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March 1, 2013

Via Electronic and FedEx

Public Utility Commission
Attn: Filing Center
550 Capitol St. NE #215
P.O. Box 2148
Salem OR 97308-2148

Re: In the Matter of Public Utility Commission of Oregon Investigation Into Qualifying Facility Contracting and Pricing
Docket No. UM 1610

Dear Filing Center:

Enclosed please find the original and one (1) copy of the Joint Motion to Strike and Exhibits on behalf of the Renewable Energy Coalition and Community Renewable Energy Association in the above-referenced docket.

Thank you for your assistance, and please do not hesitate to contact our office if you have any additional questions.

Sincerely,

/s/ Sarah A. Kohler
Sarah A. Kohler

Enclosures
cc: Service List

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing Motion to Strike and Exhibits on behalf of the Renewable Energy Coalition and the Community Renewable Energy Association upon the parties, on the service list, via electronic mail, and via U.S. Mail where paper service has not been waived.

Dated at Portland, Oregon, this 1st day of March, 2013.

Sincerely,

/s/ Sarah A. Kohler
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BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1610

In the Matter of PUBLIC UTILITY COMMISSION OF OREGON Investigation Into Qualifying Facility Contracting and Pricing	)))))))	RENEWABLE ENERGY COALITION AND THE COMMUNITY RENEWABLE ENERGY ASSOCIATION JOINT MOTION TO STRIKE **EXPEDITED CONSIDERATION REQUESTED**

I. INTRODUCTION

Pursuant to OAR § 860-001-0420, the Renewable Energy Coalition ("the Coalition") and the Community Renewable Energy Association ("CREA") (jointly, "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. The established Issues List in this proceeding separated issues into Phase I and Phase II, and issues related to the amount of time between contract execution, or legal obligation, and power delivery are scheduled to be addressed in Phase II. PGE had an opportunity to comment on the scope of the schedule and agreed to the current scope of issues in Phase I. PGE's attempt to unilaterally modify the scope of issues through its testimony causes harm and prejudice to the parties. Due to the short time remaining before non-utility testimony is due on March 18, 2013, the Movants request expedited consideration of this motion to strike and a ruling by March 12, 2013. The

Movants have conferred with PGE, and have been unable to reach an agreement to resolve this dispute.

II. BACKGROUND

The Oregon Public Utility Commission ("OPUC" or the "Commission") opened this proceeding on June 29, 2012. Prior to initiating this proceeding, the Commission was faced with a myriad of avoided cost related disputes, including out of period updates of avoided cost rates and contract update requests by energy developers, PacifiCorp and Idaho Power, and contractual disputes between qualifying facilities ("QFs") and the utilities, as well as a request to open a generic avoided cost investigation by the Coalition. These issues were moved into this Docket.

The ALJ directed the parties to attempt to jointly develop an issues list. The parties conducted workshops and submitted informal proposals amongst themselves, which resulted in large scale agreement on the joint issues list and a two-phased process in which certain issues would be addressed in Phase I and other issues would be addressed in Phase II.[1/] The Coalition's informal comments to the parties regarding the issues list identified a number of issues, including two separate issues: 1) should the Commission's rules and policies regarding legally enforceable obligations be aligned with FERC's standards; and 2) should the rules and utility tariffs regarding the power purchase agreement ("PPA") negotiation process be revised, including whether the Commission should clarify how long before the expiration of its current contract that an existing QF can enter into a new PPA with the utility. Attachment A at 5-6 (Coalition Informal Proposed Issues). The Coalition's comments demonstrated that the Coalition

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1/ Although unrelated to this motion to strike and the issue of the maximum time between contract finalization and power delivery, the parties did not reach agreement on the inclusion of a few issues, which were resolved by the ALJ.

and other parties intended the issue of legally enforceable obligation and the issue of the time between a new PPA and power delivery to be two separate issues. Staff's proposed issues list, which was agreed to by all the parties (including PGE), also separated these issues as two distinct issues: 1) when is there a legally enforceable obligation; and 2) what is the maximum time allowed between contract execution and power delivery. Without change, the ALJ adopted these two separate issues as Issues 6B (when is there a legally enforceable obligation) and 6C (what is the maximum time allowed between contract execution and power delivery). Re Investigation Into QF Contracting and Pricing, Docket No. UM 1610, Ruling (Oct. 25, 2012).

