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February 5, 2018

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 Reply in Support of Application for Rehearing or Reconsideration and Application to Rescind, Suspend or Amend Order No. 17-465.

Thank you for your assistance.

Sincerely,

A handwritten signature in blue ink that reads "V. Denise Saunders". The signature is written in a cursive style with a large, stylized "V" and "S".

V. Denise Saunders
Associate General Counsel

VDS:bop

Enclosure

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1805

NORTHWEST AND INTERMOUNTAIN
POWER PRODUCERS COALITION;
COMMUNITY RENEWABLE ENERGY
ASSOCIATION and RENEWABLE
ENERGY COALITION,

Complainants,

vs.

PORTLAND GENERAL ELECTRIC
COMPANY,

Defendant.

**PORTLAND GENERAL ELECTRIC
COMPANY'S REPLY IN SUPPORT OF
APPLICATION FOR REHEARING OR
RECONSIDERATION AND
APPLICATION TO RESCIND, SUSPEND
OR AMEND ORDER
NO. 17-465**

Pursuant to OAR 860-001-0420(5), Portland General Electric Company (PGE) files this reply in support of its application for rehearing or reconsideration and application to rescind, suspend or amend Order No. 17-465.

A. Background.

In this case three qualifying facility (QF) trade associations filed a complaint against PGE. They argued that Order No. 05-584 requires PGE to offer fixed prices for 15 years measured from the date a QF achieves commercial operation (the Commercial Operation Date or COD).¹ The complaint alleged PGE's standard contract forms were consistent with this purported requirement.² The complaint also alleged that in 2016 PGE began to improperly take

¹ *Northwest and Intermountain Power Producers Coalition; Community Renewable Energy Association; and Renewable Energy Coalition v. Portland General Electric Company*, Docket No. UM 1805, Complaint at 1 (Dec. 6, 2016) ("The Commission's policy is that 15 years of fixed pricing commences when the QF achieves operation." Citing Order No. 05-584).

² *Id.* at 2 ("PGE's Commission-approved standard contracts allow QFs to select a full 15 years of fixed prices ... through ... blank spaces that can be filled in with terms that specify that the QF's net output will be sold under fixed prices for 15 years after the QF's operation.").

the position that its forms limited the availability of fixed prices to the first 15 years measured from contract execution.³ The complaint asked the Commission: 1) to order PGE to stop taking the position that its forms limited fixed prices to the first 15 years after execution;⁴ and 2) to rule that PGE's forms provide for 15 years of fixed prices measured from COD unless the QF adds language expressing a contrary intent.⁵ In the alternative, if the Commission did not agree that PGE's forms already provide for fixed prices for 15 years from COD, then the complaint asked the Commission to order PGE to revise its forms so that they included such a provision.⁶

PGE moved for summary judgment. It pointed out that Complainants' positions were contrary to the history of the Commission's orders regarding PGE's form contracts and regarding the 15-year fixed price period. First, PGE noted that Order No. 05-584 does not state that the 15-year fixed price period begins at COD.⁷ Next, PGE demonstrated that the text of PGE's first contract forms approved by the Commission as compliant with Order No. 05-584 limited the availability of fixed prices to the first 15 years following contract execution.⁸ PGE then noted

³ Docket No. UM 1805, Complaint at 3 ("PGE's publicly stated position that contract payments start with contract signing rather than power delivery is not consistent with the Commission's policy ... Complainants respectfully request the Commission reaffirm its policy and direct PGE to conform its business practices to be consistent with the terms of its standard contract and Commission orders and policy to pay 15 years of fixed prices after the QF begins delivering its net output to the utility.") and at ¶ 41 ("Since early 2016, PGE has refused to sign standard contracts that allow QFs to fill in the standard contract in a manner that makes it clear that PGE will pay fixed prices for a full 15 years after the operation of the QF.") (Dec. 6, 2016).

⁴ *Id.* at 16 (Requesting the Commission issue an order: "1. Ordering PGE to cease and desist from any business practices inconsistent with Commission policy and orders that require long-term contracts with fixed rates, by openly disputing that it must offer 15 years of fixed prices from the QF's operation date").

⁵ *Id.* (Requesting the Commission issue an order: "2. Declaring that PGE's standard contract, as interpreted in the regulatory context from which it arose, requires payment by PGE at fixed prices for 15 years after the QF's operation date rather than merely 15 years after the time of contract execution, unless express language is inserted by the QF that demonstrates a contrary intent").

