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May 8, 2017

***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 1805 – Northwest and Intermountain Power Producers Coalition, Community Renewable Energy Association, and Renewable Energy Coalition, Complainants vs. Portland General Electric Company, Defendant

Attention Filing Center:

Enclosed for filing in Docket UM 1805 is Portland General Electric Company's Response in Opposition to Complainant's Motion for Summary Judgment.

Thank you in advance for your assistance.

Sincerely,

V. Denise Saunders

V. Denise Saunders
Associate General Counsel

VDS:bop

Enclosure

**BEFORE THE PUBLIC UTILITY COMMISSION**

**OF OREGON**

**UM 1805**

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| NORTHWEST AND INTERMOUNTAIN POWER PRODUCERS COALITION; COMMUNITY RENEWABLE ENERGY ASSOCIATION and RENEWABLE ENERGY COALITION,<br><br>Complainants,<br><br>vs.<br><br>PORTLAND GENERAL ELECTRIC COMPANY,<br><br>Defendant. | **PORTLAND GENERAL ELECTRIC COMPANY'S RESPONSE IN OPPOSITION TO COMPLAINANT'S MOTION FOR SUMMARY JUDGMENT** |

Pursuant to OAR 860-001-0420, Portland General Electric Company ("PGE") respectfully submits this response in opposition to Complainants' motion for summary judgment.

## I. INTRODUCTION

Complainants have moved for summary judgment. Complainants ask the Public Utility Commission of Oregon ("Commission") to rule that PGE must pay standard contract fixed-prices for 15 years after a qualifying facility ("QF") begins power delivery. Complainants argue this approach "makes good sense" and is the best policy to facilitate QF financing.[1] But this is not a proceeding to adopt new QF policy. This is a complaint proceeding in which PGE has been accused of violating the Commission's **existing** orders on contract length.[2] Complainants' policy arguments are irrelevant. The relevant question is: What has the Commission ordered PGE to do and has PGE complied?

[1] Docket No. UM 1805, Complainants' Motion for Summary Judgment at 2 (Apr. 24, 2017).
[2] Docket No. UM 1805, Complaint at ¶¶ 47 and 52 (Dec. 6, 2016).

In Order No. 05-584, issued May 13, 2005, the Commission made three decisions about standard contract length. The Commission decided: (1) the maximum term of a standard contract is 20 years; (2) standard contract prices should be fixed for only the first 15 years of the 20-year term; and (3) a QF that opts for a 20-year contract must accept market prices for the final five years of the contract.[3] The Commission ordered each utility to file a rate schedule and standard contract forms that were consistent with the decisions in Order 05-584.[4] Within 60 days, each utility filed a rate schedule and contract forms.[5] These documents were allowed to become effective subject to investigation to determine if they were consistent with Order No. 05-584.[6]

In early 2007, after more than a year of investigation, the Commission approved each utility's rate schedule and standard contract forms as consistent with the requirements of Order No. 05-584, including the Commission's decisions on standard contract length.[7] PGE's Commission-approved documents provided for a contract term that began at contract execution, extended for a maximum of 20-years from contract execution, and limited fixed prices to the first 15 years of the contract term.[8] PacifiCorp's and Idaho Power's documents provided for a contract term that began at contract execution, extended for a maximum of 20 years from the QF's scheduled initial delivery date (PacifiCorp) or from the QF's operation date (Idaho Power), and limited fixed prices

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[3] Docket No. UM 1129, Order No. 05-584 at 20 (May 13, 2005).
[4] *Id.* at 59-60.
[5] *See* Docket No. UM 1129, Order No. 06-538 at 6 (Sep. 20, 2006).
[6] Docket No. UM 1129, Order No. 05-899 (Aug. 9, 2005).
[7] Docket No. UM 1129, Order No. 07-065 (Feb. 27, 2007) (approving PGE Supp. Advice No. 06-26); Docket No. UM 1129, Order No. 07-120 (Apr. 2, 2007) (approving PacifiCorp Advice No. 06-019); Docket No. UM 1129, Order No. 07-197 (May 18, 2007) (approving Idaho Power Advice No. 06-10).
[8] Docket No. UM 1129, PGE's Supplemental Filing of Advice No. 06-26, Docket No. UM 1129 Compliance Filing to Order No. 06-538 (Jan. 23, 2007); *see also* Docket No. UM 1805, PGE's Motion for Summary Judgment at 18-21 (Apr. 24, 2017) (discussing relevant provisions of PGE standard contract forms approved February 27, 2007).

