

September 11, 2017

Via Email

Chair Lisa Hardie
Commissioner Steve Bloom
Commissioner Megan Decker
Oregon Public Utility Commission
201 High St SE, Suite 100
Salem, Oregon 97301

RE: In the Matter of the Complaint of NORTHWEST AND INTERMOUNTAIN POWER PRODUCERS COALITION, COMMUNITY RENEWABLE ENERGY ASSOCIATION, and RENEWABLE ENERGY COALITION against PORTLAND GENERAL ELECTRIC COMPANY
Docket Nos. UM 1805.

Dear Commissioners:

The Northwest and Intermountain Power Producers Coalition, Community Renewable Energy Association, and Renewable Energy Coalition (jointly, “Complainants”) submit this letter recommending that the Oregon Public Utility Commission (the “Commission”) **approve** Portland General Electric Company’s (“PGE”) compliance filing regarding Order No. 17-256. The Complainants do not believe that PGE’s compliance is completely consistent with Order No. 17-256; however, it is more consistent with the Commission’s direction than the current standard contracts. Therefore, the Complainants recommend that PGE’s compliance filing be preliminarily approved.

The Complainants, however, also recommend that the Commission direct PGE to file a new compliance filing in five days that corrects PGE’s proposed contract language that does not pay qualifying facilities (“QFs”) for 15 years of fixed prices on the date of commercial operations or power deliveries. The Complainants have attached simple language that is consistent with Order No. 17-256.

Therefore, the Complainants have two recommendations:

- Approve PGE’s compliance filing to immediately because it is an improvement as compared to the current standard contract form; and
- Require PGE to file a new compliance filing that will result in QFs being paid for 15 years of fixed price after commercial operation.

Before focusing on the complex and confusing details of PGE's compliance filing, it is important to recognize why this case occurred in the first place. The Commission had adopted an easily understandable policy that PacifiCorp, Idaho Power, Staff and all QF stakeholders understood as requiring the utilities to pay for 15 years of fixed prices starting at the time of power deliveries. PGE drafted a complex standard contract that, until recently, no one was aware could even be read any different from the Commission's policy. Now, instead of making an incredibly simple change to its standard contract, PGE has made another compliance filing with another confusing standard contract that still does not comply with the Commission's policy. And, despite the Commission directing PGE to expeditiously act to ensure that its standard contracts are accurately revised, PGE is moving very slowly, with the practical impact of keeping in place a standard contract that harm QFs.

The Complainants filed a complaint against PGE requesting that the Commission confirm that: 1) its policy entitles qualifying facilities ("QFs") to 15 years of fixed prices from the time the facility becomes operational and begins delivering its net output under the standard contract; and 2) PGE's standard contract can be implemented to provide QFs with 15 years of fixed prices from the time of deliveries. The Commission dismissed the complaint concluding that PGE's current standard contracts have a fixed price period that begins on the date of execution, rather than on the date that the QF begins to transmit power.

The Commission, however, effectively granted one of the Complainants request for relief concluding that its policy is for the fixed price period to start on the date of power deliveries, and not any other date, and directed PGE to change its standard contract to comply with this policy. Specifically, the Commission stated that it wanted to "clarify our policy in Order No. 05-584 to explicitly require standard contracts, on a going-forward basis, to provide for **15 years of fixed prices that commence when the QF transmits power to the utility.**" Further the Commission stated: "Therefore, we believe that, to provide a QF the full benefit of the fixed price requirement, **the 15-year term must commence on the date of power delivery.**" The Commission twice ordered PGE revise its standard contracts. First, the Commission ordered "that PGE must, on a going forward basis, offer standard contracts in which the 15-year period **of fixed prices begins on the date that a QF begins to transmit power to the utility.**" Again, the Commission ordered that "PGE should promptly file revisions to Schedule 201 which shall include a revised standard contract PPA with language consistent with our requirement that **the 15-year term of fixed prices commences when the QF transmits power to the utility.**" The Commission also directed PGE to expeditiously fix the problem by directing PGE to make a compliance filing in only five days. To the Complainants at least, this language leaves little doubt about when the Commission wants the 15-year fixed price period should start.

PGE, however, elected to draft its contract in a manner in which the 15-year fixed period will rarely, if ever, starts at the time of power delivery when it made its compliance filing on July 20, 2017. PGE instead proposes to use the date **scheduled** for commercial operation that is estimated to occur at the time of contract execution. Complainants contacted PGE immediately after the compliance filing was made to raise their concerns, but almost two months later PGE has yet to state even whether or not it agrees with the Complainants' concerns about the start date for fixed prices in its newly proposed standard contract, let alone propose a fix. This delay only benefits PGE and harms QF waiting for changed contract terms, which is likely why PGE has elected to move slowly with this particular QF-related matter and is moving expeditiously with other filings in which it has proposed to harm QFs.