The parties also reached unanimous agreement regarding which issues should be addressed in Phase I and Phase II. Re Investigation Into Qualifying Facility Contracting and Pricing, Docket No. UM 1610, Ruling (Dec. 21, 2012). Among other issues, the parties agreed that Issue 6B regarding legally enforceable obligations would be included in Phase I and Issue 6C regarding the time between a contract and power deliveries would be included in Phase II. The parties generally agreed that most contracting issues would be addressed in Phase II; however, certain contracting issues, including Issue 6B regarding legally enforceable obligations should be addressed more quickly. The primary reason that Issue 6B was included in Phase I is that the issue has been recently addressed by the Federal Energy Regulatory Commission ("FERC"), and many parties believe that the Commission's rules and policies on legally enforceable obligations are in conflict with FERC. Thus, the intention was to expeditiously address the legally enforceable obligation issue ahead of most of the other contracting issues.

Pursuant to the adopted schedule, the utilities filed testimony on the Phase I issues on February 4, 2013. Idaho Power and PacifiCorp both squarely addressed the legally enforceable obligation issue in light of the recent FERC orders, and proposed changes or clarifications to the Commission's current policies. Idaho Power/200, Stokes/79-83; PAC/200, Griswold/27-31. While PGE also submitted testimony under the topic of "legally enforceable obligations," PGE's testimony addressed a different question: how long before power deliveries can a QF enter into a legally enforceable obligation. PGE/100, MacFarlane-Morton/23. PGE specifically recommends that a QF not be allowed to enter into a legally enforceable obligation more than one year before power deliveries. Id. Neither PacifiCorp nor Idaho Power addressed the issue of the time between power deliveries and contact execution or a legally enforceable obligation.

The parties discussed PGE's testimony at a January 25, 2013 workshop. The parties did not reach agreement to change the schedule, and PGE insisted that its concerns regarding the duration between a contract or legally enforceable obligation and power deliveries should be considered in Phase I. Counsel for the Movants and PGE have subsequently failed to reach agreement, and the Movants request that the ALJ strike PGE's testimony as impermissible in Phase I.

III. MOTION

1. Legal Standard

The Commission or ALJ will strike pleadings and other documents that address issues outside of the proper scope of a proceeding. Re PGE Petition for a Declaratory Ruling, Docket No. DR 32, Order No. 05-1064 (Oct. 5, 2005). The Commission holds that its "primary consideration" in allowing filings over the course of a proceeding is whether other parties will be prejudiced. Re Revised Tariff Schedules Applicable to Electric Service Filed by PacifiCorp, Docket No. UE 111, Order No. 00-090 at 5 (Feb. 14, 2000). Similarly, the Oregon Court of Appeals has found that parties' ability to present their cases can be harmed in a number of ways, including when the evidence is not within the issues in the proceeding or if the parties do not have an adequate opportunity to respond to supplemental evidence. LaPointe's Inc. v. Beri, 73 Or App 773, 779 (1985). The Commission's rules apply the same principle—i.e., evidence is inadmissible if it causes unfair prejudice or confusion of the issues. OAR § 860-001-0450(1).

2. PGE's Testimony Should Be Stricken As Outside the Scope of Phase I

PGE's testimony on the issue of the maximum amount of time between a contract or legally enforceable obligation and power deliveries should be stricken because it is outside the scope of Phase I, and inclusion of the issue at this time would cause unfair prejudice and confusion of the issues. Specifically, Movants request that the ALJ strike PGE/100, Macfarlane-Morton/23, line 7 starting with the words "the Commission" and ending with line 17 ending with the words "one year." Attached to this motion is a redline version of the PGE testimony that should be stricken.

PGE's testimony is outside the scope of Phase I, and should be addressed in Phase II. PGE claims that its testimony is ostensibly related to Phase I because it addresses how long before power deliveries should a "legally enforceable obligation" occur. Unlike PacifiCorp and Idaho Power, however, PGE is not addressing the recent FERC rulings and the Commission's rules and policies on how a legally enforceable obligation should occur. Instead, PGE only makes one recommendation on legally enforceable obligations, which is that there be a maximum of one year between a legal obligation and power deliveries. This, however, is essentially the same issue as Issue 6C, which is what is the maximum amount of time between contract execution and power deliveries. The crux of Issue 6C is what is the appropriate amount of time between when a QF can finalize its contract or legal obligations and when the QF delivers power to the utility. The important consideration for Issue 6C is how much time between the obligation and the power delivery—not whether the obligation is formed through a contract or another legally enforceable obligation. Adoption of PGE's recommended one year maximum duration between power deliveries and legally enforceable obligations would essentially moot any further discussion or resolution of Issue 6C and leave nothing to address in Phase II on this issue.

