

March 10, 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 (NIPPC),  
Community Renewable Energy Association (CREA), and Renewable Energy Coalition  
(REC), Complainants vs. Portland General Electric Company (PGE), Respondent


Dear Filing Center:

In compliance with the Conference Memorandum issued on March 3, 2017 in OPUC Docket  
UM 1805, the parties submit the following:

1. A statement listing the facts and issues which they agree are relevant to the resolution of  
the proceeding, included as Attachment A; and
2. A statement setting forth the facts and issues of each party where those are not in  
agreement. PGE's statement is included as Attachment B. NIPPC, CREA and REC's  
statement is included as Attachment C.


The parties request that the judge conduct a conference to discuss this filing and the next steps in  
the proceeding.

Respectfully submitted,

  
\_\_\_\_\_  
Jeffrey S. Lovinger  
Law Offices of Jeffrey S. Lovinger

Of Attorneys for Portland General Electric  
Company

Respectfully submitted,

  
\_\_\_\_\_  
Irion Sanger  
Sanger Law, PC

Of Attorneys for Northwest and  
Intermountain Power Producers Coalition

Of Attorneys for Community Renewable  
Energy Association

Of Attorneys for Renewable Energy Coalition

JL/IS: bop

Attachments: A, B & C

## ATTACHMENT A

### UM 1805

#### **Statement Listing the Facts and Issues Upon Which the Parties Agree Are Relevant to the Resolution of the Proceeding**

On March 3, 2007, the Public Utility Commission of Oregon held a conference in Docket No. 1805. The parties were ordered to jointly file no later than March 10, 2017:

1. A statement listing the facts and issues upon which they agree are relevant to the resolution of the proceeding; and
2. A statement setting forth the facts and issues of each party where those are not in agreement.

The parties exchanged proposed lists of facts and issues and the following facts and issues represent those upon which the parties agree:

#### **Stipulated Facts:**

1. PGE is an investor-owned public utility regulated by the Commission under ORS Chapter 757. PGE is headquartered at 121 Southwest Salmon Street, Portland, Oregon 97204.
2. On November 18, 2016, NIPPC, CREA and the Coalition sent a joint letter to PGE requesting it unambiguously affirm that current Oregon policy and PGE's standard contract require PGE to pay fixed prices for a full 15 years after the operation of the QF, or NIPPC, CREA and the Coalition would file a complaint with the Commission.
3. On December 5, 2016, PGE informed NIPPC, CREA and the Coalition that PGE was not willing to compromise in any substantive manner.
4. On December 16, 2016 PGE filed a Motion to Strike in this Docket No. 1805. PGE's Motion to Strike stated, in part, "that PGE must pay fixed prices for QF output delivered in the first 15 years after execution."
5. On January 24, 2017, Complainants filed their Response to PGE's Motion to Strike, Motion to Make More Definite and Certain, and Motion Requesting More Time in this Docket No. 1805. Complainants' Response stated, in part, "The Complaint does not, as PGE's Motions posit, ask the Commission to interpret any of PGE's previously executed contracts and Complainants do not wish to unnecessarily broaden the scope of this proceeding by litigating specific contracts." Response at 16.

6. On April 29, 2010, PGE entered into a standard contract with PaTu Wind Farm LLC (2010 PaTu Contract). *Re PGE – Qualifying Facility Contracts*, Docket No RE 143, Informational Filing – PaTu Wind Farm, LLC (Sept. 19, 2014).

7. On February 19, 2014, PGE entered into a standard contract with OneEnergy Oregon Solar, LLC (2014 OneEnergy Contract). *Re PGE – Qualifying Facility Contracts*, Docket No. RE 143, Informational Filing – OneEnergy Oregon Solar, LLC (Sept. 19, 2014).

**Stipulated Legal Conclusions:**

8. The Commission has jurisdiction to hear the claims raised in this Complaint proceeding pursuant to 16 USC § 824a-3(a), (f), ORS 756.500 to 756.610, and ORS 758.505-758.555.

9. This proceeding does not seek any declarations interpreting or otherwise declaring the rights of the parties to PGE’s executed standard contracts. The parties acknowledge that PGE reserves its right to advance the affirmative defenses of lack of standing and failure to join indispensable parties in the event any determination is sought or issued with regard to PGE standard contracts that are executed and effective.

**Legal Issues:**

10. Has PGE violated any statute, rule or Commission order regarding when the 15-year fixed price period begins under QF standard contracts?

## **ATTACHMENT B**

### **UM 1805**

#### **Statement Setting Forth the Facts and Issues of PGE Where Those Are Not Agreed Between the Parties**

On March 3, 2007, the Public Utility Commission of Oregon held a conference in Docket No. 1805. The parties were ordered to jointly file no later than March 10, 2017:

1. A statement listing the facts and issues upon which they agree are relevant to the resolution of the proceeding; and
2. A statement setting forth the facts and issues of each party where those are not in agreement.

The parties exchanged proposed lists of facts and issues and developed an Attachment A statement listing the facts and issues upon which the parties agree. The purpose of this Attachment B is to provide a statement setting forth the facts and issues of PGE that have not been agreed to by Complaints. In addition to Attachment A and Attachment B, the Complainants have developed an Attachment C which is statement setting forth the facts and issues of Complainants that have not been agreed to by PGE. PGE reserves the right to dispute any and all facts, issues or positions asserted by the Complainants in Attachment C.

#### **Relevant Facts**

1. This list provides the facts that are relevant to the claims and legal issues as PGE understands them and as they have been stated in the legal issues section of this Appendix B list and the Appendix A list of facts and issues on which the parties agree. If the claims change or the legal issues in this list are not adopted as the full set of issues under consideration, then PGE reserves the right to assert other facts and introduce supporting evidence or to assert affirmative defenses as the issues in this case develop.

#### **A. UM 1129 - Phase I**

2. On January 20, 2004, the Commission opened Docket No. UM 1129 as “an investigation related to electric utility purchases from qualifying facilities (QFs).” Order No. 05-584 at 4.

#### **Parties to UM 1129**

3. Portland General Electric Company (PGE) was an intervenor in Docket No. UM 1129 and had a full right to participate in that proceeding.

4. Sherman County Court was an intervenor in Docket No. UM 1129 and had a full right to participate in that proceeding.
5. Middle Fork Irrigation District was an intervenor in Docket No. UM 1129 and had a full right to participate in that proceeding.
6. In 2007, Sherman County Court and Middle Fork Irrigation District established Community Renewable Energy Association (CREA).
7. CREA was added to the service list in UM 1129.
8. Industrial Customers of Northwest Utilities (ICNU) was an intervenor in Docket No. UM 1129 and had a full right to participate in that proceeding.
9. ICNU was represented in Docket No. UM 1129 by Irion Sanger, Complainants' counsel in UM 1805.
10. Commission Staff was a party to and full participant in Docket No. UM 1129.
11. Other intervenors in UM 1129 with full rights to participate in that proceeding included: the Oregon Department of Energy (ODOE), J.R. Simplot Company, Fair Rate Coalition, PacifiCorp, SP Newsprint Company, Idaho Power Company, Central Oregon Irrigation District, Symbiotics LLC, Columbia Energy Partners, Weyerhaeuser, Douglas County Forest Products, Co-Gen II LLC, Vulcan Power Company, and Oregon Wind Farms LLC.

