

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1805

NORTHWEST AND INTERMOUNTAIN)	
POWER PRODUCERS COALITION,)	
COMMUNITY RENEWABLE ENERGY)	NORTHWEST AND
ASSOCIATION and RENEWABLE)	INTERMOUNTAIN POWER
ENERGY COALITION,)	PRODUCERS COALITION,
)	COMMUNITY RENEWABLE
Complainants,)	ENERGY ASSOCIATION and
)	RENEWABLE ENERGY
v.)	COALITION’S MOTION FOR
)	SUMMARY JUDGMENT
PORTLAND GENERAL ELECTRIC)	
COMPANY,)	
)	
Defendant.)	
_____)	

I. INTRODUCTION

The Northwest and Intermountain Power Producers Coalition (“NIPPC”), Community Renewable Energy Association (“CREA”), and Renewable Energy Coalition (the “Coalition”) (collectively “Complainants”) hereby move the Oregon Public Utility Commission (“Commission”) to grant summary judgment in favor of Complainants.¹

The parties have been unable to identify any genuine issues of material fact in this proceeding and request the Commission resolve the simple legal and policy issues presented. Complainants pose two simple legal questions: 1) whether the Commission’s

¹ OAR 860-001-0000 (“The Oregon Rules of Civil Procedure (ORCP) also apply in contested case and declaratory ruling proceedings unless inconsistent with these rules”); ORCP 47 (“The court has grant the motion if the pleadings, depositions, affidavits, declarations and admissions on file show that there is no genuine issue as to any material fact and that the moving party is entitled to prevail as a matter or law”).

policy entitles qualifying facilities (“QFs”) to 15 years of fixed prices from the time the facility becomes operational and begins delivering its net output under the standard contract (also referred to as the “power purchase agreement” or “PPA”); and 2) whether Portland General Electric Company’s (“PGE”) standard contract can be implemented to provide QFs with 15 years of fixed prices from the time of deliveries.

Complainants submit that the Commission’s policy of allowing QFs 15 years of fixed prices from the time of commercial operation or power deliveries is clear from the Commission’s orders and the utilities’ standard contracts implementing its instructions. The appropriate Public Utility Regulatory Policies Act (“PURPA”) contract term was thoroughly briefed, has been revisited many times, and the Commission has repeatedly upheld its 15-year policy. PGE’s unique interpretation of that policy, that the 15-year fixed-price period begins upon contract execution, has never been addressed by interested parties, and undermines the Commission’s directives in at least four major orders over the last dozen years.

Adoption of PGE’s position would make Oregon’s implementation of PURPA for PGE markedly different from its implementation for both PacifiCorp and Idaho Power Company (“Idaho Power”), as well as different from the treatment by all other relevant jurisdictions. As explained below, it makes good sense to link the fixed-price term’s length to the in-service date of the facility because the term length is tied to financing, which requires predictable revenue streams. Accordingly, numerous other state commissions have treated this issue identically to the undisputed treatment by Idaho Power and PacifiCorp in their Oregon PPAs – that is, the term of fixed pricing offered to the QF/seller under a power sales contract does not commence upon contract execution.

Industry practices are therefore contrary to PGE's position.

PGE has itself acted inconsistently with own professed policy, both in its prior QF PPAs and in its own recent request for proposals, which set forth a contract term that runs from the in-service date or power deliveries of the generation facility. Thus, allowing PGE to begin the fixed-price period at the time of contract execution, would go against the Commission's direction and rationale. Adopting PGE's newly articulated approach would also create a new set of rules for some QFs within Oregon that is unique to those throughout the region and potentially even the rest of the country since the inception of power purchase agreements in the industry.

Unlike its business practices, PGE's standard contracts can be implemented consistent with the Commission's 15-year policy because they do not expressly prohibit a QF from actually obtaining 15 years of fixed-price payments. As this Commission's own staff has recognized in a recent docket, the blank spaces in PGE's contracts can be filled out to allow QFs to select a full 15 years of fixed prices from commercial operation or power deliveries. Should the Commission disagree, Complainants request that the Commission direct PGE to revise its standard contracts to expressly adhere to the Commission's 15-year fixed-price policy, as PacifiCorp's and Idaho Power's do.