⁶ *Id.* (Requesting the Commission issue an order: "3. Alternatively, if the relief requested [in the first two paragraphs of the request for relief cited in footnotes 4 and 5 *supra*] is denied, ordering PGE to file revised standard contracts clearly stating that the 15 years of fixed prices run from the commercial operation date").

⁷ Docket No. UM 1805, PGE's Motion for Summary Judgment at 26 (Apr. 24, 2017) ("... Order No. 05-584 clearly limits the standard contract term to 20 years and clearly limits fixed prices to the first 15 years of the 20-year term, but does not specify when the 20-year contract term begins.").

⁸ Docket No. UM 1805, PGE's Motion for Summary Judgment at 15-21 (Apr. 24, 2017) (PGE reviews provisions of Schedule 201 and standard contract forms approved by Commission in Order No. 07-065 as consistent with Order

that all of its subsequent contract forms took a similar approach (which is understandable because the Commission never ordered PGE to take any different approach).⁹ Finally, PGE explained how the text of its form contracts in effect when the complaint was filed in Docket No. UM 1805 continued to limit the availability of fixed prices to the first 15 years following contract execution.¹⁰

On July 13, 2017, in Order No. 17-256, the Commission granted PGE's motion for summary judgment. The Commission agreed with PGE that Order No. 05-584 did not establish when the 15-year fixed price period begins.¹¹ And the Commission appeared to agree with PGE that its then-effective standard contract forms and its previously-effective standard contract forms had all limited the availability of fixed prices to the first 15 years following contract execution.¹² The Commission concluded that having approved such form contracts, it could not now find PGE in violation of Commission orders.¹³ The Commission therefore granted summary judgment and dismissed Complainants' request to order PGE to stop taking the position that its forms limited fixed prices to 15 years after execution and dismissed Complainants' request to find that PGE's then-effective forms provided for fixed prices for 15 years from COD.¹⁴

No. 05-584 and demonstrates that those documents unambiguously limited the availability of fixed prices to the first 15 years following contract execution.)

⁹ *Id.* at 21.

¹⁰ *Id.* at 21-25 (PGE reviews the provisions of Schedule 201 and PGE's standard contract forms approved by the Commission in Order No. 16-174—PGE's then-effective forms—and demonstrates that those documents limit the availability of fixed prices to the first 15 years following contract execution).

¹¹ Docket No. UM 108, Order No. 17-256 at 3 (Jul. 13, 2017) (“When we concluded that QFs should receive 15 years of fixed prices under standard contracts in Order No. 05-584, we did not specify the date on which that 15-year term begins.”).

¹² *Id.* (“... Oregon utilities have filed, and we have approved, standard QF contracts that have used, as the triggering event, both the date of contract execution and the date of power delivery. Because we approved PGE's standard contract filings that limited the availability of fixed prices to the first fifteen years measured from contract execution, PGE cannot be found to have been in violation of our orders. Accordingly, PGE's motion to dismiss the complaint should be granted.”).

¹³ *Id.*

¹⁴ Docket No. UM 1805, Order No. 17-256 at 1 (Jul. 13, 2017) (“In this order, we grant the motion for summary judgment of Portland General Electric Company (PGE) and dismiss the complaint”).

Having resolved the issues raised by the complaint, the Commission shifted from its quasi-judicial function to its quasi-legislative function and announced its decision to adopt, on a going forward basis, a policy that all three utilities would be required to offer fixed prices for 15 years measured from COD.¹⁵ Having adopted this new requirement, the Commission then ordered PGE to file a new Schedule 201 and new form contracts that provided fixed prices for 15 years measured from COD.¹⁶ PGE made the required compliance filing and the Commission approved a new Schedule 201 and new standard contract forms with fixed prices that are available for 15 years measured from the scheduled COD articulated in Section 2.2.2 of the contract forms.¹⁷

Not content with their victory regarding the new policy on a going forward basis, Complainants then filed for reconsideration of Order No. 17-256. Complainants sought to have the Commission walk-back its summary judgment ruling. PGE opposed this request. The Commission denied the request for reconsideration but elected to treat the request as an application to amend the order. In Order No. 17-465, the Commission amended its prior order to indicate that it had reached its decisions in Order No. 17-256 without making any determination regarding whether PGE's contract forms actually limited the availability of fixed prices to the first 15 years measured from contract execution.¹⁸

¹⁵ *Id.* at 4 (“We take this opportunity, however, 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.”).

¹⁶ *Id.* (“... 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.”).

