 (2020).

¹² *Qualifying Facility Rates and Requirements Implementation Issues Under the Public Utility
Regulatory Policies Act of 1978*, Order No. 872-A, 173 FERC 61,158 (November 19, 2020).

1 granted authority to change how it processes its interconnection applications. Interconnection
2 has been a hurdle in the development of PURPA projects. PacifiCorp’s previous backlog of
3 interconnection applications would have been incompatible with Staff’s AR 631 proposal, and
4 ultimately the Commission’s order in PacifiCorp’s queue reform docket informed AR 631
5 proposal.

6 In summary, Staff’s meetings with representatives of stakeholder groups in 2019 and
7 January 2020, discussions with stakeholders in other proceedings in 2020, and events that
8 transpired as 2020 progressed shaped Staff’s proposal regarding changes to Oregon’s PURPA
9 contracting and standard PPAs. The Staff proposal has gone through several iterations
10 internally. While Staff counsel anticipated releasing the proposal at several points over 2020,
11 events transpired to delay the release.

12 **Conclusion**

13 Ultimately, the changes that do not conflict or overlap with AR 631 may be just what
14 PGE described in its October 1, 2019 Revised Request to Update Schedule 201 and Standard
15 Power Purchase Agreements—changes that reduce ambiguity. Notwithstanding, Staff has
16 reservations about whether UM 1987 could be processed efficiently given its history. To the
17 extent the ALJ grants PGE’s request to lift the Stay, Staff recommends that the ALJ order that
18 issues that overlap with AR 631 be removed from UM 1987.

19 DATED this 15th day of January, 2021.

20 Respectfully submitted,

21 ELLEN F. ROSENBLUM
22 Attorney General

23 */s/ Stephanie Andrus*

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