to the first 15 years following the QF's scheduled initial delivery date (PacifiCorp) or following the QF's operation date (Idaho Power).[9]

The Commission approved all three of these approaches as consistent with the Commission's decisions on standard contract length contained in Order No. 05-584.[10] The Commission has not changed its decisions on standard contract length since issuing Order No. 05-584. The Commission has not ordered PGE to change its approach to the 20-year term or the 15-year limit on fixed prices. As recently as October 11, 2016, the Commission approved PGE's current standard contract forms.[11] These documents continue to provide for a contract term that begins at execution, extends for a maximum of 20 years from contract execution, and limits fixed prices to the first 15 years of the contract term.[12]

The record of the Commission's orders and PGE's responses clearly demonstrates three things. First, the Commission has not ordered PGE to pay fixed prices for 15 years measured from the date a QF achieves commercial operation. Second, the Commission has authorized PGE to limit the availability of fixed prices to the first 15 years of a 20-year contract term that begins at contract execution. Third, PGE has not violated the Commission's orders or policies regarding the 15-year limit on fixed prices. The Complainants have failed to provide any undisputed evidence to the contrary, or to meet their burden of proof.

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[9] Docket No. UM 1129, PacifiCorp's Advice No. 06-016, Compliance Filing Regarding Order No. 06-538 (Oct. 25, 2006); Docket No. UM 1129, Idaho Power's Advice No. 06-10, Revisions to Compliance Filing to Docket No. UM 1129, Order No. 06-538 (Nov. 3, 2006); *see also* Docket No. UM 1805, PGE's Motion for Summary Judgment at 25-27 (Apr. 24, 2017) (discussing relevant provisions of PacifiCorp's and Idaho Power's standard contract forms approved by the Commission in April and May of 2007).

[10] *See* footnote 7 *supra*.

[11] Docket No. UM 1610, Order No. 16-377 (Oct. 11, 2016).

[12] Docket No. UM 1610, PGE's Schedule 201 Qualifying Facility Information Compliance Filing (Jul. 12, 2016); *see also* Docket No. UM 1805, PGE's Motion for Summary Judgment at 21-25 (Apr. 24, 2017) (discussing the relevant provisions of PGE standard contract forms and rate schedule approved October 11, 2016).

Complainants have also failed to provide any evidence to support their disputed allegation that PGE's standard contract forms are ambiguous and contain blank spaces that can be filled in to state that PGE will pay fixed prices for 15 years measured from commercial operation.[13] PGE has denied that its contract forms are ambiguous or that they can be used in this way.[14] Complainants have provided no evidence to the contrary and have failed to explain how PGE's standard contracts support Complainants' claims.

Because the Complainants have failed to establish that they are entitled to prevail as a matter of law, their motion for summary judgment should be denied. This case should be resolved in PGE's favor for the reasons discussed in PGE's April 24, 2017 motion for summary judgment. If the Commission denies PGE's motion for summary judgment, PGE requests that the Commission set this matter for hearing.

## II. RESPONSE IN OPPOSITION

Complainants' motion for summary judgment is based on several false assumptions or assertions. First, the motion relies on unsupported claims that the Commission has a policy that requires PGE to pay fixed prices for 15 years following the date a QF achieves commercial operation.[15] Second, Complainants misconstrue Order No. 05-584 and incorrectly assert that the purpose of the 15-year limit on fixed prices is to facilitate QF financing when the actual purpose is to ensure accurate prices by limiting divergence between fixed prices and actual avoided costs.[16] Finally, Complainants assert, with no support and in the face of overwhelming evidence to the contrary, that PGE's approach of limiting fixed prices to the first 15 years after contract execution is a newly

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[13] Docket No. UM 1805, Complaint at ¶ 22 (Dec. 6, 2016).
[14] Docket No. UM 1805, Answer at ¶ 22 (Mar. 28, 2017).
[15] Docket No. UM 1805, Complainants' Motion for Summary Judgment at 2 (Apr. 24, 2017).
[16] *Id.* at 6.

articulated approach that has not been considered or approved by the Commission.[17] Each of these assertions by Complainants is wrong.

