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March 7, 2013

***Via Electronic Filing and U.S. Mail***

Oregon Public Utility Commission  
Attention: Filing Center  
550 Capitol Street NE, #215  
PO Box 2148  
Salem OR 97308-2148

**Re: UM 1610 - QUALIFYING FACILITY (QF) CONTRACTING & PRICING**

Attention Filing Center:

Enclosed for filing in the captioned docket are an original and five copies of:

- **PORTLAND GENERAL ELECTRIC COMPANY'S RESPONSE TO JOINT MOTION TO STRIKE TESTIMONY**

This is being filed by electronic mail with the Filing Center.

An extra copy of the cover letter is enclosed. Please date stamp the extra copy and return to me in the envelope provided. Thank you in advance for your assistance.

Sincerely,

  
**J. RICHARD GEORGE**  
Assistant General Counsel

JRG:smc  
Enclosures  
cc: service list

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**DOCKET NO. UM 1610**

In the Matter of OREGON PUBLIC  
UTILITY COMMISSION

Investigation into Determination of  
Qualifying Facility Contracting and Pricing

PORTLAND GENERAL ELECTRIC  
COMPANY'S RESPONSE TO JOINT  
PARTIES MOTION TO STRIKE  
TESTIMONY

PGE responds to the Renewable Energy Coalition and the Community Renewable Energy Association's (hereafter "Movants") Joint Motion to strike as follows ("Joint Motion"). For the reasons discussed below, the ALJ should deny the Joint Motion or alternatively, move the issue that is the subject of this dispute (6B) to Phase II, where, based on Movants' logic, it could appropriately reside.

The issue at issue in this dispute, 6B, reads as follows: "When is there a legally enforceable obligation?" The issue Movants suggest PGE has also discussed in its testimony is 6C: "What is the maximum time allowed between contract execution and power delivery?"

While related, these are issues distinct. Our testimony addresses only issue 6B, not 6C. As a preliminary matter, the Joint Motion mischaracterizes PGE's testimony. Movants suggest that PGE has submitted testimony on the time between contract execution and power delivery.<sup>1</sup> At no point in our testimony on issue 6B does PGE reference the contract. Indeed there is a clear distinction between a contract and a legally enforceable obligation, which is the subject of issue 6B. A recent FERC opinion, *Cedar Creek Wind, LLC* 137 FERC P 61006 (2011) explains the

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<sup>1</sup> "[Movants] move to strike the limited portion of the testimony of Portland General Electric Company ('PGE') witness Rob MacFarlane and John Morton that addresses the issue of the amount of time between contract execution, or a legal obligation, and power delivery." Joint Motion at 1.

distinction: “Such commitment to sell to an electric utility, the Commission has found ‘also commits the electric utility to buy from the QF; these commitments result either in contracts or in non-contractual, but binding, legally enforceable obligations.’” (Quoting *JD Wind I*, 129 FERC ¶ 61, 148 at P 25)

Issue 6B asks “when is there a legally enforceable obligation?” PGE answered that question: “no legally enforceable obligation may be created more than one year before the QF has or will have power available or a demonstrated construction period if longer than one year.” At no point did our testimony address the issue in 6C, which concerns the time period between *contract execution* and power delivery.

PGE has not yet addressed issue 6C and does intend to submit testimony on that issue in Phase II. The Commission may certainly determine a process for QF interactions with utilities, which may prescribe when a draft contract is tendered to a QF and on what timeline it may be executed. The Commission may also determine when a QF project must start performing. A contract may be one way to evidence an LEO, but again, contract execution is distinct from the establishment of an LEO.

Parties are entitled to differing views regarding interpretation of an issue. PGE does not believe that Movants are prejudiced by the testimony it has submitted. Movants most certainly have an opportunity to submit responding testimony in the next round, and all parties, including utilities, may submit testimony in the final round. Because we believe we have responded only to issue 6B and because Movants may respond to it with their own testimony, we ask that Movant’s motion be denied.

In the alternative, we submit that issue 6B could be moved into Phase II. Movants explain in their Joint Motion (page 6) that the issue of timing between an LEO and performance is inextricably linked with other contract issues, such as PPA timelines, contracting steps and interconnection process requirements. This logic about such a linkage supports that issue 6B should be moved into Phase II where most of the contract-related issues reside. In PGE's view issue 6B most certainly includes the temporal aspect of the LEO (and not a Commission determination of the circumstances under which an LEO is established, per *Cedar Creek Wind*). Hence, including it with the other issues that may affect the timing between an LEO and contract performance, such as the interconnection requirements, would be an appropriate alternative if the motion to strike is not denied.

Dated, this 7<sup>th</sup> day of March, 2013.



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## CERTIFICATE OF SERVICE

I hereby certify that I have this day caused **PGE'S RESPONSE TO JOINT MOTION TO STRIKE TESTIMONY** to be served by electronic mail to those parties whose email addresses appear on the attached service list, and by First Class US Mail, postage prepaid and properly addressed, to those parties on the attached service list who have obtained permission to receive hard copy service for OPUC Docket # UM 1610.

Dated at Portland, Oregon, this 7th day of March, 2013.



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**SERVICE LIST 3/7/13  
OPUC DOCKET # UM 1610**

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