ORDER NO. 17 310

ENTERED: AUG 18 2017

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1854

In the Matter of PORTLAND GENERAL ELECTRIC COMPANY, Application to Lower the Standard Price and Standard Contract Eligibility Cap for Solar Qualifying Facilities.	ORDER

DISPOSITION: MOTION FOR INTERIM RELIEF GRANTED IN PART AND DENIED IN PART

I. SUMMARY

In this order, we respond to Portland General Electric Company's expedited motion for interim relief to modify the company's obligations under the Public Utility Regulatory Policies Act (PURPA) as they relate to power purchase agreements (PPAs) with solar qualifying facilities (QFs). Based on the information provided by the parties and the Commission Staff, we reduce the eligibility cap for avoided cost prices in standard contracts to 3 megawatts (MW) for solar QFs effective July 14, 2017. We deny PGE's requests for other interim relief.

II. PROCEDURAL HISTORY

On June 30, 2017, PGE filed an application to modify the terms and conditions under which PGE enters into PPAs with QFs. The company's primary request contains two parts: (1) that we lower the eligibility cap for a solar QF to obtain standard avoided cost prices from PGE from 10 MW to 3 MW; and (2) that we declare a solar QF project with capacity above 100 kilowatts (kW) not eligible for a standard contract or avoided cost prices if any owner of the solar QF project has requested or obtained standard prices from PGE for more than 10 MW of solar capacity. In the alternative, PGE requests that we lower the eligibility cap for solar QF standard contracts and avoided cost prices to 2 MW.

Simultaneous with the filing of the application for permanent relief, PGE filed a motion for identical relief on an interim basis, beginning immediately, and requested expedited consideration. PGE requests that the interim relief apply to all 41 pending requests for PURPA contracts that have not achieved a Legally Enforceable Obligation (LEO) (prior to June 30, 2017, the date of PGE's motion). PGE believes that, without interim relief, it may be obligated to purchase a combined output of 417.2 MW or more before we act on its application for permanent relief.[1]

The following parties intervened in this proceeding: Industrial Customers of Northwest Utilities (ICNU); Renewable Northwest (Renewable NW); Community Renewable Energy Association (CREA); Northwest and Intermountain Power Producers Coalition (NIPPC); Renewable Energy Coalition (Coalition); PacifiCorp, dba Pacific Power; NW Energy Coalition (NWEC); Obsidian Renewables (Obsidian); Oregon Department of Energy (ODOE); Strata Solar Development (Strata); Heelstone Development, LLC (Heelstone); and OneEnergy LLC.

ICNU, Renewable NW, CREA, NIPPC, the Coalition, Strata, OneEnergy, and Commission Staff filed comments on PGE's motion for interim relief. PGE filed a reply and supplemental testimony on August 3, 2017.[2]

III. POSITIONS OF THE PARTIES

PGE contends that interim relief is necessary to protect its customers from significant harm. The company contends that the first part of its primary request—lowering the eligibility cap from 10 MW to 3 MW for standard prices—is identical to the interim relief that we granted Idaho Power Company and PacifiCorp to address "unprecedented growth" in solar QF activity in their respective service territories.[3]

In support of its request for interim relief, PGE provided written testimony of Brett Sims and Robert Macfarlane. According to their testimony, PGE has 3.2 MW of solar QF generation on-line, 404.1 MW of new solar QF generation under contract but not yet on-line, and 417.2 MW of

[1] This figure increases to 607.8 MW as of the company's supplemental testimony. PGE/200, Sims-Macfarlane/2 (Aug 3, 2017).

[2] Following PGE's reply to the responses of the parties, Strata sought to file a sur-reply to address an issue of whether PGE is continuing to timely process QF requests under its Schedule 201. PGE objects to Strata's request. Because we find the question of PGE's timeliness in processing QF requests to be relevant to individual complaint actions and not our resolution here, we deny Strata's request.

[3] *See, In the Matter of Idaho Power Company, Applications 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. 1725 Order No. 15-199 (Jun 23, 2015); and *In the Matter of PacifiCorp, dba Pacific Power, Application to Reduce the Qualifying Facility Contract Term and Lower the Qualifying Facility Standard Contract Eligibility Cap*, Docket UM 1734, Order No. 15-241 (Aug 14, 2015) (granting interim relief to Idaho Power and PacifiCorp, respectively). We granted permanent relief to both companies in early 2016. *See* Order Nos. 16-129 (Mar 29, 2016) and 16-130 (Mar 29, 2016).

new solar QF generation proposed but not yet under contract.[4] PGE contends that this level of solar QF activity is significantly greater than the level of activity faced by Idaho Power when it obtained interim relief in docket UM 1725, and at least equal to the level of activity faced by PacifiCorp when it obtained interim relief in docket UM 1734.