## A. The Commission does not have a policy requiring the payment of fixed prices for 15 years after commercial operation.

The Commission does not have a policy requiring PGE to pay fixed prices for 15 years measured from the date a QF achieves commercial operation. In Order No. 05-584, the Commission made three decisions about standard contract length[18] and ordered the utilities to file rate schedules and standard contract forms that complied with those decisions.[19] PGE did so, proposing an approach with a standard contract term that ran from contract execution for a maximum of 20-years after contract execution and that limited the availability of fixed prices to the first 15 years of the contract term.[20] In Order No. 07-065, the Commission approved this approach as consistent with the requirements of Order No. 05-584.[21]

In response to Order No. 05-584, PacifiCorp and Idaho Power proposed approaches with standard contract terms that ran from contract execution for a maximum of 20 years after the scheduled initial delivery date (PacifiCorp) or the QF's operation date (Idaho Power). PacifiCorp and Idaho Power also proposed to limit the availability of fixed prices to the first 15-years following the scheduled initial delivery date (PacifiCorp)

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[17] Docket No. UM 1805, Complainants' Motion for Summary Judgment at 2-3 (Apr. 24, 2017).

[18] Docket No. UM 1129, Order No. 05-584 at 20 (May 13, 2005) (The Commission decided: (i) standard contracts should have a maximum term of 20 years; (ii) fixed prices should be available for only the first 15 years of the 20-year term; and (iii) market prices apply during the last five years of the 20-year term.).

[19] *Id.* at 59-60.

[20] PGE filed Advice No. 05-10 on July 12, 2005. It was revised and re-submitted by PGE as Supplemental Advice No. 06-26 on January 23, 2007. Both filings provided for a contract term that began at contract execution, terminated a maximum of 20-years after contract execution, and limited fixed prices to the first 15 years of the contract term. *See* Docket No. UM 1805, PGE's Motion for Sum. Judg. at 18-21 and Attachments 1 and 2 (Apr. 24, 2017) (discussion of the relevant terms of the PGE's documents and courtesy copies of same).

[21] Docket No. UM 1129, Order No. 07-065 (Feb. 27, 2007) (Order approving PGE's January 23, 2007 Supp. Advice No. 06-26 as consistent with Order No. 06-538, which enumerated the changes required to bring rate schedules and contract forms into full consistency with Order No. 05-584).

or the QF's operation date (Idaho Power).[22] The Commission also approved these two approaches as consistent with the requirements of Order No. 05-584.[23]

In sum, the Commission ordered all three utilities to file rate schedules and standard contract forms that were consistent with the decisions contained in Order No. 05-584, including the decisions on standard contract length. All three utilities did so. Each utility proposed a different approach regarding when a standard contract term ends and when the 15-year limit on fixed prices runs. The Commission approved all three approaches as consistent with the requirements of Order No. 05-584. The Commission determined that PGE complied with Order No. 05-584 when it proposed a contract term that began at contract execution, extended for a maximum of 20 years from contract execution, and limited fixed prices to the first 15 years of a contract term that begins at contract execution. This determination definitively established that Order No. 05-584 does not create a policy that requires PGE to offer fixed prices for 15-years measured from a QF's commercial operation date.

If the Commission had intended for the 20-year term and 15-year limit on fixed price to begin at commercial operation and not at contract execution, it would have said so in simple and straightforward language, just like the New York Commission did in the 2017 case cited by Complainants.[24] It did not. And the Commission would not have approved PGE's rate scheduled and contract forms, which clearly provided for a maximum term of 20 years measured from contact execution. But the same three Commissioners that issued Order No. 05-584 in May 2005 approved PGE's rate schedule

[22] *See* Footnote 9 *supra*.
[23] Docket No. UM 1129, Order No. 07-120 (Apr. 2, 2007) (approving PacifiCorp Advice No. 06-19); Docket No. UM 1129, Order No. 07-197 (May 18, 2007) (approving Idaho Power Advice No. 06-10).
[24] Docket No. UM 1805, Complainants' Motion for Summary Judgment at footnote 62 (Apr. 24,2017) (citing March 9, 2017 decision by the New York Public Service Commission stating that eligible net metering customers will "receive [fixed] compensation for a 20-year term from their in-service date.")

and contract forms in February 2007 because they did not intend to prohibit PGE from measuring the 20-year term and the 15-year limit on fixed prices from contract execution.