#### **Order No. 05-584 in Phase I of UM 1129**

12. On May 13, 2005, the Commission issued Order No. 05-584, the Commission's Phase I order in Docket No. UM 1129.
13. In Order No. 05-584, the Commission established requirements regarding eligibility for and term of standard contracts. Order No. 05-584 at 1.
14. In Order No. 05-584, the Commission established "a 10 MW standard contract eligibility threshold." Order No. 05-584 at 1.
15. In Order No. 05-584, the Commission established "a maximum standard contract term of twenty years." Order No. 05-584 at 1.
16. In Order No. 05-584, the Commission allowed "a QF to select fixed pricing for the first fifteen years of the standard contract, but require[ed] the selection of a market pricing option for the last five years." Order No. 05-584 at 1-2.
17. In Order No. 05-584, the Commission's discussion and resolution of the issue of standard contract length and a 15 year period for fixed prices is contained on

pages 17 to 20 in the section entitled *Standard Contract Length*. Order No. 05-584 at 17-20.

18. Order No. 05-584 ordered PGE to file “standard contract forms that set forth standard rates, terms and conditions that are consistent with the policy decisions made in this order.” Order No. 05-584, ordering paragraph 1 at page 59.

**PGE Advice No. 05-10 Compliance Filing in Phase I of UM 1129**

19. On July 22, 2005, PGE complied with ordering paragraph 1 of Order No. 05-584 by filing: (i) proposed revisions to PGE’s Schedule 201 tariff entitled *Qualifying Facility Power Purchase Information* (2005 Schedule 201); and (ii) a single proposed standard contract entitled *Standard Contract Power Purchase Agreement* (2005 Standard Contract).
20. PGE’s June 22, 2005 filing was docketed as PGE Advice No. 05-10.
21. The 2005 Schedule 201 included a single fixed price option, a table of forecasted on-peak fixed prices for the period 2005 to 2025 (Table 1), and a table of forecasted off-peak fixed prices for the period 2005 to 2025 (Table 2). PGE Advice No. 05-10, Schedule 201, Original Sheet-4 through Original Sheet-6.
22. With regard to the period during which fixed prices were available, the 2005 Schedule 201 stated:

The Fixed Price Option ... is available for a maximum of 15 years. Sellers with contracts exceeding 15 years will make a one time election at execution to select a market-based option for all years up to five in excess of the initial 15. Under the Fixed Price Option, prices will be as established at the time the Standard Contract is executed and shall be equal to the Avoided Costs in Tables 1 and 2 effective at execution for a term of up to 15 years.

PGE Advice No. 05-10, Schedule 201, Original Sheet No. 201-4.

23. The 2005 Schedule 201 included three market based price options: (i) Deadband Index Gas Price; (ii) Index Gas Price; and (iii) Dow Jones Mid-Columbia Daily on- and Off-Peak Electricity Firm Price Index (Mid-C Firm Index). PGE Advice No. 05-10, Schedule 201, Original Sheet No. 201-7.
24. The 2005 Schedule 201 stated that the term of a power purchase agreement entered into pursuant to Schedule 201 would be: “Not less than one year and not to exceed 20 years.” PGE Advice No. 05-584, Schedule 201, Original Sheet 201-16.

25. The 2005 Standard Contract defined “Term” as “the period beginning on the Effective Date and ending on the Termination Date.” PGE Advice No. 10-05, Standard Contract Power Purchase Agreement, Section 1.23, at page 4.
26. The 2005 Standard Contract defined “Effective Date” as “... upon execution [of the Agreement] by both Parties.” PGE Advice No. 10-05, Standard Contract Power Purchase Agreement, Section 2.1, at page 5.
27. The 2005 Standard Contract defined “Termination Date” as “This Agreement shall terminate on \_\_\_\_\_, \_\_\_\_ [*date to be chosen by Seller*], 20 years from the Effective Date, or the date the Agreement is terminated in accordance with Section 10 or 12.2, whichever is earlier (“Termination Date”).” PGE Advice No. 10-05, Standard Contract Power Purchase Agreement, Section 2.3, at page 5.
28. The 2005 Standard Contract had a maximum Term of 20 years from the date the contract was executed by both parties. PGE Advice No. 10-05, Standard Contract Power Purchase Agreement, Sections 1.23, 2.1 and 2.3, at pages 4-5.
29. Regarding Contract Price, the 2005 Standard Contract stated:

PGE shall pay Seller for the price options 5.1, 5.2, 5.3 or 5.4, as selected below, pursuant to the Tariff. Seller shall indicate which price option it chooses by marking it choice below with an X. If the Seller chooses the option in Section 5.1, it must mark below a single second option from Section 5.2, 5.3, or 5.4 for all Contract Years in excess of 15 until the remainder of the Term. Except as provided herein, Sellers selection is for the Term and shall not be changed during the Term

- 5.1     \_\_\_\_\_ Fixed Price.
- 5.2     \_\_\_\_\_ Deadband Index Gas Price.
- 5.3     \_\_\_\_\_ Index Gas Price.
- 5.4     \_\_\_\_\_ Mid-C Index Rate Price.

PGE Advice No. 10-05, Standard Contract Power Purchase Agreement, Section 5, at page 7.

30. As used in the 2005 Standard Contract, “Contract Year” means “each twelve (12)- month period commencing at 00:00 hours on January 1 and ending on 20:00 hours on December 31 falling at least partially in the Term of this Agreement.” PGE Advice No. 05-10, Standard Contract Power Purchase Agreement, Section 1.6, at page 2.
31. The combined meaning of Sections 1.6, 1.24, 2.1 and 5 of the 2005 Standard Contract was that Seller may select one of four price options but if Seller selects the fixed price option, it must select a second market-based price option that will

apply in all years exceeding the fifteenth year after execution of the contract until the end of the maximum 20-year contract term.