II. BACKGROUND

The history of standard contract terms in Oregon demonstrates a long-held policy, consistently interpreted as beginning a QF's fixed-price period when the facility achieves its in-service date or otherwise begins delivering its net output, rather than upon contract execution. In 1996, as competitive markets began to emerge, the Commission limited the term of QF contracts to five years. Oregon's history with five-year contracts reaffirmed a

context where the fixed price term would naturally be tied to power deliveries because starting the fixed price term at contract execution would mean that a new QF with a “five-year” contract would be paid only one to three years of prices given the time it takes to come on line.

In 2005, the Commission revisited the PURPA contract term issue in Docket No. UM 1129 with the objective of establishing a contract length that allowed QFs to establish financing, while limiting the possible divergence of standard contract rates from actual avoided costs. In Order No. 05-584, the Commission allowed QFs the ability to enter into contracts to sell their net output for up to 20 years, with fixed prices for the first 15 years of those sales.² The history of Oregon’s and other states’ standard contract terms also illustrates the stark reality that, without long-term PURPA contracts, there is no PURPA development. Since 2005, the Commission reaffirmed its 15-year fixed-price policy in Docket Nos. UM 1610, UM 1725, and UM 1734.

Despite PGE’s participation in all of the relevant proceedings addressing QF contract terms, Complainants are unaware of PGE ever publicly raising its unique interpretation of the Commission’s 15-year fixed-price policy.³ PGE appears to have first asserted its current position when responding to a Motion for Clarification of the final order in UM 1725, which was Idaho Power’s request to reduce the contract term to two

² Re Investigation Related to Electric Utility Purchases from Qualifying Facilities, Docket No. UM 1129, Order No. 05-584 at 20 (May 13, 2005).

³ Even if PGE obliquely mentioned its view at some point in the voluminous records in UM 1129, UM 1610, UM 1725 and UM 1734, PGE never requested nor did the Commission adopt the view that new QFs should lose three to four years of payments under a 15-year contract because it takes that long to construct their facility.

years.⁴ PGE asserted that “Idaho Power’s contract is ‘more generous’ than that required” claiming the “existing policy only requires a utility to pay fixed rates for the first 15 years following execution.”⁵

Subsequent to the Commission’s reaffirmation of the 15-year policy in UM 1610, PacifiCorp and Idaho Power have systematically proposed lower contract terms in Idaho, Oregon, Utah and Wyoming. Idaho Power and PacifiCorp first proposed short contract terms and obtained the two-year PURPA contracts for certain QFs in Idaho.⁶ Next, PacifiCorp sought similar contract term reductions in Oregon (which effectively includes California), Wyoming and Utah. This Commission rejected PacifiCorp’s request and reaffirmed its current policy. The Wyoming Public Service Commission (“Wyoming Commission”) followed suit and likewise rejected PacifiCorp’s request, maintaining 20 year terms. The Utah Public Service Commission (“Utah Commission”) reduced its standard contract term from 20 to 15 years.⁷

⁴ Re Idaho Power Co., Application to Lower Standard Contract Eligibility Cap and to Reduce the Standard Contract Term, Docket No. UM 1725, PGE’s Response in Opposition to Motion for Clarification at 2 (Apr. 29, 2016).

⁵ Id. at n.9.

⁶ Re Idaho Power Company’s Petition to Modify Terms and Conditions of PURPA Purchase Agreements, IPUC Case Nos. IPC-E-15-01, AVU-E-15-01, PAC-E-15-03, Order No. 33311 (June 2, 2015).