**B. The purpose of the 15-year limit on fixed prices.**

Complainants state that the purpose of the 15-year limit on fixed prices is to facilitate QF financing.[25] Complainants are wrong. In Order No. 05-584, the Commission stated that deciding the issue of an appropriate standard contract length required it to "balance two goals"—facilitating QF financing and ensuring accurate avoided cost prices.[26] The Commission addressed the first goal—facilitating QF financing—by setting "the maximum term for standard contracts" equal to "the contract term length minimally necessary to ensure that most QF projects can be financed." [27] The Commission determined that 20 years is the minimum period necessary to ensure QF financing and the Commission set the maximum term of a QF standard contract at 20-years.[28]

The Commission then turned to its second goal—ensuring accurate prices for QF power. The Commission addressed this second goal by limiting the availability of fixed

[25] Docket No. UM 1805, Complainants' Motion for Summary Judgment at 6 (Apr. 24, 2017) (arguing that Commission policy requires PGE to pay 15 years of fixed prices beginning from commercial operation and that this policy is based on "a determination that 15 years of fixed pricing was the minimum time needed to facilitate appropriate financing for most QF projects.").

[26] Docket No. UM 1129, Order No. 05-584 at 19 (May 13, 2005) ("We conclude that establishing an appropriate maximum term for standard contracts requires us to balance two goals. A primary goal in this proceeding is to accurately price QF power. We also seek … to ensure that the terms of the standard contract facilitate appropriate financing for a QF project. Consequently, … our fundamental objective is to establish a maximum standard contract term that enables eligible QFs to obtain adequate financing, but limits the possible divergence of standard contract rates from actual avoided costs.").

[27] *Id*. at 19-20 ("We conclude that the contract term length minimally necessary to ensure that most QF projects can be financed should be the maximum term for standard contracts. The evidence presented in this proceeding is inconclusive, however, about whether that length of term is 15 or 20 years. … Although Staff presented evidence that ODOE has represented in the recent past that 15 years is an appropriate term, ODOE itself argued in this proceeding that 20 years is minimally adequate. Given its role as a facilitator and financier of QF projects, we find ODOE's testimony to be the most persuasive in this proceeding. Consequently, we adopt ODOE's recommendation that the maximum term of a standard contract be raised to 20 years.").

[28] *Id.*

prices to the first 15 years of the maximum 20-year contract term.[29] The Commission stated:

> Given our desire to calculate avoided costs as accurately as possible, and the testimony of several parties that avoided costs should not be fixed beyond 15 years, we are persuaded that standard contract prices should be fixed for only the first 15 years of the 20-year term.[30]

In sum, the purpose of the 15-year limit is to ensure accurate avoided cost prices by limiting—to 15-years—the period over which fixed prices are allowed to diverge from actual avoided costs.[31] The best way to accomplish this purpose is to limit the availability of fixed prices to 15 years measured from the date the contract is executed. This is because a utility's forecasted avoided costs become fixed contract prices on the date the contract is executed.[32] As a result, fixed prices begin to diverge from actual avoided costs on the date a contract is executed. It made good sense for PGE to propose, and for the Commission to approve, PGE's approach of limiting fixed prices to the first 15 years of the contract term measured from the date the contract is executed.