PGE contends that this extraordinary increase in solar QF activity has the potential to create significant financial consequences for its ratepayers. PGE estimates that entering into standard price contracts for the identified potential solar QF development could cost ratepayers over $545 million more than projected market prices for equivalent power over the next 15 years.[5] To protect ratepayers, PGE requests we provide the same relief granted to Idaho Power and PacifiCorp and lower the eligibility cap for standard prices for solar QFs from 10 MW to 3 MW.

In addition to lowering the standard contract eligibility cap, PGE contends that additional relief is necessary to fully protect customers. PGE states that a majority of requests for solar QF contracts are from single developers who have developed multiple projects to avoid the 10 MW threshold for negotiated contracts and prices. PGE cites evidence that 13 developers have each proposed or obtained multiple solar QF contracts for projects sized at or under 10 MW with aggregate values up to 100 MW.[6] PGE requests we also impose a 10 MW cap per developer—that is, lower the cap to 100 kW for any developer who has requested or obtained standard prices for more than 10 MW of solar capacity. In the alternative, PGE proposes reducing the eligibility cap for standard solar QFs to 2 MW. PGE believes this relief would be less effective than a 3 MW individual project cap and a 10 MW aggregate cap but would to some extent curtail developers' ability obtain standard contracts and standard prices for multiple small solar QF projects.

ICNU supports PGE's motion for interim relief to the extent that the standard eligibility cap for standard prices for solar QFs is reduced to 3 MW. ICNU believes such relief will protect customers from potentially significant cost impacts due to long-term contracts with prices in excess of avoided costs. ICNU believes that PGE's request to lower the cap to 100 kW for developers with projects aggregating to more than 10 MW is not necessary as interim relief, but should be considered as part of PGE's underlying request for permanent relief in this docket.

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[4] PGE/100, Sims-Macfarlane/2 (Jun 29, 2017). PGE filed supplemental testimony updating these amounts as of July 28, 2017 to: 3.2 MW of solar QF generation on-line, 406.1 MW of new solar QF generation under contract but not yet on-line, and 607.8 MW of new solar QF generation proposed but not yet under contract. PGE/200, Sims-Macfarlane/2.

[5] In its supplemental testimony updating the amount of new solar QF generation proposed but not yet under contract through July 28, 2017 to 607.8 MW, this projection increases to payments in excess of market around $918 million. PGE/200, Sims-Macfarlane/7.

[6] In its supplemental testimony, PGE adds that two more developers have proposed multiple solar QF projects. PGE/200, Sims-Macfarlane/5.

CREA, NIPPC, and the Coalition do not oppose, in principle, granting PGE narrowly-tailored interim relief, but find PGE's request overbroad, unsupported, and unprecedented. First, these joint parties contend that it is unrealistic to assume that all of the proposed new solar QF contracts will actually become under contract and brought on-line. They contend that many factors suggest only a fraction of these will become operational, including difficulties with financing and transmission constraints on PacifiCorp's and the Bonneville Power Administration's systems that make it difficult for new off-system QFs to deliver their power to PGE. They also suggest that PGE's QF queue will "dry-up" in the near future as PGE's renewable prices will continue to drop following review of its pending integrated resource plan.

Second, the joint parties contend that PGE has exaggerated the potential impact to customers by inappropriately comparing Schedule 201 rates to a forward market price curve. The parties maintain that this type of comparison is misleading, as negotiated PPAs are based on Schedule 202 pricing that more accurately reflect PGE's avoided costs.

Third, the joint parties contend that PGE's request to impose a 10 MW cap on solar QF developers is extraordinary and misdirected. They claim that no other state commission has imposed such a lifetime cap, and contend that PGE's request would be difficult to implement. The parties also claim that PGE has mischaracterized the problem. They contend that project siting in PGE's territory is generally based on land use restrictions rather than the 10 MW threshold for standard QF contracts and process.