⁷ Re Application of Rocky Mountain Power for Modification of Contract Term of PURPA Power Purchase Agreements with QFs, WPSC Docket No. 15-035-53, Final Order (Jan. 7, 2016); Re PacifiCorp, dba Pacific Power, Application to Reduce the Qualifying Facility Contract Term and Lower the Qualifying Facility Standard Contract Eligibility Cap, Docket No. UM 1734, Order No. 16-130 (Mar. 29, 2016); see also Re Idaho Power Company, Application to Lower Standard Contract Eligibility Cap and to Reduce the Standard Contract Term, Docket No. UM 1725, Order No. 16-129 (Mar. 29, 2016); Re Application of Rocky Mountain Power for Modification of Contract Terms of PURPA Power Purchase Agreements with QFs, UPSC Docket No. 20000-481-EA-15, Record No. 14220 (June 23, 2016).

PGE has not formally proposed changing Commission policy, but has taken the position in negotiations with QFs and pleadings in this proceeding that a QF is only entitled to 15 years of fixed prices from the date of contract execution. PGE's interpretation of the Commission's 15-year fixed price term would have the practical effect of lowering the maximum QF contract term to as low as 11 years. This is because a QF cannot start delivering power until it has been built, and it takes new QFs years to go from contract execution to power deliveries.⁸ Thus, PGE's position could implicitly accomplish what other utilities have failed to do through open Commission proceedings.

III. ARGUMENT

A. **The Commission's Policy Requires Utilities Pay 15 Years of Fixed Prices to QFs Beginning from the Date of Commercial Operation or Power Deliveries**

The Commission based its policy upon a determination that 15 years of fixed pricing was the minimum time needed to facilitate appropriate financing for most QF projects. The Commission acknowledged that its policy balanced two separate goals: 1) accurately pricing QF power; and 2) ensuring that eligible QF projects have viable opportunities to finance their projects and associated interconnections. The Commission concluded "the contract term length minimally necessary to ensure that most QF projects can be financed should be the maximum term for standard contracts."⁹

PGE's position conflicts with the Commission's policy because PGE is interpreting its standard contract to offer less than 15 years of fixed prices, which the Commission deemed the minimum time needed to facilitate appropriate financing. PGE

⁸ Re Investigation into Qualifying Facility Contracting and Pricing, Docket No. UM 1610, Order No. 15-130 at 2 (Apr. 16, 2015).

⁹ Docket No. UM 1129, Order No. 05-584 at 19.

is not actually offering a full 15 years of fixed prices, if the fixed price term starts from the time a PPA is executed, because there is no power to purchase until the project is operational. Importantly, PGE does not propose to pay the QF prior to the time that it delivers energy under the PPA; instead, it simply asserts that the QF loses years of its fixed pricing payments, if it must secure financing and complete construction after executing the PPA. Contrary to PGE's position, the fixed-price term of 15 years necessarily begins when power sales begin, which is typically allowed to occur up to three years after contract execution.

The Commission has revisited its policy on fixed prices and QF contract terms many times, and the Complainants are unaware of PGE ever publicly arguing its unique position that the fixed-price period should begin before power sales. Both PacifiCorp's and Idaho Power's contract terms establish that the fixed-price period does not begin at contract execution. As such, the numerous proceedings in this and other states involving these terms have established a trade usage and custom for understanding when fixed prices are offered. PGE's alternative interpretation is simply not reasonable in this context.

1. 15 Years of Fixed Prices from Contract Execution Could Effectively Mean as Little as Only 11 Years of Fixed Prices

The simple issue in this proceeding is whether QFs are paid fixed prices for 15 years of power deliveries or as little as 11 years of power deliveries. PGE's position presents a logical timing problem for the vast majority of QFs. The Commission has acknowledged "that a QF developer may only have access to financing after a PPA has been

signed . . .”¹⁰ Obviously, if the facility has not even been financed for construction prior to PPA execution, it cannot begin selling its net output and receiving the predictable revenue of fixed prices on the day it signs the PPA.

Instead, QFs typically receive or finalize their financing *after the executing the PPA* based on the expected revenue stream, which the Commission determined should at minimum be set at 15 years. If the expected revenues are based upon the date of PPA execution, then the QF may only rely on receiving as little as 11 years of actual payments. Stated differently, the number of total years between contract execution and expiration are essentially meaningless to determine the predictable revenue that a financial institution relies upon because projects typically take between one and four years to be constructed. How many years a QF will actually be paid, and at what rate, is what determines a project’s ability to establish financing. Thus, the QF project could never obtain 15 years of predictable revenue the Commission deemed minimally necessary for financing under PGE’s interpretation.