### **The Commission's Compliance Investigation in Phase I of UM 1129**

32. On August 9, 2005, the Commission issued Order No. 05-899 in Docket No. UM 1129, which stated that "Portland General Electric Company's Advice No. 05-10 [is] allowed to go into effect on August 11, 2005, subject to investigation and possible refund pursuant to ORS 757.215(4)" Order No. 05-899, ordering paragraph 1 at page 3.
33. On September 20, 2006, the Commission issued Order No. 06-538 in Docket No. UM 1129.
34. Order No. 06-538 provided the results of the Commission's investigation of the compliance filings made by the utilities in response to Order 05-584. Order No. 06-538 considered 30 general issues and over 80 separate questions of compliance raised by the parties in UM 1129.
35. During the investigation, no party to UM 1129 raised any concerns with or objections to the manner in which PGE Advice No. 05-10 implemented the 20-year maximum term of a standard contract.
36. During the investigation, no party to UM 1129 raised any concerns with or objections to the manner in which PGE Advice No. 05-10 implemented the 15-year fixed price period established on page 20 of Order No. 05-584.
37. Order No. 06-538 identified a number of changes required in the compliance filings made by the utilities, including changes required to PGE Advice No. 05-10.
38. Order No. 06-538 did not require PGE to change the 20-year maximum term of a standard contract established in the 2005 Schedule 201 and the 2005 Standard Contract as described in paragraphs 23 through 27 above.
39. Order No. 06-538 did not require PGE to change the language governing the 15-year fixed price period in the 2005 Schedule 201 and the 2005 Standard Contract as described in paragraphs 20, 21, 22, 28, 29 and 30.
40. Order No. 06-538 ordered PGE to file "one or more revised standard contract forms that set forth standard rates, terms and conditions that are consistent with the policy decisions made in this order." Order No. 06-538, Ordering Par. 1 at 67.

### **PGE's Advice No. 06-26 Compliance Filing in Phase I of UM 1129**

41. On October 20, 2006, PGE complied with Order No. 06-538 by filing: (i) a revised Schedule 201 tariff entitled *Qualifying Facility Power Purchase Information (2006*



Schedule 201); (ii) a revised single standard contract entitled *Standard Contract Power Purchase Agreement (2006 Standard Contract)*; and (iii) a new *Off System Standard Power Purchase Agreement (2006 Off System Standard Contract)*.

42. PGE's October 20, 2006 filing was docketed as PGE Advice No. 06-26.
43. The 2006 Schedule 201 contained the same language regarding the availability of fixed prices as that contained in the 2005 Schedule 201 and described in paragraphs 20, 21 and 22 above.
44. The 2006 Schedule 201 contained the same language regarding the maximum 20 year term of a standard contract as that contained in the 2005 Schedule 201 and described in paragraph 23 above.
45. The 2006 Standard Contract contained the same language regarding the availability of fixed prices as that contained in the 2005 Standard Contract and described in paragraphs 24, 27, 28, 29 and 30 above.
46. The 2006 Standard Contract contained the same language regarding the maximum 20-year term of a standard contract as that contained in the 2005 Standard Contract and described in paragraphs 24, 25, 26 and 27 above.
47. The 2006 Off System Standard Contract contained the same language regarding the availability of fixed prices as that contained in the 2005 Standard Contract and described in paragraphs 24, 27, 28, 29 and 30 above.
48. The 2006 Off System Standard Contract contained the same language regarding the maximum 20-year term of a standard contract as that contained in the 2005 Standard Contract and described in paragraphs 24, 25, 26 and 27 above.
49. On November 13, 2006, the Commission issued Order No. 06-629 in Docket No. UM 1129 under which the Commission suspended PGE Advice No. 06-26 and initiated an investigation into whether PGE Advice No. 06-26 complied with Order No. 06-538.

#### **Order No. 07-065 Approving Compliance in Phase I of UM 1129**

50. On February 27, 2007, the Commission issued Order No. 07-065 in Docket No. UM 1129, approving PGE Advice No. 06-26 as compliant with Order No. 06-538. PGE Advice No. 06-26 became effective March 7, 2007.
51. Order No. 07-065 found that the 2006 Schedule 201 complied with Order No. 06-538 and therefore complied with all requirements of Order No. 05-584.
52. Order No. 07-065 found that the 2006 Standard Contract complied with Order No. 06-538 and therefore complied with all requirements of Order No. 05-584.

53. Order No. 07-065 found that the 2006 Off System Standard Contract complied with Order No. 06-538 and therefore complied with all requirements of Order No. 05-584.

**B. Avoided Cost Price Update – Summer 2007**

54. On July 13, 2007, PGE filed revisions to Schedule 201 proposing updates to avoided cost prices only. The submission was docketed as PGE Advice No. 07-17, was allowed/approved by the Commission on August 7, 2007, and became effective August 13, 2007.

**C. UM 1129 – Phase II**

**Order No. 07-360 in Phase II of UM 1129**

55. On August 20, 2007, the Commission issued Order No. 07-360, the Commission's Phase II order in Docket No. UM 1129.

56. In Order No. 07-360 the Commission adopted guidelines for negotiated contracts with large QFs that are not eligible for standard contracts. Order No. 07-360 at 1.

57. In Order No. 07-360, the Commission also decided several issues remaining from the first phase of UM 1129 related to standard contracts. Order No. 07-360 at 1.

58. In Order No. 07-360, the Commission did not alter its determination in Order No. 05-584 that a utility must offer eligible QFs as standard contract with "a maximum standard contract term of twenty years" that "[a]llow[s] a QF to select fixed pricing for the first fifteen years of the standard contract, but require[s] the selection of a market pricing option for the last five years." Order No. 05-584 at 1-2 and 19-20.

59. In Order 07-360, the Commission made specific revisions to the language and requirements of Order No. 05-584 as necessary. Order No. 07-360 at Ordering Pars. 1 and 2, on page 42.

60. In Order No. 07-360, the Commission did not make any changes to the language r requirements on pages 19 through 20 of Order No. 05-584, which language established the requirement that PGE offer standard contracts with a 20 year maximum term, allow QFs to select fixed pricing for the first 15 years of the standard contract, but require the selection of a market pricing option for the last five years.

61. Order No. 07-360 ordered PGE to "submit modified tariffs to incorporate the decisions adopted in this order." Order No. 07-360 at ordering paragraph 6 on page 43.

62. Order No. 07-360 ordered that PGE's and PacifiCorp's "standard off-system QF contracts, as modified by this order, are approved." Order No. 07-360 at ordering paragraph 8 on page 43.
63. Order No. 07-360 ordered PGE and the other two utilities "to modify their standard QF contracts for intermittent resources to include a mechanical availability guarantee in lieu of a minimum delivery obligation." Order No. 07-360 at ordering paragraph 9 on page 43.