¹⁷ Docket No. UM 1805, Order No. 17-373 (Sep. 28, 2017) (order memorializing the Commission's September 26, 2017 decision to adopt Staff's recommendation to approve PGE's compliance filing as consistent with the requirements of Order No. 17-256).

¹⁸ Docket No. UM 1805, Order No. 17-465 at 4 (Nov. 13, 2017) (“We ... clarify that, although we concluded that PGE had not violated any Commission order with regard to its prior standard contracts, we did not interpret any terms of those standard contract forms or executed contracts.”).

As part of the process of denying rehearing or reconsideration but approving amendment of Order No. 17-256, the Commission denied a petition to intervene out of time filed by ten QFs with ten executed standard contracts totaling 100 megawatts of capacity (the NewSun Solar Projects).¹⁹ The NewSun Solar Projects claim that their executed contracts, which are based on PGE standard contract forms that were in effect from September 2015 to October 2016²⁰ provide for 15 years of fixed prices measured from COD.²¹ PGE disagrees and believes the previously effective contract forms limited the availability of fixed prices to the first 15 years following contract execution, just like all of the PGE's previously effective contract forms. In denying the petition to intervene out of time, the Commission invited NewSun Solar to file a complaint with the Commission to resolve the issue.²² Instead, the NewSun Solar Projects have filed a complaint with the United States District Court for the District of Oregon.²³ However, on January 25, 2018, PGE filed a complaint with the Commission to resolve the 15-year fixed price issue with regard to the NewSun Solar contracts in light of the federal district court action.²⁴

B. Need for Rehearing or Reconsideration or to Rescind, Suspend or Amend Order No. 17-465.

As originally issued Order No. 17-256 appeared to contain four key determinations that supported one another and resulted in a well-reasoned decision. First, Order No. 17-256 appeared to conclude that PGE's standard contract forms in effect when the complaint was filed limited

¹⁹ Docket No. UM 1805, Order No. 17-418 (Oct. 16, 2017).

²⁰ See Docket No. UM 1610, Order No. 16-289 (Sep. 22, 2015) (order approving the standard contract forms used as the basis for the NewSun Solar Projects' PPAs) and Order No. 16-377 (Oct. 11, 2016) (order approving standard contract forms that replaced those used as the basis for the NewSun Solar Projects' PPAs).

²¹ Docket No. UM 1805, NewSun Solar Projects' Petition to Intervene Out of Time at 3 (Sep. 8, 2017).

²² Docket No. UM 1805, Order No. 17-418 at 3 (Oct. 16, 2017) ("We clarify that our decision here does not preclude the Petitioners [the NewSun Solar Projects] from seeking other relief from the Commission to address their concerns, including the filing of a complaint under ORS 756.500.").

²³ *Alfalfa Solar I LLC et. al. v. PGE*, United States District Court for the District of Oregon, Case No. 3:18-cv-00040, Complaint (Jan. 8, 2018).

²⁴ *PGE v. Alfalfa Solar I LLC, et. al.*, Docket No. UM 1931, PGE's Complaint (January 25, 2018).

the availability of fixed prices to the first 15 years following contract execution. Second, Order No. 17-256 appeared to conclude that such PGE contract forms did not violate Commission rules because Order No. 05-584 did not state when the 15-year fixed prices period must begin and because the Commission had previously approved PGE's contract forms. Third, Order No. 17-256 appeared to grant summary judgment and dismiss the complaint because Complainants' claim that PGE was violating its contract forms and Commission policy was incorrect. Fourth, Order No. 17-256 determined that—on a going forward basis—the Commission's new policy would be to require fixed prices for 15 years measured from COD and ordered PGE to file revised contract forms that complied with the new policy (presumably because PGE's then-effective forms limited fixed prices to 15 years after contract execution and therefore did not comply with the new policy). These apparent determinations made sense, supported one another, and resulted in a well-reasoned decision.