Under PGE's compliance filing standard contracts, the 15-year fixed price period, and the maximum overall contract term of 20 years, will start at the QF's scheduled "Commercial Operation Date" selected at contract execution, rather than the date power deliveries actually begin. Section 4.1 addresses payments for power deliveries and provides: "PGE shall pay Seller the Contract Price for all delivered Net Output. **For the first 15 years measured from the date in Section 2.2.2**, the Contract Price will be the Standard Fixed Price Option under the Schedule; thereafter and for the remainder of the Term, the Contract Price will be equal to the Mid-C Index Price." Thus, PGE now proposes that the date upon which the 15-year period shall be measured is a specific date inserted at the time of contract execution, rather than, as directed in Order No. 17-256, the date of power deliveries.

To be specific, the date the 15-years of fixed prices will begin in PGE's compliance filing is set in Section 2.2.2, which is the date of scheduled commercial operation. Section 2.2.2 states: "By _____ [date to be determined by the Seller subject to Section 2.2.3 below] Seller shall have completed all requirements under Section 1.4 and shall have established the Commercial Operation Date." Likewise, Section 2.2.3 limits the QF's selected "Termination Date" to a "not to exceed 20 years from the date contained in Section 2.2.2." The date in Section 2.2.2 is simply the date the QF estimates it will achieve commercial operation. If the QF fails to achieve Commercial Operation on or before that date it would be in default and potentially owe delay damages or eventually have its contract terminated under the terms of Sections 9.1.6 and 9.2. While a scheduled Commercial Operation Date is an important contract date, it is rarely the precise date that the QF begins delivering its power. The actual date of power deliveries under full operation could be days or months before or after the date scheduled at the time of contract execution for numerous reasons, which could be caused by the QF or PGE itself during interconnection construction.

Under PGE's proposal, if the project comes on line and is commercially operational before the scheduled date, then the project is paid at a lower test energy rate until the date of scheduled commercial operation, even though it has met all of the contractual requirements for commercial operation. Test energy rates are appropriate for

start-up test power for a short period of time, due to the fact that it may be difficult to rely upon the QF's steady operations and delivery during the test energy period, but under PGE's proposed contract a QF could be paid a test energy rate for months before being paid the full 15-years of fixed prices and well after it is in fact fully operational and reliable.

In contrast, PGE appears to propose that if the project comes online later than the scheduled operation date, each day of delay will result in a day-for-day reduction in the right to 15 years of fixed prices. That type of contract provision will cause significant financing problems for QFs that find themselves in any sort of unexpected delay, including delays by PGE, even though the contract itself and the Commission's policy is to give the QF one year to cure the delay, as reflected in Section 9.2 of PGE's contract. In short, under PGE's new proposal a QF only gets 15 years of fixed pricing if it precisely hits the only date estimated at the time of contract execution.

The better approach is to use the actual date the QF achieves the "Commercial Operation Date," as defined in the contract, as the triggering event for both the 15-year period of fixed prices and the maximum 20-year overall contract period. This is more consistent with the directive and reasoning of Order No. 17-256 that PGE's proposal. Recall that the Commission reasoned at page 4 of the Order No. 17-256:

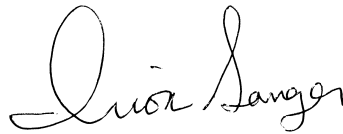
Standard contracts, whether prepared by PGE, Idaho Power or PacifiCorp, all contain QF performance benchmark event dates that must be achieved before the QF can offer power to the utility. The 15-year period of fixed prices is, of necessity, tied to these benchmarks. Prices paid to a QF are only meaningful when a QF is operational and delivering power to the utility. Therefore, we believe that, to provide a QF the full benefit of the fixed price requirement, the 15-year term must commence on the date of power delivery.

Complainants have attached a redline edit to the relevant provisions of PGE's proposed standard contract to faithfully implement this directive. PGE has also proposed changes to Schedule 201, but if the Complainants changes are made then there is no need to make any changes to PGE's existing approved Schedule 201, which already contains language describing the 15-year and 20-year terms that is substantively identical to Idaho Power's and PacifiCorp's tariffs on these points. So long as the contract itself is clear, there should be no need to update the tariff for PGE to make it more explicit than Idaho Power or PacifiCorp's tariffs. The Commission should approve the filed compliance filing because there should not be any further delay in PGE providing 15 years of fixed price payments, but then direct PGE to make a new compliance filing within five days that is consistent with the Complainants recommendation and Order No. 17-256.

Finally, the NewSun Solar Projects and the Complainants have separately filed petitions for clarification and rehearing regarding ambiguities as to language in Order No.

17-256 that could affect previously effective standard contract forms and executed versions of those forms. Neither of these petitions challenge and they both support the Commission's conclusion that PGE be required to revise the standard contract to ensure that the 15-year term of fixed prices commences when the QF transmits power to the utility. Therefore, these petitions do not impact the issues raised in the compliance filing and should not bar the Commission from approving the compliance filing promptly to make it available for new contracts going forward.

Sincerely,

A handwritten signature in cursive script that reads "Irion A. Sanger". The signature is written in black ink and is centered below the word "Sincerely,".