Addressing Issue 6C without consideration of the other issues deferred to Phase II will harm the Movants, and could cause undue confusion. The Commission will not have all information to resolve Issue 6C in Phase I because setting the correct amount of time between contact finalization at the same time as the Commission is dependent upon resolution of the other Phase II contracting and interconnection issues. Issue 6A in Phase II addresses whether the standard contracting process, steps and timelines should be changed. This specifically includes "when an existing QF can enter into a new PPA and the inclusion of conditions precedent to the PPA including conditions requiring a specific interconnection agreement status." Docket No. UM 1610, Ruling, Appendix A at 3 (Dec. 21, 2012). In addition, Phase II will address Issue 7A regarding interconnection issues, which includes whether a PPA should include conditions that reference the timing of an interconnection agreement and interconnection milestones.

The Phase II issues of PPA timelines, contracting steps, how long it takes for a QF to negotiate a PPA, and whether a QF needs to complete an interconnection agreement prior to finalizing a PPA (Issues 6A and 7A) are related to how long before power deliveries should a QF be allowed to finalize its PPA (Issue 6C). For example, both new QFs and existing QFs with expiring contracts often need new or updated interconnections. The interconnection process can be very costly and take years to complete, and QFs may not know whether they can afford to undertake the interconnection process until they have completed a new PPA. As the time between contract formation and power delivery should be at least as long as the time to complete the interconnection process, the Commission should consider the amount of time necessary to complete the interconnection process at the same time the Commission considers the maximum amount of time that a QF can enter into a PPA and when power deliveries will occur. PGE, however, would have the Commission decide to adopt a one-year maximum duration between power deliveries and contract execution without considering how much time QFs may actually need because of the PPA contracting and interconnection process. Thus, issues related to the time between power deliveries and a contract or other legally enforceable obligation should be considered at the same time as the other Phase II issues.

Consideration of Issue 6C at this time would also cause undue prejudice to the Movants. PGE has suggested that Issue 6C be included in Phase I, which would not provide sufficient opportunity for all parties to fully address the question of the time between contract finalization and power deliveries. PGE has specifically proposed that parties (including Idaho Power and PacifiCorp) address this issue in their final round of testimony. It is critical that Idaho Power's and PacifiCorp's position on Issue 6C be presented to the parties as the majority of the QFs in Oregon sell their power to PacifiCorp and Idaho Power. All parties should have an opportunity to respond to Idaho Power's and PacifiCorp's positions, which cannot occur if PacifiCorp and Idaho Power provide their positions on Issue 6C for the first time in their final round of testimony. Therefore, PGE's suggestion that PacifiCorp and Idaho Power be allowed to address this issue in their final testimony would deprive other parties of an adequate opportunity to respond.

III. CONCLUSION

The ALJ should strike PGE's testimony regarding the issue of the proper amount of time between contract execution or a legally enforceable obligation and power deliveries under a PPA. All the parties previously agreed that Issue 6C should be addressed in Phase II, and PGE is inappropriately seeking to address this issue in Phase I. More importantly, this issue is better addressed with the other issues that will be addressed in Phase II. PGE's recommended one-year limitation on the time between contract execution or a legally enforceable obligation is a major revision to Oregon policies that is grossly out of proportion to the other contracting issues in this case and would significantly harm QFs. The Commission should only consider this issue in the context of the other contracting and interconnection issues that have been deferred to Phase II.

Dated this 1st day of March, 2013.