**PGE's Advice No. 07-27 Compliance Filing in Phase II of UM 1129**

64. On November 1, 2007, PGE complied with Order No. 07-360 by filing:  
(i) revisions to PGE's Schedule 201 tariff (2007 Schedule 201); (ii) a proposed Schedule 202 tariff addressing negotiation of contracts with large QFs (2007 Schedule 202); (iii) a proposed a standard contract for intermittent resources (2007 Intermittent Standard Contract); and (iv) a proposed standard contract for off system intermittent resources (2007 Intermittent Off-System Standard Contract).
65. PGE's 2007 Intermittent Standard Contract and PGE's 2007 Intermittent Off-System Standard Contract were submitted in addition to PGE's 2006 Standard Contract and PGE's 2006 Off-System Standard Contract. PGE Advice No. 07-27 at 2.
66. PGE's 2006 Standard Contract and PGE's 2006 Off-System Standard Contract were previously approved by the Commission in Order No. 07-065.
67. PGE's November 1, 2007 filing was docketed as PGE Advice No. 07-27.
68. The 2007 Schedule 201 contained the same language regarding the availability of fixed prices as that contained in the 2005 Schedule 201 and described in paragraphs 20, 21 and 22 above.
69. The 2007 Schedule 201 contained the same language regarding the maximum 20 year term of a standard contract as that contained in the 2005 Schedule 201 and described in paragraph 23 above.
70. The 2007 Intermittent Standard Contract contained the same language regarding the availability of fixed prices as that contained in the 2005 Standard Contract and described in paragraphs 24, 27, 28, 29 and 30 above.
71. The 2007 Intermittent Standard Contract contained the same language regarding the maximum 20-year term of a standard contract as that contained in the 2005 Standard Contract and described in paragraph 24, 25, 26 and 27 above.

72. The 2007 Intermittent Off-System Standard Contract contained the same language regarding the availability of fixed prices as that contained in the 2005 Standard Contract and described in paragraphs 24, 27, 28, 29 and 30 above.
73. The 2007 Intermittent Off-System Standard Contract contained the same language regarding the maximum 20-year term of a standard contract as that contained in the 2005 Standard Contract and described in paragraph 24, 25, 26 and 27 above.

### **Approval of Compliance in Phase II of UM 1129**

74. On June 3, 2008, the Commission accepted PGE Advice No. 07-27 with an effective date of November 2, 2007.

#### **D. Avoided Cost Price Updates – Summer 2009 and Winter 2010**

75. On July 10, 2009, PGE filed revisions to Schedule 201 proposing updates to avoided cost prices only. The submission was docketed as PGE Advice No. 09-16, was allowed/approved by the Commission on September 8, 2009, and became effective September 9, 2009.
76. On December 20, 2010, PGE filed revisions to Schedule 201 proposing updates to avoided cost prices only. The submission was docketed as PGE Advice No. 10-27, was allowed/approved by the Commission on January 11, 2011, and became effective January 19, 2011.

#### **E. April 29, 2010 Contract between PGE and PaTu**

77. On April 29, 2010, PGE entered into a standard contract with PaTu Wind Farm LLC, with a 20-year term measured from the contract effective date and offers fixed prices for 15 years measured from the contract effective date. *Re PGE – Qualifying Facility Contracts, Docket No RE 143, Informational Filing – PaTu Wind Farm, LLC (Sept. 19, 2014).*

#### **F. Avoided Cost Price Updates – Winter 2012 and Summer 2013**

78. On December 20, 2012, PGE filed revisions to Schedule 201 proposing updates to avoided cost prices only. The submission was docketed as an application to revise Schedule 201 in UM 1637. On January 15, 2013, the Commission issued Order No. 13-007 approving PGE's revised Schedule 201 effective January 19, 2013.
79. On July 22, 2013, PGE filed revisions to Schedule 201 proposing updates to avoided cost prices only. The submission was docketed as an application to revise Schedule 201 in UM 1664. On October 17, 2014, the Commission issued

Order No. 13-378 approving PGE's revised Schedule 201 effective February 20, 2014.

**G. UM 1610 – Phase I**

80. On June 29, 2012, the Commission opened Docket No. UM 1610 to continue its “evaluation of policies and procedures to implement the Public Utility Regulatory Policies Act (PURPA) ... and consider specific proposals raised by Staff and the parties to revise the rates, terms, and conditions for Qualifying Facility (QF) standard contracts in Oregon.” Order No. 14-058 at 1.

**Parties to UM 1610**

81. PGE is an intervenor in Docket No. UM 1610 and has a full right to participate in the proceeding.

82. Renewable Energy Coalition (REC) is an intervenor in Docket No. UM 1610 and has a full right to participate in the proceeding.

83. CREA is an intervenor in Docket No. UM 1610 and has a full right to participate in the proceeding.

84. Renewable Northwest Project is an intervenor in Docket No. UM 1610 and has a full right to participate in the proceeding.

85. ICNU is an intervenor in Docket No. UM 1610 and has a full right to participate in the proceeding.

86. ICNU was initially represented in Docket No. UM 1610 by Irion Sanger, Complainants' counsel in UM 1805.

87. Other intervenors in UM 1610 with full rights to participate in that proceeding included: Idaho Power Company, ODOE, PacifiCorp, Oregon Solar Energy Industries Association, Oregonians for Renewable Energy Policy, OneEnergy, Inc., Coronal Development Services, Gardner Capital Solar Development LLC, Threemile Canyon Wind I LLC, Small Business Utility Advocates.

**February 19, 2014 Contract Between PGE  
and OneEnergy Oregon Solar, LLC**

88. Under the February 19, 2014, contract between PGE and OneEnergy Oregon Solar, LLC (2014 OneEnergy Contract), Seller OneEnergy Oregon Solar LLC added language to Sections 5.1 and 5.2 that is not part of the standard contract form and did not fill in a blank in the standard contract form.

89. PGE did not enter into the 2014 OneEnergy Contract in the belief that Order No. 05-584, PGE Schedule 201, or PGE's standard contract forms authorize or allow PGE to offer fixed prices for 15 years measured from the date a QF achieves commercial operation.
90. By email dated November 4, 2015, PGE indicated that the adjustment to the 214 OneEnergy Contract were an error and not consistent with PGE's standard contract forms, Schedule 201, or Commission Order No. 05-584. A copy of the November 4, 2015 email from PGE to OneEnergy is attached as Exhibit A and incorporated into this statement of facts by reference.
91. Of the over 90 QF power purchase agreements filed by PGE in RE 143, the 2014 OneEnergy Contract is the only instance in which PGE has agreed to a contract in which the language of Section 5.1 and Section 5.2 has been modified in a manner that suggests PGE may be required to offer fixed prices for 15 years measured from commercial operation.

**Order No. 14-058 in Phase I of UM 1610**

92. On February 24, 2014, the Commission issued Order No 14-058, the Commission's Phase I decision in UM 1610.
93. Among other things, Order No. 14-058 modified the Commission's "methodology for calculating standard avoided cost prices and standard renewable avoided cost prices to account for the capacity contribution of different QF resources and wind integration costs." Order No. 14-058 at 2 and *see* 8 through 15.
94. Order No. 14-058 also eliminated the Commission's requirement that PGE maintain multiple market-based price options for its standard contracts. Order No. 14-058 at 23.
95. In Order No. 14-058, the Commission did not alter its determination in Order No. 05-584 that a utility must offer eligible QFs as standard contract with "a maximum standard contract term of twenty years" that "[a]llow[s] a QF to select fixed pricing for the first fifteen years of the standard contract, but require[s] the selection of a market pricing option for the last five years." Order No. 05-584 at 1-2 and *see* 19-20.
96. In Order No. 14-058, the Commission ordered PGE to file "revised standard contract forms that set forth standard rates, terms and conditions that are consistent with the resolutions made in this order." Order No. 14-058, ordering paragraph 2 at page 32.
97. In Order No. 14-058, the Commission also ordered PGE to file "revised tariffs that implement the resolutions made in this order." Order No. 14-058, ordering paragraph 4 at page 32.