However, in Order No. 17-465 the Commission amended Order No. 17-256 and stated that the Commission has not determined whether PGE's contract forms in effect when the complaint was filed actually limited the availability of fixed prices to the first 15 years following contract execution. Without such a determination, the remaining elements of Order No. 17-256 lack support and are not well reasoned. Specifically, if the Commission does not determine that PGE's then-effective forms limited fixed prices to the 15 years following contract execution, then the Commission cannot conclude that Complainants' first and second claims for relief were without merit.²⁵ And if the Commission does not determine that PGE's then effective forms

²⁵ The first claim for relief asked the Commission to order PGE to stop taking the position that its contract forms limited the availability of fixed prices to the first 15 years following contract execution. If the Commission determines that PGE's then-effective contract forms actually did limit the availability of fixed prices to the first 15 years following contract execution, then there was nothing wrong with PGE taking that position and the first claim for relief was appropriately dismissed. The second claim for relief asked the Commission to confirm that PGE's

limited fixed prices to the 15 years following contract execution, then there is no basis for ordering PGE to modify those forms to comply with the new policy requiring fixed prices for 15 years measured from COD. PGE believes the Commission was correct to grant summary judgment and dismiss the complaint, but in order to do so on the basis of a well-reasoned decision, the Commission needs to conclude that PGE's standard contract forms that were in effect when the complaint was filed limited the availability of fixed prices to the first 15 years measured from contract execution.

It is also important for the Commission to grant rehearing or reconsideration and address this issue because QF counter-parties are already taking the position that the Commission's decision in Order No. 17-256 as amended by Order No. 17-465 supports the conclusion that PGE's previous contract forms and executed standard contracts should be interpreted as providing for 15 years of fixed prices measured from COD.²⁶

The answer to the question of when the 15-year fixed price period begins to run under PGE's standard contract forms is likely to have a substantial aggregate impact on PGE's customers. It is likely a question that the Commission must address in one forum or another. It is also a question that the Commission is uniquely qualified to address. On January 25, 2018, in

then-effective contract form provided for fixed prices for 15 years from COD, unless the QF inserted language that provided otherwise. If the Commission determines that PGE's then-effective contract forms actually limited the availability of fixed prices to the first 15 years following contract execution, then it was entirely appropriate for the Commission to grant summary judgment and dismiss the second claim for relief.

²⁶ See *Alfa Solar I LLC et. al. v. PGE*, United States District Court for the District of Oregon, Case No. 3:18-cv-00040, Complaint at ¶ 41 (Jan. 8, 2018) (suggesting that the NewSun Solar PPAs should be interpreted as offering fixed prices for 15 years following COD at least in part because the Commission stated in Order No. 17-256, as amended by Order No. 17-465, 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."); see also UM 1805, Complainants' Response to PGE's Application for Rehearing or Reconsideration at 2-3 (Jan. 29, 2018) (the Complainants in this proceeding describe the Commission's historic practices on this question as though the Commission has required 15 years of fixed prices measured from COD since 2005); the Commission should issue a determination that PGE's standard contract forms prior to Order No. 17-256 limited fixed prices to the first 15 years after contract execution and were approved by the Commission so that Complainants and QF parties cannot continue to advance misleading representations about the Commission's past policy and PGE's past contract forms.

Order No. 18-025, the Commission affirmed that it has primary subject matter jurisdiction to interpret the terms of PGE's standard contracts, which are terms that the Commission has required and approved as part of its implementation of PURPA and related state statutes.²⁷ Under the logic of Order No 18-025, the Commission has primary jurisdiction to interpret the standard contract provisions of the PGE forms that were in effect when the complaint in this docket was filed and to determine whether PGE's forms limited the availability of fixed prices to the first 15 years following contract execution.

In their response to PGE's application for rehearing or reconsideration, Complainants assert that PGE is attempting use this proceeding to litigate all of its executed contracts and that this would be unworkable because it would require joining all of the counter-parties to PGE's executed contracts.²⁸ But PGE has not proposed that the Commission litigate the meaning of all of PGE's executed contracts in the context of Docket No. UM 1805. Rather, PGE seeks rehearing or reconsideration for the limited purpose of the Commission interpreting PGE's standard contract forms that were in effect when the complaint was filed to determine whether those forms limited the availability of fixed prices to the first 15 years following contract execution (or alternatively for the limited purpose of resolving that question with regard to all of PGE's previously-effective standard contract forms).²⁹ PGE does not seek interpretation of any

²⁷ *In the matter of Portland General Electric Company v. Pacific Northwest Solar, LLC*, Docket No. UM 1894, Order No. 18-025 at 6-7 (Jan. 25, 2018).

²⁸ Docket No. UM 1805, Complainants' Response to PGE's Application for Rehearing or Reconsideration at 2 and 10-11 (Jan. 29, 2018).