**C. PGE's approach is not a new position.**

Complainants have wrongly asserted that PGE's approach to the 15-year limit is a new position.[33] PGE first submitted its approach to the Commission almost twelve years ago on July 12, 2005, in response to Order No. 05-584.[34] The Commission investigated

[29] Docket No. UM 1129, Order No. 05-584 at 20 (May 13, 2005) (The Commission adopted the 15-year limit on fixed prices after stating: "… we acknowledge that 20 years is a significant amount of time over which to forecast avoided costs. Indeed, divergence between forecasted and actual avoided costs must be expected over a period of 20 years.").
[30] *Id.*
[31] *See* Docket No. UM 1805, PGE's Motion for Summary Judgment at 9-15 (Apr. 24, 2017) (discussion of Commission's decisions on standard contract length in Order No. 05-584).
[32] Docket No. UM 1610, PGE's Schedule 201 QF Information Compliance Filing, Schedule 201 at Sheet 201-4 (Jul. 12, 2016) ("Standard Fixed Price Option ... Prices will be as established at the time the Standard PPA is executed and be equal to the Standard Avoided Costs in Tables [contained in Schedule 201].").
[33] Docket No. UM 1805, Complainants' Motion for Sum. Judg. at 2-4, 11, 13-14 and 18 (Apr. 24, 2017).
[34] Docket No. UM 1129, PGE Advice No. 05-10, Compliance Filing (Jul. 12, 2005).

PGE's compliance filing intensively.[35] More than a year later, the Commission approved PGE's approach as consistent with the requirements of Order No. 05-584.[36] There is simply no truth to Complainants' assertion that PGE's approach is "newly articulated" or that adopting it "would create a new set of rules for some QFs in Oregon."[37] The fact that the Commission approved three clearly different approaches to the 15-year limit on fixed prices demonstrates that the issue is **not** governed by an industry standard or by an "established … trade usage" as alleged by Complainants."[38]

**D. The Commission has not modified the requirements of Order No. 05-584.**

Complainants assert that the Commission has "reaffirmed" a requirement for utilities to pay fixed prices for 15 years from commercial operation in three dockets—UM 1610, UM 1725 and UM 1734.[39] Complainants are wrong.

In UM 1610, the Commission acknowledged that Order No. 05-584 established requirements for standard contract length, but the Commission did not order any changes to those requirements. In the first phase of UM 1610, the Commission simply acknowledged that Order No. 05-584 adopted "20-year standard contracts with 15-year fixed prices."[40] In the second phase of UM 1610, the Commission stated:

> In Order No. 05-584, we established a 20-year maximum term for a standard contract to facilitate QF financing, fixing prices for only the first 15 years to minimize forecasting error. … Order No. 05-584 dictates the maximum term of any standard contact and that market prices replace avoided cost prices during the last five years of a 20-year standard contract.[41]

[35] *See* Docket No. UM 1129, Order No. 06-538 at 6-7 (Sep. 20, 2006) (detailing the investigation of the rate schedules and standard contract forms filed in compliance with Order No. 05-584).
[36] Docket No. UM 1129, Order No. 07-065 (Feb. 27, 2007) (approving PGE Supp. Advice No. 06-26).
[37] Docket No. UM 1805, Complainants' Motion for Summary Judgment at 3 (Apr. 24, 2017).
[38] Docket No. UM 1805, Complainants' Motion for Summary Judgment at 7 (Apr. 24, 2017).
[39] *See e.g.,* Docket No. UM 1805, Complainants' Motion for Summary Judgment at 13-14 (Apr. 24, 2017).
[40] Docket No. UM 1610, Order No. 14-058 at 3 (Feb. 24, 2014).
[41] Docket No. UM 1610, Order No. 16-174 at 5 (May 13, 2016).

There is no order in UM 1610 in which the Commission indicated any intent to change any aspect of the standard contract length requirements established in Order No. 05-584. The Commission certainly did not order PGE to change its previously approved approach of limiting fixed prices to the first 15 years of a standard contract term that begins when the contract is executed.