For these reasons, the joint parties recommend we grant PGE more narrowly-tailored interim relief. They recommend we: (1) temporarily lower the size threshold for solar generation to 5 MW for standard avoided cost prices; (2) retain the 10 MW size limit for standard contract terms for solar QFs; (3) reject PGE's proposal to identify particular owners and impose a lifetime standard contract eligibility cap; and (4) grandfather all projects for which PPA requests have already been submitted and limit relief to only those requests filed after the date of our order.

OneEnergy opposes PGE's motion. It asks that, in the event we find some form of interim relief appropriate, we ensure that projects that have commenced the contracting process in good faith prior to the date of PGE's motion are able to complete the contracting process.

Renewable NW opposes PGE's motion, arguing that the company has failed to provide persuasive evidence that substantial and irreparable harm warranting Commission action would occur. Like the joint parties, Renewable NW contends that PGE exaggerates the magnitude of the asserted harm by assuming that all projects requesting PPAs will become operational, and by comparing current standard rates to market rates—rather than the company's avoided cost rates. Renewable NW also disputes PGE's claim that the current level of QF activity faced by the

company is similar to or greater than the level of QF activity supporting the interim relief granted to Idaho Power and PacifiCorp.

Strata states that PGE's "owner capacity cap" is an unprecedented approach and should only be addressed through a thorough, deliberative process and assessed for statutory propriety. Strata believes other, less drastic, means are available to control speculative behavior by solar developers.

Staff supports PGE's motion in part. It contends that the circumstances presented here are similar to those presented by Idaho Power and PacifiCorp in their applications for interim relief. Accordingly, Staff recommends that we grant PGE's request for interim relief to the extent that we lower the eligibility cap for solar QFs seeking standard prices to 3 MW, pending our final resolution of the application. Staff recommends that any interim relief granted be provided prospectively, so that PGE may not unilaterally disregard contracting parameters outlined in Schedules 201 and 202.

To help ensure that PGE adheres to the required contracting and timing requirements, Staff recommends that we require PGE to file monthly reports on QF contracting activity. Each report should include a list of every QF that seeks to enter into a PURPA contract with PGE, but lacks an executed contract. Staff recommends that information for each QF should include the following: (1) date of initial contract request and other milestones; (2) date of written request for draft Negotiated Agreement with indicative pricing; (3) status of the contracting process; and (4) additional information listed in the standard PPA or in Schedule 202 that PGE has required the QF to provide.

Staff does not support PGE's other requests for interim relief. Staff believes that interim relief is not the appropriate vehicle to consider adopting a new policy regarding PURPA contracting policies, and any departure from Commission policy should occur only after a more thorough and complete examination.

IV. DISCUSSION

A. Background

PURPA, federal legislation enacted in 1978, has the primary purpose of providing a market for the electricity produced by small power producers and co-generators. Although PURPA is a federal law, states are responsible for implementing significant aspects of the law, as well as regulations adopted by the Federal Energy Regulatory Commission (FERC).

To help remove market barriers to QF development, FERC requires a utility to offer standard contracts and prices to QFs with a design capacity of 100 kW or less. The purpose of this requirement is to protect small QFs from some of the transaction costs associated with negotiating a PPA.

Although federal rules require utilities to offer standard contracts to QFs with a nameplate capacity of 100 kW or less, state commissions may establish a higher eligibility cap. Over the years, this Commission has increased the nameplate capacity of QFs eligible for standard contracts, most recently to 10 MW in 2005. We set this threshold after balancing the interests of promoting QF development by allowing smaller projects to avoid certain transaction costs and the need to ensure that ratepayers are indifferent to QF development. We explained:

> Standard contract rates, terms, and conditions are intended to be used as a means to remove transaction costs associated with QF contract negotiation, when such costs are a market barrier to QF development. * * * At the same time, however, we recognize the need to balance our interest in reducing these market barriers with our goal of ensuring that a utility pays a QF no more than its avoided costs for the purchase of energy.[7]

We recently granted interim relief reducing the eligibility cap for solar QFs to obtain standard prices from Idaho Power and PacifiCorp. We first granted relief for Idaho Power. In Order No. 15-199, we noted that Idaho Power had received an unprecedented growth in the number of applications and expressions of interest by solar QF developers. Although we acknowledged that some of these solar QF projects might not be built, we were persuaded that a sufficient number of projects would become operational and require Idaho Power—without some form of interim relief—to enter into substantial long-term contracts in excess of the company's actual avoided costs. We also found that single solar QF developers had developed multiple projects to avoid the 10 MW threshold and were able to negotiate PPAs for QF projects sized in the 4 to 10 MW range. Based on those facts, we lowered the eligibility threshold for solar projects to 3 MW.

