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October 13, 2015

Via Electronic Filing

Public Utility Commission of Oregon
Filing Center
201 High St SE, Suite 100
PO Box 1088
Salem OR 97308-1088

RE: UM 1610 Phase II – *Investigation into Qualifying Facility Contracting and Pricing*

Attention Filing Center:

Enclosed for filing in Docket UM 1610 Phase II is Portland General Electric Company's **Closing Brief** to be filed electronically with the Filing Center.

Thank you in advance for your assistance.

Sincerely,

V. Denise Saunders
Associate General Counsel

VDS:bop

Enclosure

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1610
Phase II

In the Matter of: **PUBLIC UTILITY COMMISSION OF OREGON,** **Investigation Into Qualifying Facility Contracting and Pricing.**	**PORTLAND GENERAL ELECTRIC COMPANY'S CLOSING BRIEF**

I. INTRODUCTION

Portland General Electric Company (PGE) submits this closing brief in accordance with the procedural schedule established by the Administrative Law Judge (ALJ). In pre-hearing briefs, the Qualifying Facility (QF) parties advocate that the Public Utility Commission of Oregon (Commission) should revise its existing and long-standing QF policies in a manner that will lengthen and further burden existing regulatory processes and increase prices that utilities pay for QF energy to above avoided cost prices, to the detriment of the utility's customers. PGE continues to urge the Commission to decline to make such changes. In this closing brief, we respond to arguments raised in other parties' pre-hearing briefs on issues 1, 5 and 8. As discussed below, no party has offered compelling argument or evidence that the Commission should revisit its earlier decisions related to issues 1 and 5. On issue 8, the parties appear to agree Oregon's existing LEO rule is inconsistent with FERC precedent. We believe the Commission can revise the rule in a manner that addresses almost all of the concerns raised by the parties.

II. ISSUES

Issue 1: Who owns the Green Tags during the last five years of a 20-year fixed price Power Purchase Agreement (PPA) during which prices paid to the QF are at market?

PGE urges the Commission to clarify that ownership of Green Tags or Renewable Energy Certificates (RECs)[1] during the last five years of a 20-year fixed price PPA should be handled consistent with its ruling in Order No 11-505:

> The renewable resource QF will keep all associated Renewable Energy Certificates (RECs) during periods of renewable resource sufficiency, but will transfer those RECs to the purchasing utility during periods of renewable resource deficiency.[2]

The Community Renewable Energy Association (CREA), Oregon Department of Energy (ODOE) and Commission Staff (Staff) would have the Commission revisit this ruling by linking the ownership of the RECs to the price paid for the QF power.[3] Such a link is contrary to Commission Order 11-505 in which the Commission tied the ownership of Green Tags to whether a utility is resource deficient or sufficient and not to the price paid for the energy.[4] The Commission's decision in Order 11-505 makes sense because the purpose of the renewable fixed price PPA is for the utility to acquire the renewable attributes associated with the QF during a period of renewable resource deficiency, consistent with its need to acquire a resource to satisfy Oregon's Renewable Portfolio Standards.[5]

[1] The terms "Renewable Energy Certificate" and "Green Tags" are used interchangeably in this brief. Green tags are tradable, non-tangible energy commodities that represent proof that electricity was generated from a renewable energy resource. PGE's Schedule 201 and associated Power Purchase Agreements ("PPA") use the term "RPS Attributes."
[2] Order No. 11-505, UM Docket 1396 at 1.
[3] CREA Pre-Hearing Brief at 4; ODOE Pre-Hearing Memorandum at 3; Staff Pre-Hearing Memorandum at 2-3.
[4] Order No. 11-505, Docket UM 1396 at 1.
[5] *See, Id.*

Staff's argument that there is potentially conflicting language in Order No 05-584 is not accurate. Order No. 05-584 did not address the issue of ownership of Green Tags. Rather it requires the last five years of the renewable fixed price PPA to be priced at market for the purpose of mitigating the divergence between forecasted and actual avoided costs at the end of the 20-year contract term.[6] There is simply no link between the Commission's pricing decision in the 2005 order and the ownership of green tags.

There is no need for the Commission to revisit either Order 11-505 or Order 05-584. When read together they provide a price structure that allows the utility to acquire renewable attributes during a period of renewable resource deficiency while at the same time enabling the QF to obtain adequate financing while limiting the possible divergence of standard contract rates from actual avoided costs. We urge the Commission to clarify that this remains its intent.

Issue 5: What is the appropriate forum to resolve litigated issues and assumptions?