Respectfully submitted,

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BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1610

In the Matter of	)	
	)	RENEWABLE ENERGY COALITION PROPOSED ISSUES
PUBLIC UTILITY COMMISSION OF OREGON	)	
	)	
Investigation Into Qualifying Facility Contracting and Pricing	)	

I. INTRODUCTION

Pursuant to the Administrative Law Judge's August 24, 2012 Ruling, the Renewable Energy Coalition ("REC") submits this proposed list of issues in the Oregon Public Utility Commission's (the "Commission" or "OPUC") investigation into qualifying facility ("QF") contracting and pricing under the Public Utility Regulatory Policies Act ("PURPA"). REC does not believe that there should be a wholesale revision or modification to the Commission's current QF-related policies and rules. Instead, this proceeding should focus on streamlining and improving the current policies, rules, and contract negotiation process to provide more stability, certainty, consistency in implementation, and cost savings to QFs. All of this should also ensure ratepayer neutrality and minimize complaints. Many of these issues are time sensitive and should be presented for Commission resolution as soon as possible.

After identifying the issues that will be addressed in this proceeding, REC recommends that the parties consider categorizing the issues in an effort to identify issues that can or should be resolved more efficiently or expeditiously. Given the wide variety of issues that many parties raised at the August 10, 2012 workshop, it is possible that this proceeding could become long and drawn out. For example, REC notes that the last major generic QF-related investigation (Docket No. UM 1129) took approximately four-and-a-half years from the time of its initiation to the approval of the final phase's compliance filings. There are a number of issues in this proceeding that should not wait two years, let alone over four years. Some of the issues are capable of prompt resolution, including streamlining and updating the timing of, triggers for and content of avoided cost price filings, streamlining the purchase power agreement ("PPA") negotiation process, and aligning Oregon's requirements for entering into a legally enforceable obligation with the requirements of the Federal Energy Regulatory Commission ("FERC"). It is our hope that these inter-related issues be resolved within six months, and will provide the appropriate foundation for other issues to be resolved.

II. PROPOSED ISSUES

A. Should There Be More Clarity and Specificity Regarding the Timing Of, Triggers For, and Content Of Avoided Cost Price Filings?

A major source of controversy and unnecessary regulatory uncertainty in recent years has been avoided cost price updates. The Commission should provide clear and consistent direction regarding when updates can be filed, the exceptions for permitting early filing, and the minimum filing requirements regarding content. There should be a single set of rules and requirements that apply regardless of whether avoided cost prices are increasing or decreasing. Uniform and consistent rules and requirements will benefit both QFs and ratepayers and be consistent with Oregon's policy of creating "a settled and uniform institutional climate for the qualifying facilities in Oregon." ORS § 758.515(3)(b).

Oregon law requires that the utilities file updated avoided cost prices at least once every two years. ORS § 758.525(1). The Commission has adopted a policy that allows utilities to update their avoided costs every two years, and 30 days after an order is issued acknowledging an Integrated Resource Plan ("IRP"). <u>Re Investigation into determination of resource</u>

sufficiency, Docket No. UM 1396, Order No. 10-488 at 8 (Dec. 22, 2010); Re Staff Investigation, Docket No. UM 1129, Order No. 05-584 at 29 (May 13, 2005). The Commission has stated that parties may propose to revise avoided costs at other times based on a significant change. The Commission will treat these filings on a case-by-case basis. Id. The Commission has in recent years rejected two attempts to update avoided costs outside of the two-year cycle, one by QF advocates and one by Idaho Power Company ("Idaho Power"). Re Idaho Power, Docket No. UE 241, Order No. 11-414 (Oct. 11, 2011); Re Staff Investigation, Docket No. UM 1129, Order No. 07-199 at 2-3 (May 22, 2007). While not allowing an early update, the Commission also suspended the obligation of Idaho Power to enter into new standard contracts, based on concerns that its avoided costs were outdated. Re Idaho Power, Docket No. UE 244, Order No. 12-042 (Feb. 14, 2012).

The lack of clarity regarding when avoided costs are updated, as well as whether such updates are based upon a non-acknowledged IRP, can significantly harm QFs. How and when prices change are the key to the entire power purchase process, notwithstanding the establishment of legally enforceable obligation. QFs may be aware that avoided cost prices are updated on a two-year cycle, but there is no way they can know that a utility is planning to update its avoided cost prices early. QFs may invest significant time and money into negotiating PPAs, interconnection agreements and obtaining financing—all of which are based on the utility's currently published avoided cost tariffs. Thus, early changes in the avoided cost prices can completely upset this process and result in an unsettled and inconsistent institutional climate for QFs in Oregon, conflicts between utilities and QFs, and complaints requiring Commission handling.