We then granted the similar interim relief to PacifiCorp. In Order No. 15-241, we noted that PacifiCorp had also experienced significant growth in solar QF development in its territory. Again, we acknowledged questions about whether all the potential QF projects would actually be built, but found interim relief was warranted to protect ratepayers from the possibility of being charged more than PacifiCorp's avoided power costs. We also noted that, "having granted Idaho Power's request for interim relief in Order No. 15-199, a failure to provide a similar 3 MW cap

[7] *In the Matter of Public Utility Commission of Oregon, Investigation Relating to Electric Utility Purchases from Qualifying Facilities*, Docket No. UM 1129, Order No. 05-584 at 16 (May 13, 2005).

on solar QF project eligibility to PacifiCorp might well encourage developers to engage in geographic arbitrage."[8]

B. Resolution

As we noted in Order No. 15-199 when we provided Idaho Power interim relief, our role in implementing PURPA requires a balancing of interests. We must simultaneously promote QF development by creating "a settled and uniform institutional climate for qualifying facilities in Oregon,"[9] while also 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."[10]

Balancing those interests here, we find sufficient cause to lower the eligibility cap for a solar QF to obtain standard avoided cost prices from PGE from 10 MW to 3 MW. Like Idaho Power and PacifiCorp, PGE has demonstrated significant growth in solar QF activity in its service territory. Although many of these projects may not be become operational, we are convinced that this interim relief is appropriate to protect ratepayers from potential significant cost impacts due to long-term PPAs with prices that exceed PGE's avoided costs.

We decline, however, PGE's request to make this interim relief effective June 29, 2017—the date it filed its request. To help ensure "a settled and uniform institutional climate" for QF development, we believe QF developers should be provided with some degree of advanced notice of PGE's proposed change to eligibility criteria for standard avoided cost prices in this particular instance. We also decline the request of CREA, NIPPC, the Coalition, and Staff to make interim relief prospective from the date of our order, as such implementation would effectively render meaningless the interim relief we find necessary to protect ratepayers. Instead, we make the interim relief effective July 14, 2017—two weeks after PGE sought interim relief. Solar QF developers yet to sign an executable contract committing to sell power to PGE prior to that date may seek a determination of whether a LEO had been established.[11]

We condition this interim relief by adopting Staff's proposal to require PGE to provide monthly reports on the progress of the contracting process with solar QFs. We believe having such information will provide us additional insight into the status of the QF activity that PGE is

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[8] Order No. 15-199 at 3.
[9] ORS 758.515(3)(b).
[10] *In the Matter of Public Utility Commission of Oregon, Investigation into Qualifying Facility Contracting and Pricing,* Docket No. UM 1610, Order No. 14-058 at 3 (Feb 24, 2014), citing Order No. 05-584 at 6; U.S.C. § 824a-3(a)-(b 18 C.F.R. § 292.101 *et seq.*
[11] *See In re Public Utility Commission of Oregon, Investigation into Qualifying Facility Contracting and Pricing,* Docket No. UM 1610, Order No. 16-174 (May 13, 2016).

experiencing. We require a report to be filed at the beginning of each month until we resolve PGE's underlying request for permanent relief.

Finally, to ensure that the interim relief is appropriately "narrow, targeted, and proportionate,"[12] we decline to adopt PGE's other requests for interim relief. PGE's request to impose contracting limits on individual QF developers may be addressed as part of the company's application for permanent relief in this docket.

V. ORDER

IT IS ORDERED that:

1. The motion for interim relief filed on June 30, 2017 by Portland General Electric Company is granted in part consistent with this order.

2. Order Nos. 05-584 and 14-058 are amended to reduce, on an interim basis and effective July 14, 2017, the eligibility cap to 3 MW for standard prices offered by Portland General Electric Company to solar QF projects.

3. Portland General Electric Company shall make compliance filings as necessary consistent with this order.

Made, entered, and effective AUG 18 2017.

Lisa D. Hardie
Chair

Stephen M. Bloom
Commissioner

Megan W. Decker
Commissioner

A party may request rehearing or reconsideration of this order under ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480 through 183.484.

[12] Order No. 15-199 at 7.