## **PGE's November 25, 2014 Compliance Filing in Phase I of UM 1610**

98. On November 25, 2014, PGE filed in Docket No. UM 1610 an application to modify PGE's Schedule 201 tariff and PGE's standard contracts to comply with the requirements of Order No. 14-058.
99. PGE's November 25, 2014 application in UM 1610: (i) contained a revised Schedule 201 tariff entitled *Qualifying Facility 10 MW or Less Avoided Cost Power Purchase Information* (2014 Schedule 201); (ii) contained eight proposed standard contracts (collectively the 2014 Form Contracts); and (iii) requested an effective date of December 17, 2014.
100. PGE's November 25, 2014 application in UM 1610 contained four standard contracts—the Standard Off-System Variable Power Purchase Agreement, the Standard Off-System Non-Variable Power Purchase Agreement, the Standard In-System Variable Power Purchase Agreement, and the Standard In-System Non-Variable Power Purchase Agreement (collectively the 2014 Standard Contracts).
101. PGE's November 25, 2014 application in UM 1610 contained four standard renewable contracts—the Standard Renewable Off-System Variable Power Purchase Agreement, the Standard Renewable Off-System Non-Variable Power Purchase Agreement, the Standard Renewable In-System Variable Power Purchase Agreement; and the Standard In-System Non-Variable Power Purchase Agreement (collectively the 2014 Standard Renewable Contracts).
102. Under PGE's standard contracts pre-dating the 2014 Form Contracts, contract price was addressed through the Seller selecting fixed prices and one of several market-based price options under Section 5 of the standard contract forms. *See* paragraph 29 above. Order 14-058 eliminated the requirement for PGE to maintain multiple market-based price options. Order No. 14-058 at 23. As a result, in the 2014 Form Contracts, PGE eliminated the previous Section 5 provision providing for selection of contract price.
103. Under the various 2014 Form Contracts, contract price was addressed through Section 4.1 or Section 4.2 which stated: "PGE shall pay Seller the Contract Price for all delivered Net Output." *See e.g.*, PGE Schedule 201 effective on and after December 17, 2014, Standard In-System Non-Variable Power Purchase Agreement at Section 4.1 on page 7; and PGE Schedule 201 effective on and after December 17, 2014, Standard In-System Variable Power Purchase Agreement at Section 4.2 on page 9.
104. Under the 2014 Form Contracts, "Contract Price" means "the applicable price, including on-peak and off-peak prices, as specified in the Schedule." *See e.g.*, PGE Schedule 201 effective on and after December 17, 2014, Standard Off-System Non-Variable Power Purchase Agreement at Section 1.5 on page 2.

105. Under the 2014 Form Contracts, “Schedule” means “PGE Schedule 201 filed with the Oregon Public Utilities Commission ... in effect on the Effective Date of this Agreement and attached hereto as Exhibit E, the terms of which are hereby incorporated by reference.” *See e.g.*, PGE Schedule 201 effective on and after December 17, 2014, Standard Off-System Non-Variable Power Purchase Agreement at Section 1.26 on page 5.
106. The 2014 Schedule 201 included two fixed price options: the Standard Fixed Price Option and the Renewable Fixed Price Option. PGE Schedule 201 effective on and after December 17, 2014, Sheet No. 201-4, Sheet No. 201-5 and Sheet No. 201-12.
107. The 2014 Schedule 201 includes six tables of forecasted standard fixed prices for the period from 2014 to 2034. These tables are designated as Tables 1a and 1b, 2a and 2b, and 3a and 3c. PGE Schedule 201 effective on and after December 17, 2014, Sheet No. 201-6 through Sheet No. 201-11.
108. Under the 2014 Schedule 201, the Standard Fixed Price Option “is available for a maximum term of 15 years.” Under the Standard Fixed Price Option, “[p]rices will be as established at the time the Standard PPA is executed and will be equal to the Standard Avoided Costs in Tables 1a and 1b, 2a and 2b, or 3a and 3b, depending on the type of QF, effective at execution.” In addition, under the Standard Fixed Price Option, “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.” PGE Schedule 201 effective on and after December 17, 2014, Sheet No. 201-4 and Sheet No. 201-5.
109. The 2014 Schedule 201 included six tables of forecasted renewable fixed prices for the period from 2014 to 2034. These tables are designated as Tables 4a and 4b, 5a and 5b, and 6a and 6c. PGE Schedule 201 effective on and after December 17, 2014, Sheet No. 201-13 through Sheet No. 201-18.
110. Under the 2014 Schedule 201, the Renewable Fixed Price Option “is available for a maximum term of 15 years.” Under the Renewable Fixed Price Option, “[p]rices will be as established at the time the Standard PPA is executed and will be equal to the Renewable Avoided Costs in Tables 4a and 4b, 5a and 5b, or 6a and 6b, depending on the type of QF, effective at execution.” In addition, under the Renewable Fixed Price Option, “Sellers with PPAs exceeding 15 years will receive pricing equal to the Mid-C Index Price and will retain all Environmental Attributes generated by the facility for all years up to five in excess of the initial 15.” PGE Schedule 201 effective on and after December 17, 2014, Sheet No. 201-12.
111. The 2014 Schedule 201 stated that the term of a power purchase agreement entered into pursuant to Schedule 201 would be: “Not less than one year and not



to exceed 20 years.” PGE Schedule 201 effective on and after December 17, 2014, Sheet No. 201-23.

### **Order No. 14-435 Approving PGE Compliance in Phase I of UM 1610**

112. On December 16, 2014, the Commission issued Order No. 14-435 in Docket No. UM 1610.
113. In Order No. 14-435 the Commission approved the 2014 Schedule 201 and the 2014 Form Contracts as compliant with Order No. 14-058. The 2014 Schedule 201 and 2014 Form Contracts became effective December 17, 2014. Order No. 14-435 at 1, and Appendix A at 1.

### **H. Avoided Cost Price Update – Spring 2015**

114. On May 1, 2015, PGE filed revisions to Schedule 201 proposing updates to avoided cost prices only. The submission was docketed as an application to revise Schedule 201 in UM 1728. On August 25, 2015, the Commission issued Order No. 15-251 approving PGE’s revised Schedule 201 effective August 26, 2015.