The Commission should consider revising the current rules and policies to ensure consistent timing and content of avoided cost price updates. Avoided cost updates outside of the two-year cycle should be limited strictly to definitive established exceptions. The Commission should also consider requiring the utilities to provide six months' notice to QFs prior to any update outside of the two-year cycle, and to decide whether both renewable and standard avoided cost prices should be updated if a request is made to update avoided cost prices outside of the two-year cycle.

The Commission should also provide clarity regarding the content of avoided cost price updates. The Commission's policy is to use the utility's last approved IRP for the information and content of avoided cost price updates. See Order No. 10-488 at 8. Utilities, however, have proposed that they be allowed to include information from not yet acknowledged IRPs in their avoided cost updates when the information would harm QFs. Allowing deviations from the Commission's established procedures on a one-sided and ad hoc basis only increases the uncertainty and difficulty facing Oregon QFs.

The Commission also should clarify a number of procedural aspects regarding how avoided cost filings are made. Both the Commission and utilities have characterized names and statutory framework for avoided cost price updates and compliance filings differently, and the Commission should establish a single, consistent set of rules and policies that apply to all utilities.

B. Should the Commission's Rules and Policies Regarding Legally Enforceable Obligations Be Aligned with FERC's Standards?

The issue of when a QF enters into a "legally enforceable obligation" to sell power to the utility has been extremely controversial in Oregon and a critical cornerstone to establishing a settled environment for implementing PURPA. Oregon's current policy and the avoided cost tariffs are inconsistent with FERC precedent, and the Commission should make revisions to ensure consistency with FERC and the intent of state law.

FERC has explained that a QF and utility enter into a legally enforceable obligation at the time that the QF commits to sell power to the utility. Rainbow Ranch Wind, LLC and Rainbow West Wind, LLC, 139 FERC ¶ 61,077 at PP. 20-24 (April 30, 2012); Cedar Creek Wind LLC, 137 FERC ¶ 61,006 at P. 39 (Oct. 4, 2011). FERC recognizes that a legally enforceable obligation is broader than simply a contract between the QF and the utility and "is used to prevent an electric utility from avoiding its PURPA obligations by refusing to sign a contract, or as here, from delaying the signing of a contract, so that a later and lower avoided cost is applicable." Id. at P. 36.

The Commission's policy and approved utility avoided cost tariffs such as PacifiCorp's Schedule 37, which presents the process for entering into a power purchase agreement, are inconsistent with FERC's standard regarding legally enforceable obligations and should be revised. Under current Commission policy, a legally enforceable obligation is based on when the utility and the QF finalize a formal contract, and not when the QF obligates itself to sell power to the utility. International Paper v. PacifiCorp, Docket No. UM 1449, Order No. 09-439 at 6 (Nov. 4, 2009). For example, PacifiCorp's tariffs specifically allow the utility to wait up to at least three weeks after all material contract terms have been finalized and the QF has obligated itself to sell power. Id. at 3, 6. The Commission should assure consistency within its policies and rules, including the complaint process that recognizes the critical linkage between the power purchase process, legally enforceable obligations, and the timing and mechanisms for avoided cost prices changes.

C. Should the Rules and Utility Tariffs Regarding the PPA Negotiation Process Be Revised?

The Commission has provided guidance regarding the process for utilities and both large and small QFs to negotiate new PPAs. REC believes that most of the process should be retained, but that there are a small number of critically important areas that should be revised to ensure a more streamlined process that provides more clarity to the parties. The issues identified below are a non-exhaustive list of areas in which the Commission should consider improving the PPA negotiation process.

The Commission should clarify how long before the expiration of its current contract that an existing QF can enter into a new PPA with the utility. There are numerous existing QFs in Oregon with long-term contracts that are expiring within the next few years. Many of these QFs with expiring contracts may need to update their physical interconnections and make other changes before they can enter into new contracts. This interconnection process can be very costly and take years to complete, and the existing QFs may not know whether they can afford to undertake the interconnection process until they have completed a new PPA. The Commission should ensure that QFs be allowed to enter into a new and complete PPA within a reasonable time before the date upon which the QF will deliver power under the new contract.

The Commission should consider whether certain pre-requisites imposed by the utilities, such as those related to interconnection or possible “load pockets” before commencing or completing the PPA negotiation process are reasonable, or should be eliminated or clearly defined. Additional information requirements have been imposed upon some QFs as pre-requisites for starting the negotiation process. In addition, information that has historically been provided after entering into a final PPA is now requested before finalizing the agreements.