Similarly, neither UM 1725 nor UM 1734 altered the Commission's requirements on standard contract length established in Order No. 05-584. In neither docket did the Commission order PGE to change its previously approved approach of limiting fixed prices to the first 15 years of a standard contract term that begins when the contract is executed.[42] Indeed, in UM 1725, the Commission made it clear that the proceeding did not involve questions of generally applicable policy, that the docket did not alter Idaho Power's existing approach to the 15-year limit on fixed prices, and that the Commission was not making any determination in UM 1725 regarding PGE's approach to the 15-year limit on fixed prices.[43]

**E. Complainants' have failed to meet their burden of proof.**

Complainants' motion for summary judgment contains numerous assertions of fact that are not supported by any evidence or that have been contradicted by PGE. As a

[42] Docket No. UM 1725, Order No. 16-129 (Mar. 29, 2016) (on application by Idaho Power, the Commission reduced the eligibility for standard contracts for solar QFs to 3 MW, denied a request to reduce the term of negotiated contracts, and approved a change in resource deficiency date); Docket No. UM 1734, Order No. 16-130 (Mar. 29, 2016) (on application by PacifiCorp, the Commission reduced the eligibility for standard contracts for solar QFs to 3 MW, and denied a request to reduce the term of negotiated contracts).

[43] Docket No. UM 1725, Order No. 16-175 at 2-3 (May 16, 2016)("… Idaho Power sought in this docket … no change with respect to the duration of standard contracts … the order [resolving the docket] only addressed the specific questions in the application regarding Idaho Power QF contracts, and did not seek to change the *status qua ante* in any other regard. … Order No. 16-129 made no changes to Idaho Power's Schedule 85, which unambiguously provides that the 15-year period commences at the time [of] the QF's "Operation Date." We note … PGE's standard QF contract differs with regard to when the 15-year period commences. Because this docket specifically addresses the terms and conditions of QF agreements to be entered into by Idaho Power and [does] not … address overall QF policy, we respond only to CREA's and REC's motion and do not address the provisions of PGE's standard contract at this time.").

result, the Complainants have failed to meet their burden of proof, have failed to establish that there are no genuine issues of material fact, or have failed to establish that they are entitled to prevail as a matter of law.

### 1. Complainants provide no evidence to support their argument involving the 2010 Pa´Tu Contract and the 2014 OneEnergy Contract.

The Complainants assert that a 2010 contract with Pa´Tu Wind Farm, LLC and a 2014 contract with OneEnergy Oregon Solar, LLC demonstrate that PGE's standard contract forms can be filled out to make it clear that PGE will pay fixed prices for 15 years measured from the date a QF achieves commercial operation.[44] Complainants have failed to provide any evidence to support these assertions. Complainants have provided no discussion of either contract, and Complainants have not explained, in even rudimentary form, how the contracts allegedly prove Complainants' assertion.

PGE has denied that the contracts demonstrate that PGE's standard contracts allow for payment of fixed prices for 15 years measured from the commercial operation date.[45] In its own motion for summary judgment, PGE has provided a detailed review of the language of the two contracts and explained why they do not support Complainants' assertions.[46] Complainants have failed to meet their burden of proof on this contested issue, and Complainants' argument about these two contracts should be rejected.

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[44] Docket No. UM 1805, Complainants' Motion for Summary Judgment at 29-30, note 79 (Apr. 24, 2017).
[45] Docket No. UM 1805, Answer at ¶¶ 24-26 (Mar. 28, 2017).
[46] Docket No. UM 1805, PGE's Motion for Summary Judgment at 27-34 (Apr. 24, 2017)(PGE provided courtesy copies of the two contracts at Attachments 5 and 6 to PGE's motion for summary judgment).

### 2. Complainants' provide no evidence to support their factual claims concerning PGE's standard contract.

Another example of Complainants' failure to meet its burden of proof is their failure to provide any evidence to support the following factual claim:

> Simply put, because PGE's contracts do not expressly specify when the fixed-price period begins, and allow for a date to be filled in, the current contracts can be used in a way that adheres to [Complainants' view of] the Commission's policy [as requiring fixed prices for 15 years measured from commercial operation].[47]

Complainants do not bother to review the actual language of PGE's standard contract forms, or to provide any analysis or evidence showing how the contracts can be used in the way Complainants assert they can be used. Instead, Complainants rely on an extended quote from a May 6, 2016 brief filed in UM 1725 by counsel to Commission Staff. Staff's legal brief is argument, not evidence.