### **I. UM 1610 – Party Stipulation**

115. On April 16, 2015, the Commission issued Order No. 15-130 in Docket No. UM 1610 adopting a stipulation by key parties to UM 1610.
116. On May 27, 2015, PGE filed a revise Schedule 201 (2015 Schedule 201) and revised versions of all eight of PGE’s standard contract forms (2015 Form Contracts) to comply with Order No. 15-150.
117. The revisions in the 2015 Schedule 201 and in the 2015 Form Contracts did not involve the maximum 20 year term of PGE’s QF standard contracts and did not involve the 15-year fixed price period.
118. PGE’s 2015 Schedule 201 addressed fixed prices with the same language used in PGE’s 2014 Schedule 201 detailed in paragraphs 100 through 105 above.
119. PGE’ 2015 Schedule 201 addressed the 20-year maximum term of PGE’s QF standard contracts with the same language used in PGE’s 2014 Schedule 201 detailed in paragraph 106 above.
120. PGE’s 2015 Form Contracts addressed contract prices using the same language as used in PGE’s 2014 Form Contracts detailed in paragraphs 97 through 99 above.

121. On September 22, 2015, the Commission issued Order No. 15-289 in Docket No. UM 1610 approving PGE's May 27, 2015 revisions to Schedule 201 and to PGE's standard contract forms as compliant with Order No. 05-150. The 2015 Schedule 201 and the 2015 Form Contracts became effective September 23, 2015.

**J. Avoided Cost Update – Spring 2016**

122. On April 29, 2016, PGE filed revisions to Schedule 201 proposing updates to avoided cost prices only. The submission was docketed as an application to revise Schedule 201 in UM 1728. On June 8, 2016, the Commission issued Order No. 16-220 approving PGE's revised Schedule 201 effective June 22, 2016.

**K. UM 1610 – Phase II**

**Order No. 16-174 in Phase II of UM 1610**

123. On May 13, 2016, the Commission issued Order No. 16-174 the Commission's Phase II order in Docket No. UM 1610.

124. In Order No. 16-174, the Commission did not alter its determination in Order No. 05-584 that a utility must offer eligible QFs as standard contract with "a maximum standard contract term of twenty years" that "[a]llow[s] a QF to select fixed pricing for the first fifteen years of the standard contract, but require[s] the selection of a market pricing option for the last five years." Order No. 05-584 at 1-2 and 19-20.

125. In Order No. 16-174, the Commission made a determination regarding the ownership of renewable energy credits (RECs).

126. In Order No. 16-174, the Commission noted the REC issue concerns who owns a QF's RECs "during the last five years of a 20-year fixed power purchase agreement (PPA)—a period when the QF is paid rates that are based on market prices rather than avoided costs." Order No. 16-174 at 4.

127. In Order No. 16-174, the Commission noted that the REC issue "arises from a perceived conflict between two directives: (1) the directive in Order No. 05-584 that QFs be paid market rates during the last five years of a 20-year fixed-price contract; and (2) the directive in Order No. 11-505 that when a utility is renewable resource deficient, a QF is paid standard renewable avoided cost prices based on the cost of the next avoidable renewable resource but must transfer its RECs to the utility." Order No. 16-174 at 4.

128. The Commission found no conflict between Order Nos. 05-584 and 11-505. In Order No. 16-174 the Commission concluded:

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. In Order No. 11-505, we determined that a utility, once it becomes renewable resource deficient, receives a renewable QF's RECs for the remainder of the standard contract. Thus, Order No. 11-505 ties REC ownership to utilities sufficiency or deficiency position. Order No. 05-584 dictates the maximum term of any standard contract and that market prices replace avoided cost prices during the last five years of a 20-year standard contract. RECs continue to transfer to a utility at the beginning of the utility's resource deficiency period.

Order No. 16-174 at 5.

129. In Order No. 16-174, the Commission ordered PGE to file "revised standard contract forms that set forth standard rates, terms and conditions that are consistent with the resolutions made in this order." Order No. 16-174, ordering paragraph 1 at page 31.
130. In Order No. 16-174, the Commission further ordered PGE to "file revised avoided cost schedules that implement the resolutions made in this order." Order No. 16-174, ordering paragraph 3 at page 31.

**PGE's Application to Revise Schedule 201 in Compliance with  
Order No. 16-174 in Phase II of UM 1610**

131. On July 12, 2016, PGE complied with Order No. 16-174 by filing in UM 1610: (i) a revised Schedule 201 (2016 Schedule 201); (ii) a revised Schedule 202; and (iii) revisions to all eight of PGE's standard contract forms (2016 Form Contracts).
132. PGE's July 12, 2016 submission proposed revisions in the 2016 Schedule 201 and the 2016 Form Contracts to address the Commission decision in Order No. 16-174 regarding ownership of RECs.
133. PGE's July 12, 2016 revisions found in the 2016 Form Contracts provide that from the start of the renewable resource deficiency period through the remainder of contract term, Seller will provide and PGE will acquire RECs even during the last five years of a 20-year contract when PGE is paying market prices instead of fixed renewable prices.
134. PGE's July 12, 2016 compliance filing also included price changes in the 2016 Schedule 201 to address the Commission's decision in Order No. 16-174 regarding capacity contributions for standard avoided costs and standard renewable avoided costs.

135. The revisions in the 2016 Schedule 201 and in the 2016 Form Contracts did not involve the maximum 20 year term of PGE's QF standard contracts and did not involve the 15-year fixed price period.
136. PGE's 2015 Form Contracts addressed contract prices using the same language as used in PGE's 2014 Form Contracts detailed in paragraphs 97 through 99 above.
137. PGE' 2016 Schedule 201 addressed fixed prices with the same language used in PGE's 2014 Schedule 201 detailed in paragraphs 100 through 105 above.
138. PGE' 2016 Schedule 201 addressed the 20-year maximum term of PGE's QF standard contracts with the same language used in PGE's 2014 Schedule 201 detailed in paragraph 106 above.
139. PGE's 2016 Form Contracts addressed contract prices using the same language as used in PGE's 2014 Form Contracts detailed in paragraphs 97 through 97 above.

#### **Order No. 16-377 Approving PGE Compliance in Phase II of UM 1610**

140. On October 11, 2016, the Commission issued Order No. 16-377 in UM 1610 approving PGE's July 12, 2016 avoided cost prices and other changes made in PGE's 2016 Schedule 201 and PGE's 2016 Form Contracts submitted in compliance with Order No. 16-174. The revised documents became effective October 11, 2016. Order No. 16-377 at 1 and Appendix A at 4.