²⁹ Docket No. UM 1805, PGE's Application for Rehearing or Reconsideration and Application to Rescind, Suspend or Amend Order No. 17-465 at 1-2 ("Both Complainants and PGE asked the Commission to rule on the issue of whether PGE's standard contract forms in effect when the complaint was filed limited the availability of fixed process to the first 15 years following contract execution. ... PGE believes the Commission is in the best position to answer that question and must do so to ensure that Order No. 17-256 as amended by Order No. 17-465 is well reasoned and serves the public interest.") and 12-13 (For the reasons detailed above, PGE respectfully requests that the Commission either grant rehearing or reconsideration of Order No. 17-465 or issue an order amending Order No. 17-465 to clarify that PGE's standard contract forms in effect when the complaint was filed in this proceeding, or

executed standard contracts and recognizes that even if the standard forms limit the availability of fixed prices to 15 years measured from contract execution, a particular executed contract may include unique language that could lead to a different result (*see e.g.*, the OneEnergy contract discussed at some length in the summary judgment briefing).³⁰

As PGE noted in its application for rehearing or reconsideration, the NewSun Solar Projects have filed suit on this question in the United States District Court for the District of Oregon. PGE intends to move to dismiss or stay the federal court case on the grounds, among several grounds, that the Commission has the primary jurisdiction to resolve this question. On January 25, 2018, PGE filed a complaint with the Commission to resolve the question of when the 15-year fixed price period begins under the NewSun Solar PPAs. This complaint has been assigned to Commission Docket No. UM 1931 and PGE expects that NewSun's specific executed contracts will be interpreted by the Commission in that docket.³¹

Nevertheless, the Commission should grant rehearing or reconsideration of Order No. 17-465 and resolve the question of whether PGE's then-effective standard contract forms limited the availability of fixed prices to the first 15 years following contract execution. The issues have been fully briefed in UM 1805. It would be inefficient and a waste of the parties' considerable efforts in this docket if the Commission refuses to decide the question in this proceeding. Moreover, a well-reasoned decision leading to the conclusions found in Order No. 17-256

alternatively all of PGE's prior Commission-approved standard contract forms limited the availability of fixed prices to the first 15 years following contract execution.") (Jan. 12, 2018).

³⁰ *See* Docket No. UM 1805, PGE's Motion for Summary Judgment at 29-34 (Apr. 24, 2017), PGE's Response in Opposition to Complainants' Motion for Summary Judgment at 11 (May 8, 2017), and PGE's Reply in Support of PGE's Motion for Summary Judgment at 14-15 (May 15, 2017).

³¹ NewSun, though, is trying to prevent the Commission from interpreting its 10 Standard PPAs and seeking to have the federal court make that determination instead. In its motion to stay UM 1931, filed February 2, 2018, NewSun indicated that it will move to dismiss in lieu of answering PGE's complaint, and NewSun asked the Commission to stay UM 1931 until the federal court rules on PGE's motion to dismiss NewSun's federal case. Docket No. UM 1931, Defendants' Motion for Stay (Feb. 2, 2018).

requires that the Commission determine, at a minimum, that PGE's then-applicable standard contract forms limited the availability of fixed prices to the first 15 years measured from contract execution.

C. PGE Has Not Engaged in Inappropriate Tactics.

Complainants spend considerable space in their response arguing that PGE has been overly litigious or has otherwise acted to make what should have been a simple proceeding overly complex.³² PGE disagrees with Complainants' characterization. Complainants characterize Docket No. UM 1805 as "a procedural nightmare" involving dozens of pleadings, two public meetings and no less than five Commission orders with a sixth order still to come.³³ But it is Complainants' actions, not PGE's, which have led to most of the complexity and process in this case.

Complainants initiated this proceeding with a complaint that was difficult to understand because Complainants were attempting to accomplish a difficult and complicated task. They wanted the Commission to rule that its policy required 15 years of fixed prices measured from commercial operation, that PGE's Commission-approved forms had always provided for 15 years of fixed prices from commercial operation, but that PGE had recently begun to improperly argue for a different outcome and that PGE must stop doing so.³⁴

PGE responded to the complaint with Rule 21 motions that were intended to clarify the precise scope of Complainants claims.³⁵ Complainants resisted amending their complaint to

³² Docket No. UM 1805, Complainants' Response to PGE's Application for Rehearing or Reconsideration at 2-6 (Jan. 29, 2018) ("Complainants wish to express their strong frustration with PGE's litigious approach in this proceeding, which exemplifies its negotiations and business practices with qualifying facilities.").

³³ *Id.* at 3-4.

³⁴ See footnotes 1 to 6 *supra*.