UM 1725 did not focus on the question of when PGE's 15-year limit on fixed prices begins to run. The Commission ultimately decided that PGE's contracts had no bearing on UM 1725 and would not be addressed in the proceeding.[48] Nevertheless, legal counsel for Staff filed a brief in UM 1725 stating:

> PGE asserts that its standard contract includes a 20-year term, inclusive of the time between contract execution and the commercial on-line date of the QF. A review of PGE's Standard Renewable Off-System Variable Power Purchase Agreement Form, effective September 23, 2015, does not clearly substantiate PGE's claim. Notably, the form of contract does not have a specified term. Instead, the term of the contact is filled out by the contracting parties. While PGE may have completed and executed these contracts so that the fifteen-year fixed-price term starts from the effective date of the contract rather than the QF's [commercial operation date], this cannot be known from the form of the contract reviewed and approved by the Commission.[49]

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[47] Docket No. UM 1805, Complainants' Motion for Summary Judgment at 26 (Apr. 24, 2017).
[48] Docket No. UM 1725, Order No. 16-175 at 2-3 (May 16, 2016).
[49] Docket No. UM 1725, Staff's Response to Motion for Clarification at 4 (May 6, 2016).

This conclusion is incorrect. The contract form reviewed by Staff's attorney provided for a maximum contract term of 20-years beginning at contract execution. It defined the contract "Term" as "the period beginning on the Effective Date and ending on the Termination Date."[50] It defined the "Effective Date" as the date both parties execute the contract.[51] It allowed the QF to select a Termination Date,[52] but it incorporated by reference all of the terms of PGE's Schedule 201,[53] and the rate schedule clearly required a seller to select a contract term that does not exceed 20 years.[54]

So, by its express provisions, PGE's contract form provided for a contract term that began at contract execution and extended for a maximum of 20 years from contract execution. The contract form required PGE to pay the Contract Price for all QF net output delivered to PGE.[55] And the contract form defined "Contract Price" as the applicable price specified in Schedule 201.[56] The expressly incorporated terms of Schedule 201 provided that fixed prices are available only during the first 15 years of the contract term, after which market prices apply for the "up to five years" remaining in the contract term.[57] There is no ambiguity in PGE's contract form. PGE's Commission-approved form provides for a maximum 20-year term measured from the date the contract is fully executed and limits fixed prices to the first 15 years of that term.

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[50] Docket No. UM 1610, PGE's Application in Compliance with OPUC Order No. 15-130, *Standard Renewable Off-System Variable Power Purchase Agreement* at Section 1.38 (May 27, 2015).
[51] *Id.* at Sections 1.8 and 2.1.
[52] *Id.* at Section 2.3.
[53] *Id.* at Section 1.33.
[54] Docket No. UM 1610, PGE's Application in Compliance with OPUC Order No. 15-130, Schedule 201 at Sheet No. 201-1 (May 27, 2015) ("The agreement will have a term of up to 20 years as selected by the QF").
[55] Docket No. UM 1610, PGE's Application in Compliance with OPUC Order No. 15-130, *Standard Renewable Off-System Variable Power Purchase Agreement* at Section 4.2 (May 27, 2015).
[56] *Id.* at Section 1.6.
[57] Docket No. UM 1610, PGE's App. in Comp. with Order No. 15-130, Schedule 201 at 201-12 (May 27, 2015) ("The Renewable Fixed Prices Option … is available for a maximum term of 15 years. Prices will be established at the time the Standard PPA is executed … Sellers with PPAs exceeding 15 years will receive pricing equal to the Mid-C Index Price … for all years up to five in excess of the initial 15.").