#### **L. Other Relevant Facts**

141. PGE's executed QF standard contracts are filed with the Commission in Docket No. Re 143.
142. PGE's currently effective QF standard contracts and PGE's currently effective Schedule 201 have been posted on PGE's website since at least May 13, 2005, the date the Commission issued Order No. 05-584.
143. Since PGE's July 22, 2005, filing of Advice No. 05-10 in compliance with Order No. 05-584 in Docket No. UM 1129, PGE has publicly indicated in both its Schedule 201 and its QF standard contracts that PGE offers to pay fixed prices under QF standard contracts for the initial 15 years of a maximum 20 year QF standard contract and that PGE will pay a market-based price for the last five years of a maximum 20 year QF standard contract.
144. Beginning with the standard contract form filed by PGE as Advice No. 05-10 in compliance with Order No. 05-584 through PGE's currently effective standard contracts, none of PGE's Commission-approved standard contract forms have

contained blank spaces that are intended to 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. None of PGE's standard contract forms have ever had a blank that was provided in order to allow a QF to so specify.

145. PGE has not entered into a standard contract where one of the blank spaces in the standard contract form was 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.

### **Legal Issues**

146. Did PGE comply with ordering paragraphs 1 and 4 of Order No. 05-584 by filing PGE Advice No. 05-10?
147. Did PGE comply with ordering paragraphs 1 and 4 of Order No. 06-538 by filing PGE Advice No. 06-26?
148. Did the standard contracts filed in PGE Advice No. 05-10 and PGE Advice No. 06-26 provide for a maximum 20-year standard contract term measured from the contract effective date?
149. Did the standard contracts filed in PGE Advice No. 05-10 and PGE Advice No. 06-26 offer fixed prices for a maximum of 15-years measured from the contract effective date?
150. Did the Schedule 201 tariffs filed in PGE Advice No. 05-10 and PGE Advice No. 06-26 provide for a maximum 20-year standard contract term measured from the contract effective date?
151. Did the Schedule 201 tariffs filed in PGE Advice No. 05-10 and PGE Advice No. 06-26 offer fixed prices for a maximum of 15-years measured from the contract effective date?
152. Did Order No. 07-065 find that Advice No. 06-26 complied with Order No. 06-538, Order No. 05-584, and the policy decisions and requirements contained in those orders, including the establishment of a maximum 20-year term for standard contracts and the requirement to offer QFs fixed prices for the first 15 years of a 20-year standard contract term?
153. Subsequent to Order No. 07-065, has the Commission ordered PGE to comply with any new, revised or additional requirements regarding the date on which the 20-year maximum standard contract term begins to run?
154. Subsequent to Order No. 07-065, has the Commission ordered PGE to comply with any new, revised or additional requirements regarding the date on which the 15-year fixed price period begins to run?

Attachment B

UM 1805

Statement Setting Forth the Facts and Issues of PGE  
Where Those Are Not Agreed Between the Parties

**EXHIBIT A**

November 4, 2015 6:02 PM Email from  
Bruce True of PGE to Bill Eddie of OneEnergy Oregon Solar, LLC

Bruce True <Bruce.True@pgn.com>

November 4, 2015 6:02 PM

To: Bill Eddie

RE: Acceptance of Schedule 201 Renewable Avoided Costs: Morrow Solar, LLC

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Bill,

The added language has to be removed to move ahead.

The adjustment to the term in the Steel Bridge contract was in error. Under the current form contract, PGE provides a 15 year fixed price term starting on the Effective Date. PGE is not willing to move the start of the fixed price term to the Commercial Operation Date. Our position is consistent with Schedule 201 which states that the fixed price option “is available for a maximum term of 15 years” and that “prices will be established at the time the Standard PPA is executed.” It is also consistent with Commission Order 05-584 in which the Commission ruled that “standard contract prices should be fixed for only the first 15 years of the 20-year term.” As the seller you may maximize the ability to take advantage of the fixed price term by bringing your project on line as quickly as possible.

Let me know if you have any additional questions.

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**From:** Bill Eddie [mailto:bill@oneenergyrenewables.com]

**Sent:** Tuesday, November 03, 2015 3:03 PM

**To:** Bruce True

**Subject:** Re: Acceptance of Schedule 201 Renewable Avoided Costs: Morrow Solar, LLC

Bruce,

Attached is the agreement for Morrow Solar, LLC with project particulars completed.

We added language at Exhibit D to clarify the 15 year fixed price payment

period begins on the commercial operation date. Our agreement on the Steel Bridge project was clear in that respect (see Section 5 of that agreement), but the newer PPA format for variable resources is a little ambiguous about the length of the fixed price period. We are happy to consider alternative language to achieve the same outcome.

We will follow up shortly with the completed agreement for OE Solar 1, LLC. Thank you,

Bill Eddie  
503-232-3852

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**From:** Bill Eddie  
**Sent:** Thursday, October 15, 2015 1:35 PM  
**To:** Bruce True  
**Subject:** Re: Acceptance of Schedule 201 Renewable Avoided Costs: Morrow Solar, LLC

Thank you. To recap, there are two 10 MWac projects at this time:

1. Morrow Solar, LLC, 10 MWac, located west of Boardman (we originally sought indicative pricing at 20 MWac at this site, but withdrew that 20 MW request).
2. OE Solar 1, LLC, 10 MWac, located northeast of Lone.

Bill Eddie  
503-232-3852

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**From:** Bruce True <[Bruce.True@pgn.com](mailto:Bruce.True@pgn.com)>  
**Sent:** Thursday, October 15, 2015 1:20 PM



**To:** Bill Eddie

**Subject:** RE: Acceptance of Schedule 201 Renewable Avoided Costs: Morrow Solar, LLC

I have a second e-mail. Are there two projects or only 1?

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**From:** Bill Eddie [<mailto:bill@oneenergyrenewables.com>]

**Sent:** Thursday, October 15, 2015 1:11 PM

**To:** Bruce True

**Subject:** Re: Acceptance of Schedule 201 Renewable Avoided Costs: Morrow Solar, LLC

Bruce, could you please confirm that you received the October 6, 2015 email below in regard to Morrow Solar, LLC?

Bill Eddie

503-232-3852

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**From:** Bill Eddie

**Sent:** Tuesday, October 6, 2015 10:01 AM

**To:** Bruce True

**Cc:** Ann Siqveland; Arlo Corwin

**Subject:** Acceptance of Schedule 201 Renewable Avoided Costs: Morrow Solar, LLC

Bruce,

Please find attached the acceptance of Schedule 201 Renewable Avoided Cost rates by Morrow Solar, LLC. Also attached are: (a) 12x24 output spreadsheet; (b) PVsyst report; and (c) site control documentation.

Bill Eddie

503-232-3852

## ATTACHMENT C

### UM 1805

#### **Statement Listing the Facts and Issues Upon Which the Parties Disagree Are Relevant to the Resolution of the Proceeding**

On March 3, 2007, the Public Utility Commission of Oregon held a conference in Docket No. 1805. The parties were ordered to jointly file no later than March 10, 2017:

1. A statement listing the facts and issues upon which they agree are relevant to the resolution of the proceeding; and
2. A statement setting forth the facts and issues of each party where those are not in agreement.