For the reasons set forth in its pre-hearing brief, PGE continues to urge the Commission not to revisit its existing policies and processes with regard to this issue. No party has provided compelling evidence or argument to support the need for additional or expanded processes related to the review of utilities avoided cost prices. Indeed the concerns expressed by the Small Business Utility Advocates (SBUA) further caution against such addition or expansion. SBUA argues that "[b]y utilizing IRPs as a primary vetting ground for pricing assumptions…the Commission is implicitly requiring a prospective QF to participate in a docket dealing with far more issues than the power generation which is the focus of the QF."[7] SBUA claims that this requires more of the QF than is required in PURPA.[8] SBUA appears to be particularly

[6] Order 05-584, Docket UM 1129 at 20.
[7] SBUA Pre-Hearing Brief at 2.
[8] *See, Id.*

concerned with easing the transaction costs of smaller QFs.[9] Several parties urge the Commission to expand the existing IRP process or implement a new process to allow for additional review of avoided cost prices. [10] We note that the adoption of any additional processes or the expansion of existing processes related to the review of avoided cost prices will exacerbate SBUA's concerns by placing additional burdens and costs on small QFs wishing to participate in such processes. Nor are such expanded or additional processes necessary. We agree with Staff that the current process which has been in place for nearly ten years is the most appropriate process for determining a utility's avoided cost prices.[11] [12]

We also note that REC briefs an issue that was not on the issues list adopted by the ALJ, i.e., whether the utilities have the burden of proof to establish that avoided cost rates are just and reasonable.[13] We do not think it is either necessary or appropriate for the Commission to consider this issue at this time. It is not necessary because the Commission's statutes and rules speak for themselves in terms of the obligations of the utilities in proposing and obtaining approval of rates. PGE is unaware of (and REC provides no evidence of) any confusion with regard to the meaning of the rules on this issue. Moreover, it would be procedurally inappropriate to rule on an issue not on the issues list and for which all parties have not had the opportunity to provide testimony or argument.

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[9] *Id.*
[10] CREA Pre-Hearing Brief at 9; ODOE Pre-Hearing Memorandum at 6-7; REC Pre-Hearing Brief at 10-11.
[11] As explained in our Pre-Hearing Brief, we do not agree with Staff's proposal to add additional formal minimum filing requirements (MFRs) to the existing process. There is no evidence that MFRs are necessary or would be helpful. To the contrary, the imposition of formal requirements could serve as additional grounds for dispute in the avoided cost review. See PGE at 7.
[12] Staff Pre-Hearing Memorandum at 22.
[13] REC Pre-Hearing Brief at 6.

Issue 8: When is there a legally enforceable obligation ("LEO")?

The crux of this issue is the determination of when a LEO arises outside of an executed contract. Most of the parties briefing this issue appear to agree to the following:

(1) Oregon's existing LEO rule is inconsistent with FERC precedent.[14]

(2) A LEO cannot be created when a QF simply signs a form contract as the first point of contact.[15]

(3) In order for a LEO to be established, the utility and the QF must attempt to proceed through the Commission-approved contracting process.[16]

(4) If there are disputes during the contracting process that prevent the parties from executing a written contract, the dispute should be submitted to the Commission.[17] [18]

The parties disagree as to what happens when the Commission's dispute resolution process is triggered. CREA and REC argue that a LEO should automatically be created once a QF requests dispute resolution.[19] REC appears to be concerned that utilization of the dispute resolution process itself could somehow jeopardize the rights of the QF to seek access to current avoided cost rates.[20] However, as PacifiCorp points out, allowing a QF the ability to unilaterally trigger a LEO by submitting a dispute to the Commission could incent QFs to find disputes in order to lock in stale prices.[21] Both concerns can be addressed if the Commission clarifies that, as part of the dispute resolution process, it will determine whether and when a LEO has been established. This removes any incentive for either the QF or the utility to submit disputes to the Commission for the purpose of "locking in" lower or higher avoided cost prices prior to a price revision. Both

[14] PAC Pre-Hearing Brief at 39; REC Pre-Hearing Brief at 16; Gardner Pre-Hearing Brief at 1; Staff Pre-Hearing Memorandum at 38.
[15] PAC Pre-Hearing Brief at 37; REC Pre-Hearing Brief at 14; Gardner Pre-Hearing Brief at 9.
[16] CREA Pre-Hearing Brief at 21; REC Pre-Hearing Brief at 14; Staff Pre-Hearing Memorandum at 39; PAC Pre-Hearing Brief at 38.
[17] *Id.*
[18] PAC Pre-Hearing Brief at 43-44; REC Pre-Hearing Brief at 21; Gardner Pre-Hearing Brief at 11.
[19] CREA Pre-Hearing Brief at 22; REC Pre-Hearing Brief at 20.
[20] REC Pre-Hearing Brief at 21.
[21] PAC Pre-Hearing Brief at 45.

PacifiCorp and Idaho Power Company have suggested reasonable criteria that the Commission can consider in making such a determination.[22]

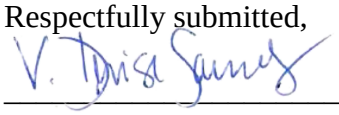
In short, we recommend that the Commission revise its rules to clarify that in order to establish a LEO, the QF and the utility must attempt to proceed through the Commission-approved contracting process. If there are disputes during the contracting process that cannot be resolved, the dispute should be submitted to the Commission. As part of the dispute resolution process, the Commission will determine when a LEO has been established.

III. CONCLUSION

For the reasons set forth above and in our Pre-Hearing Brief, PGE respectfully requests that the Commission refrain from making changes to its existing QF policies on the matters related to Issues 1 through 6 on the Issues List for this proceeding. PGE requests that the Commission clarify its policies, in the manner suggested by PGE, for Issues 7 through 9.

DATED this 13th day of October, 2015.

Respectfully submitted,



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[22] PAC Pre-Hearing Brief at 42; Idaho Power Pre-Hearing Brief at 26-27.