The Commission should consider revising the PPA negotiation process to eliminate unnecessary milestones or other obligations associated with the interconnection process. The purchase power and interconnection agreement negotiation process are highly interrelated and dependent upon each other. For example, to finalize a PPA, a QF must specify a date upon which it will sell power to the utility. The date of actual power delivery, however, is highly dependent upon the utility timely completing and accurately estimating the costs of any interconnection facilities. A QF should be allowed a reasonable opportunity to revise the date of power deliveries in the PPA if the utility does not complete the interconnection process by the delivery date in the contract as a result of no delay on the part of the QF. The Commission should ensure that there is consistency between the PPA and interconnection process.

The Commission should clarify whether utilities can impose non-Commission authorized restrictions in the middle of the purchase power negotiation process. For example, PacifiCorp recently filed revised avoided cost tariffs proposing to charge certain QFs the costs associated with the QFs being located in a "load pocket." The Commission should consider whether it is appropriate for utilities to unilaterally cease negotiations and file new tariffs that significantly revise the negotiation process or avoided cost rates.

In addition, standard contract development or revisions should be subject to public review and not part of compliance filings that limit such opportunity for public input. Interested parties should have a full and fair opportunity to review all proposed changes to the standard contracts.

D. Should the Interconnection Rules, Policies and Practices Be Revised?

The Commission issued Order 09-196 and has adopted rules regarding both large and small generator interconnections. OAR §§ 860-029-0060; 860-082-0005. Order 09-196 adopted the current rule and provides the Commission's guidance on issues not completely resolved or fully addressed in the rules. REC largely supports these rules and the intent or spirit of Order 09-196 as providing much needed clarity and consistency in the interconnection process. Unfortunately, neither Order 09-196 nor the rules resolved critically important interconnection issues, and it has become clear that there remain significant areas of dispute between QFs and the utilities. The Commission should consider revising to the interconnection rules, policies, and practices to streamline the process, provide more clarity, and facilitate more cost effective and timely interconnections. Below is the initial list of the major areas in which REC proposes revisions.

QFs often face milestones in their PPA or interconnection process that provides them with little opportunity to review, question, or mitigate the interconnection requirements and estimates. The process has been presented as a take it or leave it proposition. This in turn causes problems for the QF meeting its PPA obligations as defaults are commonly tied to completion of major interconnection steps or a date certain to commence deliveries. Similarly, both the amount of time to complete the interconnection and the estimated costs often change dramatically. The Commission should review the utilities' interconnection process, the results of their cost and time estimates, and the imposed requirements. In addition, changes should be considered to ensure that QFs have a fair and reasonable opportunity to negotiate the requirements and costs of their interconnections without the unfair leverage of a power purchase agreement deadline.

The Commission should also analyze the utilities' actual interconnections to ascertain whether they have been reasonable in terms of requirements, costs, progress payments, timing, use of third-party contractors, and final accounting. The Commission should re-affirm its intent that QFs should be allowed to use and contract with utility-approved third parties for any portion of the interconnection work, from studies to construction. Typically, such approved contractors are used to perform interconnection work but under the direction of the utility. Having the QF contract with the approved third-party contractor can provide the QF with the essential control of the costs, the time for completion, and meeting its power purchase obligations. Direct contracting with third parties can also limit the utilities' exposure to excessive cost claims and failure to meet critical deadlines.

E. Should the Applicability of Renewable Avoided Cost Prices Be Revised or Expanded?

The Commission has recently required the utilities to allow renewable QFs the option of selling power to PacifiCorp and Portland General Electric Company ("PGE") at the standard avoided cost rates or selling both power and the renewable energy credits at a renewable avoided cost rate. Docket No. UM 1396, Order No. 11-505 (Dec. 13, 2011). PacifiCorp and PGE made compliance filings, and while many parties raised concerns with the filings, all parties agreed to allow the filings to become effective, and any concerns with the filings would be addressed in this proceeding.