The parties exchanged proposed lists of facts and issues and the following facts and issues represent those upon which the parties are not in agreement:

Complainants believe that in lieu of adopting PGE's Attachment B that the parties should be permitted to rely upon the relevant orders and filings in Oregon Public Utility Commission proceedings regarding the Public Utility Regulatory Policies Act, including but not limited to AR 102, AR 112, AR 116, AR 174, AR 246, R 58, UM 21, UM 155, UM 1129, UM 1610, UM 1637, UM 1664, UM 1725, UM 1728, UM 1734, RE 141, RE 142, RE 143, as well as PGE Advice Nos. 05-10, 06-26, 07-17, 07-27, 09-16, 10-05, and 10-27. To the extent that the Commission believes that these orders and filings constitute facts necessary for resolving the legal issue in this Complaint, the Complainant's therefore move for the ALJ to take official notice of these filings and orders in these proceedings under OAR 860-001-0460(d).

Complainants submit that specific portions of Commission orders should not be considered disputed factual statements because ascertaining the meaning of certain portions of these orders requires a legal argument, not a factual statement. Very few facts are needed to resolve the disputed policy issue, which is why the parties entertained the idea of addressing this issue through a declaratory ruling proceeding rather than a complaint. The parties are unlikely to be able to agree to the relevancy and meaning of every paragraph of every order and filing in every PURPA regulatory proceeding over the last thirty-five years. Thus, Complainants reject PGE's approach entirely, and urge ALJ to do so as well.

The voluminous "facts" that may be gleaned from the various Commission filings should likewise not be subject to reasonable dispute. Just like the orders themselves, these facts are suitable for judicial notice because they are capable of accurate and ready determination from sources whose accuracy cannot reasonably be questioned.<sup>1</sup> Complainants see little value in verifying the parties to these various proceedings and, for

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<sup>1</sup> ORS 40.065.

example, when CREA was added to the service list in UM 1129. Moreover, some of the portions of these filings proposed by PGE's are very narrow sections and exclude critically important information that Complainants intend to rely upon in their filings on the merits. The inclusion of such an expansive list of "facts" regarding filings and interpretations of prior Commission orders suggests that the parties would not intend to point to any other filings or orders from these proceedings, but that is not the case. Complainants should be able to rely on the rest of the documents cited by PGE in its expansive list, as well as other filings in the proceeding, to provide context and rebut PGE's arguments. Therefore, if the ALJ is inclined to adopt PGE's approach of developing a list of every detail from every prior filing or order in every prior docket that may be relied upon in this proceeding, Complainants request the ability to supplement the expansive list PGE has provided with the similarly expansive list that Complainants will rely upon.

PGE has avoided filing an answer to this complaint for over three months already. If PGE would simply answer the complaint, the admissions it must make thereto would establish much of the predicate facts to resolve this dispute. Moreover, Complainants are materially compromised in ways they cannot even yet know by being required to develop the universe of facts that might be necessary to respond to any additional allegations, affirmative defenses, or counter claims that PGE may raise when it finally files its answer. Complainants reserve the right to prove any facts that may become necessary to support Complainants claims as this docket develops. Complainants also reserve the right to further supplement the facts herein if official notice of the filings and orders in the above referenced dockets is not taken, as proposed above.

PGE's approach to identifying stipulated facts and issues is unacceptable to Complainants. Complainants believe this approach has added additional delay and unnecessary complication to a relatively simple issue and request that PGE's Attachment B be rejected. To be clear, Complainants do not agree to all of PGE's characterizations in its argumentative presentation of the facts it believes are relevant. The Complainants urge the ALJ to conclude that PGE's list of facts is simply unnecessary, require PGE file its answer and dispute the allegations in the complaint and the list of facts in Attachment C, and adopt the Complainants list of legal issues.

**Complainant facts that are disputed by PGE:**

1. NIPPC is a non-profit organization, qualified under Internal Revenue Code Section 501(c)(6), with the organizational purpose of representing the interests of independent power producers, marketers, and service providers in the Pacific Northwest. NIPPC is headquartered at 4106 78th Avenue Southeast, Mercer Island, Washington 98040.

2. CREA is an intergovernmental association organized under ORS Chapter 190 with the organizational purpose of promoting the development of locally-owned, renewable energy projects in Oregon. CREA's physical mailing address is c/o Mid-Columbia Council of Governments, 1113 Kelly Avenue, The Dalles, Oregon 97058.

3. The Coalition is an unincorporated association representing non-utility owned renewable energy generators throughout the Pacific Northwest. The Coalition is headquartered at 88644 Hwy 101, Gearhart, Oregon 97138.

4. Complainants collectively advocate for the interests of independent power producers, including owners and prospective developers of QFs.

5. NIPPC's organizational purpose is to represent the interests of independent power producers, marketers, and service providers in the Pacific Northwest to advance fair and competitive power markets. NIPPC's members include independent power producers, electricity service suppliers, transmission companies, and commercial and industrial customers.

6. CREA's organizational purpose is to educate and advocate for policies that support development of locally-owned, renewable energy projects in Oregon. CREA's members include several Oregon counties, irrigation districts, councils of government, project developers, for-profit businesses, and non-profit organizations.

7. The Coalition's organizational purpose is to ensure that small renewable generation projects continue to make an important contribution to the future of energy in the region. The Coalition's thirty four members operate over fifty QF projects throughout the Northwest. Several types of entities are members of the Coalition,

including irrigation districts, water and waste management districts, corporations, small utilities, and individuals.

8. In compliance with Order No. 05-584, both Idaho Power's and PacifiCorp's Commission-approved standard contracts have declared that the QF may elect to sell under prices that are fixed for a full 15 years from the date the QF achieves operation, and provide that the 15 years do not start on the date that the parties execute the contract.

9. Both Idaho Power's and PacifiCorp's standard contracts have remained materially unchanged since 2005 on this point.

10. PGE did not state in any filings, oral comments, or argument submitted to the Commission prior to 2016 that it would only pay QFs 15 years of fixed prices commencing on the effective date of the PPA.

11. PGE's current practice in negotiating with QFs is to refuse to sign a standard PPA with the blank spaces completed such that the 15-year fixed price period unambiguously commences on the operation date instead of the effective date.

12. PGE's current practice prevents all QFs entering into a new or renewal contract from obtaining a fully executed PPA that unambiguously states that the period of 15 years of fixed prices commences on the operation date.

13. Since at least 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.

**Disputed Legal Issues:**

14. Does the Commission's policy require PGE to offer 15 years of fixed prices from the time of power deliveries?

15. Do PGE's standard contracts require 15 years of fixed prices from the time of power deliveries, unless express language has been inserted by the QF that demonstrates a contrary intent?

16. If the Commission concludes that PGE's standard contracts do not allow for 15 years of fixed prices to commence on the operation date, should the Commission direct PGE to file revised standard contracts that unambiguously provide that the QF may elect to enter into a contract where the 15-year period of fixed prices commences on the operation date, consistent with the options provided by Idaho Power's and PacifiCorp's standard contract?