In its May 6, 2016 legal brief, Staff also noted that Section 4.5 of PGE's renewable standard contract form appeared to be "inconsistent with PGE's assertion that the fifteen-year fixed-price term starts on the effective date of the contract, rather than the COD of the QF." PGE disputes this assertion. First, Staff's legal brief is not evidence. Complainants have failed to provide any evidence that Section 4.5 is inconsistent with PGE's Commission-approved approach of limiting fixed prices to the first 15 years of a contract term that begins at contract execution. Second, the language referred to by Staff's attorney is no longer a part of PGE's standard contract forms.[58] Third, the language referred to by Staff's attorney addressed ownership of a QF's renewable energy credits and did not purport to address Contract Prices or the 15-year limit on fixed prices. The contract under review expressly stated that its term began at contract execution, and that the Contract Price would be the applicable price from PGE's rate schedule. Schedule 201, which was incorporated by reference, expressly limited the availability of fixed prices to the first 15 years of the contract term. There is no basis to conclude that PGE's standard contracts forms—either the superseded contract form reviewed by legal counsel for Commission Staff in the May 6, 2016 brief, or PGE's currently effective contract forms—provide for payment of fixed prices for 15 years measured from the QF's commercial operation date.

[58] The language in question addressed ownership of renewable energy credits (RECs). In Docket No. UM 1610, Order No. 16-174 at 5 (May 13, 2016), the Commission clarified that once a utility is resource deficient, RECs transfer to the utility for the remainder of the standard contract term. This clarification regarding the ownership of RECs made the prior language of Section 4.5 unnecessary, and PGE removed the language as part of its compliance filing in response to Order No. 16-174.

### 3. Complainants' argument about 11-years of payments is based on a flawed assumption about the purpose of the 15-year limit on fixed prices.

The Complainants argue that PGE's approach could lead to a QF receiving only 11 years of fixed-price payments if the QF needs the first four years of its contract term to bring its project on-line.[59] Complainants object that this would frustrate the purpose of facilitating QF financing but provide no evidence to support their objection.[60] However, as PGE has explained, and as the Commission made clear in Order No. 05-584, the purpose of the 15-year limit on fixed prices is not to facilitate QF financing.[61] The purpose of the 15-year limit is to ensure accurate prices by limiting the period of divergence between fixed prices and actual avoided costs to no more than 15 years.[62]

A utility maintains forecasted avoided cost prices in its rate schedule.[63] The utility updates these forecasted prices on an annual basis to prevent them from diverging too radically from the utility's actual avoided costs.[64] However, when a QF enters into a standard contract, the forecasted avoided costs in effect *at the time the contract is executed* become fixed prices under the contract.[65] These fixed prices are not updated annually. As a result, the fixed prices begin to diverge from the utility's actual avoided costs from the date the contract is executed.

Under the scenario imagined by Complainants, a QF can execute a standard contract, fix contract prices on the contract effective date, take four years from the contract effective date to achieve commercial operation, and then demand fixed prices for

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[59] Docket No. UM 1805, Complainants' Motion for Summary Judgment at 7-8 (Apr. 24, 2017).
[60] *Id.*
[61] *Supra* at 6-7.
[62] Docket No. UM 1129, Order No. 05-584 at 20 (May 13, 2005); *see also, supra* at 6-7.
[63] *See e.g.* Docket No. UM 1610, PGE's Schedule 201 Qualifying Facility Information Compliance Filing, Schedule 201 at Sheet 201-6 through Sheet 201-11 (Jul. 12, 2016).
[64] Docket No. UM 1610, Order No. 14-058 at 25 (Feb 24, 2014) ("We direct electric utilities to update their avoided cost rates ... on May 1 every year.").
[65] *See* footnote 32 *supra*.

15 years from the commercial operation date. This would allow fixed contract prices to diverge from actual avoided costs for 19 years. This would frustrate the express purpose of the 15-year limit on fixed prices, which is to limit divergence between fixed prices and actual avoided costs to 15 years. Complainants' argument about 11 years of payments demonstrates why PGE's approach to the 15-year limit on fixed prices is the approach that most faithfully implements the 15-year limit established by Order No. 05-584.

## III. CONCLUSION

For the reasons discussed above, Complainants have failed to meet their burden of proof, failed to establish that there are no genuine issues of material fact, and failed to establish that they are entitled to prevail as a matter of law. As a result, the Commission should deny Complainants' motion for summary judgment.

For the reasons discussed in PGE's motion for summary judgment, the Commission should grant summary judgment in favor of PGE and deny all of the relief requested in the complaint. If the Commission denies PGE's motion for summary judgment, PGE respectfully requests that the Commission set this matter for hearing.

Dated this 8th day of May 2017.

Respectfully submitted,


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