The Commission should review which QFs are eligible to receive the renewable avoided cost prices. PacifiCorp's and PGE's compliance filings took a narrow view allowing only Oregon renewable portfolio standard eligible projects to qualify for renewable avoided cost pricing. Renewable QFs that include transferable renewable energy credits that qualify for another state's renewable portfolio standard can provide value to Oregon's utilities. These projects could maintain ratepayer neutrality by transferring their renewable credits, and the Commission should consider whether this broader spectrum of projects can reasonably be afforded access to the renewable avoided cost price option. Other eligibility issues include how to account for vintage Oregon projects that are banking renewable energy credits, and whether the transfer and/or timing of such transfer of a renewable energy credit through the Energy Trust precludes selling power at the renewable avoided cost rate.

F. Should QFs Be Allowed to Select Levelized Prices?

The Commission should consider requiring utilities to offer some measure of levelized avoided cost prices. The Commission does not currently require the utilities to levelize the avoided cost prices, but it has required levelization in the past. Docket No. UM 1129, Order No. 05-584 at 7-9 (discussion of prior levelization). Limited levelization, especially during long resource sufficiency periods, can provide significant benefits to QFs without unduly harming ratepayers.

Levelization accounts for the fact that the avoided cost price varies for each year, and smoothes out these annual price variations. When avoided costs are expected to be very low in early years, but much higher in later years, levelization can allow a QF to obtain sufficient revenues and financing that will allow it to operate. This is particularly important when avoided costs are declining due to short term decreases in natural gas prices. For QFs whose original PPAs will be expiring and their facilities are already commercially operational, they have no control over the timing of need for a replacement PPA. New contracts with extended periods of resource sufficiency based market prices can cause extreme revenue shortfalls and possible unnecessary project shutdowns.

REC recognizes that levelization theoretically increases ratepayer risks and therefore does not recommend that the Commission consider full levelization that would result in equal annual prices or even full coverage of resource sufficiency years, except in the case of existing projects whose agreements are expiring. The Commission, however, should consider some degree of partial levelization to address very low avoided cost prices resulting from extended resource sufficiency periods (i.e., 3-5 years) that may prevent otherwise cost effective QFs from entering into contracts with the utilities or existing projects from continuing to operate.

G. Should the Standard Form Agreements Be Revised?

Resolution of the issues in this proceeding should result in necessary changes to the utilities' standard forms, contracts, and tariffs. The Commission should ensure that the standard forms, contracts, and tariffs are revised to comply with the ultimate policy determinations in this proceeding and provide for a public review process that does not require requesting of a suspension of a filing but rather a review process followed by a filing.

III. CONCLUSION

The Commission has already established PURPA related policies and rules that attempt to carefully balance the interest of QFs and ratepayers. Resolution of REC's issues could result in a better process for setting avoided cost prices, while negotiating both purchase power and interconnection agreements in a way that does not increase costs or risk to ratepayers and minimizes the number of disputes along the way. REC appreciates the Commission considering these important issues and hopes for expedited resolution of certain of these more time sensitive issues.

Dated this 27th day of August, 2012.

Respectfully submitted,

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VII. Contracting Issues

Q. When is there a legally enforceable obligation? (Issue list 6B)

A. PGE supports a rule that 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. While the recent FERC opinion, Cedar Creek Wind, LLC, 137 FERC P 61006 (2011), stated that a state Commission could not limit the method through which a legally enforceable obligation ("LEO") may be created to an executed contract, ~~the Commission may determine the date on which an LEO is incurred. West Penn Power Co. 71 FERC P 61,153 (1995) and Power Resources Group, Inc., 422 F.3d 231, 238 (2005). The Texas Commission has adopted a 90-day rule, which provides that no LEO can be established more than ninety days before the QF has power available, or will have power available. Thus, under this approach, QFs cannot game the system by locking down QF rates well in advance of commercial operation, and actual avoided costs are more likely to be reflected in prices paid to the QF. Moreover, filed avoided cost prices are much more likely to be accurate (not necessarily lower or higher) if the date on which the LEO and prices are established is close to the QF's actual delivery of net output. For these reasons, PGE recommends a similar approach, but with a rule that allows one year or a demonstrated construction period if longer than one year.~~

Q. What is the appropriate contract term? What is the appropriate duration for the fixed price portion of the contract? (Issue list 6I)

A. We recommend the current practice for a newly constructed QF: a contract term of up to 20 years with the last 5 years based on a daily market index. The current practice balances the interests of utility customers and fosters new QF development. It provides a