QF projects take years of planning and construction before power deliveries for a wide variety of reasons. Only after the interconnection costs and financing are fully established, project construction can finally begin. The interconnection process alone can take years. PacifiCorp’s tariff states that its interconnection process takes 18 months.¹¹ Delays in construction must be carefully managed by QF developers so that they can hit

¹⁰ Re Investigation Into Qualifying Facility Contracting and Pricing, Docket No. UM 1610, Order No. 14-058 at 7 (Feb. 24, 2014).

¹¹ Generation Interconnection Process, PACIFICORP, <http://www.pacificorp.com/tran/ts/gip.html> (under “Standard study process and timelines” dropdown) (“Steps 1-6 can require up to one year or more. Step 7 can require 18 to 24 months.”).

their estimated commercial operation date.

Although everyone recognizes that new QFs take years to develop, existing QFs also need to enter into contracts well in advance of their PPA expiration.¹² Just like new QF planning, existing QFs need to plan for future operations, and finance improvements and new interconnections. Existing QFs may also need flexibility when renewing to avoid periods where the utility may be initially offering low market prices. Although there was disagreement between the parties in UM 1610, UM 1725 and UM 1734 as to how much time was needed for existing QFs to renew their contracts, the parties agreed that some time was needed to renegotiate and plan facility upgrades.¹³

Three years is generally accepted as a normal amount of time a QF project needs to become fully operational. The Commission recognized a joint stipulation in UM 1610 where parties established three years as a permissible time period between the effective

¹² Re Investigation into Qualifying Facility Contracting and Pricing, Docket No. UM 1610, REC's Reply Testimony at Coalition/600, Lowe/18-19 (Aug. 7, 2015); Docket No. UM 1610, Order No. 15-130 at 2 ("The stipulating parties agree that QFs can select a scheduled COD anytime within three years of contract execution, and that a QF can elect a scheduled COD that is more than three years from contract execution if the QF can establish that a period in excess of three years is reasonable and necessary and the utility agrees to the scheduled COD."); see also Re PacifiCorp, dba Pacific Power, Application to Reduce the Qualifying Facility Contract Term and Lower the Qualifying Facility Standard Contract Eligibility Cap, Docket No. UM 1734, REC's Response Testimony, Coalition/100, Lowe/3, 17-18 (Oct. 15, 2015) ("three-year contract terms could place existing projects' continued operation in jeopardy"); Re PacifiCorp, dba Pacific Power, Application to Reduce the Qualifying Facility Contract Term and Lower the Qualifying Facility Standard Contract Eligibility Cap, Docket No. UM 1734, PacifiCorp's Reply Testimony at PAC/200, Griswold/5 (Dec. 10, 2015); Re Idaho Power Company, Application to Lower Standard Contract Eligibility Cap and to Reduce the Standard Contract Term, Docket No. UM 1725, Response Testimony of John Lowe at Coalition/200, Lowe/7 (Aug. 31, 2015).

¹³ See supra note 12.

date of a PPA and the commercial operation date of a project.¹⁴ That stipulation also agreed that the three-year period should be extended for any reasonable cause that arises. If the QF's commercial operation date is delayed, and there are no other relevant cure provisions, a utility can terminate the PPA one year after missing its commercial operation date.¹⁵ PGE did not raise this 15-year issue in that discussion.

The Complainants do not advocate for an indefinite PPA term that could be achieved by unreasonable delays of the operation date. Rather, if the QF were to unreasonably delay its operation date, the utility would presumably be entitled to exercise a right to terminate the PPA, under the terms of the standard contract and the Commission's policies. Thus, the Commission's policy does not guarantee 15 years of fixed prices beyond the terms of the contract.

In summary, the practical impact of PGE's interpretation would mean that effectively all new QF projects and most existing QF projects would not be able to obtain 15 years of fixed pricing. The only way a QF project would be able to obtain 15 years of fixed pricing is if it were able to make power deliveries the day after the contract was executed. This result runs afoul of the Commission's rationale. Yet, until now, PGE has never explained how its unique interpretation conforms with the Commission's rationale.