Irion A. Sanger

Attachment A

UM 1805 Compliance Filing Comments Attachment – Redline to PGE’s Proposed Section 2 and 4 (There Are No Edits to Sections 1.4 and 9, Which Are Only Excerpted for Completeness)

(Section numbers reflect PGE’s Standard In-System Non-Variable Power Purchase Agreement)

1.4. "Commercial Operation Date" means the date that the Facility is deemed by PGE to be fully operational and reliable. PGE may, at its discretion require, among other things, that all of the following events have occurred:

1.4.1. (facilities with nameplate under 500 kW exempt from following requirement) PGE has received a certificate addressed to PGE from a Licensed Professional Engineer (“LPE”) acceptable to PGE in its reasonable judgment stating that the Facility is able to generate electric power reliably in amounts required by this Agreement and in accordance with all other terms and conditions of this Agreement (certifications required under this Section 1.4 can be provided by one or more LPEs);

1.4.2. Start-Up Testing of the Facility has been completed in accordance with Section 1.28;

1.4.3. (facilities with nameplate under 500 kW exempt from following requirement) After PGE has received notice of completion of Start-Up Testing, PGE has received a certificate addressed to PGE from an LPE stating that the Facility has operated for testing purposes under this Agreement uninterrupted for a Test Period at a rate in kW of at least 75 percent of average annual Net Output divided by 8,760 based upon any sixty (60) minute period for the entire testing period. The Facility must provide ten (10) working days written notice to PGE prior to the start of the initial testing period. If the operation of the Facility is interrupted during this initial testing period or any subsequent testing period, the Facility shall promptly start a new Test Period and provide PGE forty-eight (48) hours written notice prior to the start of such testing period;

1.4.4. (facilities with nameplate under 500 kW exempt from following requirement) PGE has received a certificate addressed to PGE from an LPE stating that in accordance with the Generation Interconnection Agreement, all required interconnection facilities have been constructed, all required interconnection tests have been completed; and the Facility is physically interconnected with PGE's electric system.

1.4.5. (facilities with nameplate under 500 kW exempt from following requirement) PGE has received a certificate addressed to PGE from an LPE stating that Seller has obtained all Required Facility Documents and if requested by PGE in writing, has provided copies of any or all such requested Required Facility Documents;

* * * *

2.2. Time is of the essence of this Agreement, and Seller's ability to meet certain requirements prior to the Commercial Operation Date and to complete all requirements to establish the Commercial Operation Date is critically important. Therefore,

2.2.1. By _____ [date to be determined by the Seller] Seller shall begin initial deliveries of Net Output; and

2.2.2. By _____ [date to be determined by the Seller subject to Section 2.2.3 below] Seller shall have completed all requirements under Section 1.4 and shall have established the Commercial Operation Date.

2.2.3. Unless the Parties agree in writing that a later Commercial Operation Date is reasonable and necessary, the Commercial Operation Date shall be no more than three (3) years from the Effective Date. Buyer will not unreasonably withhold agreement to a Commercial Operation Date that is more than three (3) years from the Effective date if the Seller has demonstrated that a later Commercial Operation Date is reasonable and necessary.

2.3. This Agreement shall terminate on _____, _____ [date to be chosen by Seller but not to exceed 20 years from the Commercial Operation Date], or the date the Agreement is terminated in accordance with Section 9 or 11.2, whichever is earlier ("Termination Date").

Deleted: date contained in Section 2.2.2

* * * *

4.1. Commencing on the Effective Date and continuing through the Term of this Agreement, Seller shall sell to PGE the entire Net Output delivered from the Facility at the Point of Delivery. PGE shall pay Seller the Contract Price for all delivered Net Output. For the first 15 years after the Commercial Operation Date, the Contract Price will be the Standard Fixed Price Option under the Schedule; thereafter and for the remainder of the Term, the Contract Price will be equal to the Mid-C Index Price.

Deleted: measured from the date in Section 2.2.2

* * * *

SECTION 9: DEFAULT, REMEDIES AND TERMINATION

9.1. In addition to any other event that may constitute a default under this Agreement, the following events shall constitute defaults under this Agreement:

9.1.1. Breach by Seller or PGE of a representation or warranty, except for Section 3.1.4, set forth in this Agreement.

9.1.2. Seller's failure to provide default security, if required by Section 6, prior to delivery of any Net Output to PGE or within 10 days of notice.

9.1.3. Seller's failure to deliver the Minimum Net Output for two consecutive Contract Years.

9.1.4. If Seller is no longer a Qualifying Facility.

9.1.5. Failure of PGE to make any required payment pursuant to Section 8.1.

9.1.6 Seller's failure to meet the Commercial Operation Date.

9.2. In the event of a default under Section 9.1.6, PGE may provide Seller with written notice of default. Seller shall have one year in which to cure the default during which time the Seller shall pay PGE damages equal to the Lost Energy Value. If Seller is unable to cure the default, PGE may immediately terminate this Agreement as provided in Section 9.3. PGE's resource sufficiency/deficiency position shall have no bearing on PGE's right to terminate the Agreement under this Section 9.2.