³⁵ Docket No. UM 1805, PGE's Motion to Strike, Motion to Make More Definite and Certain, and Motion Requesting More Time to Respond (Dec. 16, 2016).

more precisely identify the issues under consideration,³⁶ and the Rule 21 motions remained fully briefed but unresolved for two months. Eventually, in an effort to move forward and resolve the case, PGE filed an answer³⁷ and then a motion for summary judgment.³⁸

PGE's motion for summary judgment was granted in the Commission's first order in this proceeding—Order No. 17-256. PGE filed a revised Schedule 201 and revised standard contract forms in compliance with Order No. 17-256. This is the sum total of the process PGE created in this case before filing its application for rehearing or reconsideration on January 12, 2018: (a) motions to clarify the complaint that went unresolved, (b) a motion for summary judgment that was granted, and (c) a compliance filing that was approved.

It is Complainants' actions that have created procedural complexity and required multiple Commission orders in this docket. Complainants challenged PGE's compliance filing.³⁹ It was Complainants' challenge that required two public meetings and two Commission orders to resolve.⁴⁰ The resolution was that the Commission approved PGE's compliance filing as originally submitted. This was not litigious action or complexity created by PGE; it was created by Complainants.

Then, after having obtained a new policy determination that fixed prices will apply for 15 years from COD on a going forward basis, Complainants and NewSun Solar both sought rehearing of the original order granting summary judgment.⁴¹ This resulted in two more

³⁶ Docket No. UM 1805, Complainants' Response to PGE's Rule 21 Motions (Jan. 24, 2017).

³⁷ Docket No. UM 1805, PGE's Answer (March 28, 2017).

³⁸ Docket No. UM 1805, PGE's Motion for Summary Judgment (Apr. 24, 2017).

³⁹ Docket No. UM 1805, Complainants' Comments (Sep. 11, 2017) (Complainants file comments opposing PGE's compliance filing).

⁴⁰ See Docket No. UM 1805, Order No. 17-346 (Sep. 14, 2017) and Order No. 17-373 (Sep. 28, 2017) (orders approving PGE's compliance filing as submitted and rejecting Complainants' challenges to the submission).

⁴¹ Docket No. UM 1805, Complainants' Petition for Clarification and Application for Rehearing or Reconsideration (Sep. 11, 2017) and Petitioners (NewSun Solar Projects) Motion for Clarification and Application for Rehearing or Reconsideration (Sep. 8, 2017).

Commission orders—an order denying NewSun Solar’s petition to intervene out of time and striking NewSun Solar’s application for rehearing or reconsideration,⁴² and an order denying Complainants’ application for rehearing or reconsideration and amending Order No. 17-256.⁴³ Again, these orders and the related procedural “nightmare” alleged by Complainants were the result of Complainants’ actions and litigation strategy, not the result of PGE’s actions.

PGE’s current request for rehearing or reconsideration is not an inappropriate attempt to create additional litigation or complexity, it is a good faith effort by PGE to insure that this lengthy and resource intensive litigation instigated by Complainants is resolved in a manner that is well-reasoned and which addresses the larger set of issues that PGE and the Commission presently face. The Commission should render a decision regarding when the 15-year fixed price period began to run under the contract forms in effect when the complaint was filed in this proceeding. Such a determination is necessary to provide the support that will make Order No. 17-256 as amended by Order No. 17-465 a well-reasoned decision.

Such a determination would also prevent *ad hoc* adjudication of the same question before state or federal courts. This is not a theoretical concern. The NewSun Solar Projects are currently attempting to prevent the Commission from exercising its authority on this issue by filing a complaint in federal court and arguing that under the “first-filed doctrine” the NewSun PPAs must be interpreted by the federal courts rather than by the Commission (ignoring that Docket No. UM 1805 preceded both actions). The Commission should deny NewSun’s end-run around

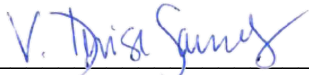
⁴² Docket No. UM 1805, Order No. 17-418 (Oct. 16, 2017).

⁴³ Docket No. UM 1805, Order No. 17-465 (Nov. 13, 2017).

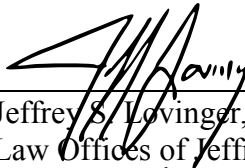
its authority and resolve the important questions of standard contract interpretation raised in Docket No. UM 1931 and here in Docket No. UM 1805.

DATED this 5th day of February, 2018.

Respectfully submitted,



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