¹⁴ Docket No. UM 1610, Order No. 15-130 at 2; see, e.g., Standard In-System Variable Power Purchase Agreement at Section 2.2.3, PORTLAND GENERAL ELECTRIC, <https://www.portlandgeneral.com/business/power-choices-pricing/renewable-power/install-solar-wind-more/sell-power-to-pge>.

¹⁵ Docket No. UM 1610, Order No. 15-130 at 2; see, e.g., Standard In-System Variable Power Purchase Agreement at Section 2.2.3, PORTLAND GENERAL ELECTRIC, <https://www.portlandgeneral.com/business/power-choices-pricing/renewable-power/install-solar-wind-more/sell-power-to-pge>.

2. The Commission Has Affirmed its Policy of allowing 15 Years of Fixed Pricing in Four Separate Dockets Over the Last Dozen Years

The Commission understands that fixed prices and the number of years of payments are important for financing, which is why it has repeatedly reaffirmed its 15-year policy. Over the last 12 years, the Commission has reached the same conclusions in at least four separate dockets. Worth noting, PGE does not appear to have raised this 15-year issue in any of these proceedings.

First, in UM 1129, the Commission addressed “the appropriate contract length which is consistent with the Federal PURPA law standards and which will balance the interest of QF developers and the utility’s customers”.¹⁶ At that time, the Commission’s current practice was a five-year term, which had not allowed for any QF development. PGE and Idaho Power entered into zero five-year contracts and PacifiCorp entered into one contract with a very small (65 kilowatt) QF.¹⁷

The Commission had adopted the five-year contract term, at the request of PGE, in 1996.¹⁸ In support of the five-year contract term, PGE stated that most of the long-term power purchase contracts it was executing at that time were for three to five years. The Complainants are not aware of any evidence that PGE requested its five-year contracts start upon execution rather than commercial delivery. To the contrary,

¹⁶ Docket No. UM 1129, Order No. 05-584 at 5, n. 3.

¹⁷ Re Investigation Related to Electric Utility Purchases from Qualifying Facilities, Docket No. UM 1129, Staff Testimony at Staff/200, Schwartz/2-16 (Aug. 3, 2004) (adding that PGE signed its most recent contract in 1984 and Idaho Power’s last QF in Oregon was in 1985).

¹⁸ PGE Advice No. 96-21 (Oct. 31, 1996). PacifiCorp and Idaho Power subsequently adopted the five-year term in their avoided cost filings. See PacifiCorp Advice No. 99-004 (May 20, 1999); Idaho Power Advice No. 99-02 (Dec. 9, 1999).

such an interpretation would not have been practical, especially for unbuilt and unfinanced QFs, and would have made significant portions, if not the entire contract, meaningless. For example, assuming that a new QF in 1996 that signed a five-year contract could become operational in three years, then the QF would only be able to receive payments for two years of fixed prices.

All of the UM 1129 parties proposed significant increases in the standard contract term—some proposing up to thirty years and beyond for some QF technologies. For example, the Oregon Department of Energy (“ODOE”) recommended a maximum of 20 years and represented that 15 years may not be a sufficient time to establish financing, based upon its experience financing Small Energy Loan Program (“SELP”) projects. The Commission noted,

ODOE disagrees with Staff’s claim that a term of fifteen years is sufficient to attract financing. ODOE indicates that since 1980, ODOE’s loan program has financed twenty-one QF projects. Of those, sixteen projects have been financed for periods of twenty to twenty-five years, three for shorter, and two for longer.

The Industrial Consumers of Northwest Utilities (“ICNU”) has also recommended matching a QF’s contract term with the economic life of a facility, claiming that financing is more difficult to obtain and more expensive when the contract term is shorter than the economic life of the project.¹⁹

PGE, PacifiCorp, Idaho Power and OPUC Staff, however, all proposed 15 years

¹⁹ Docket No. UM 1129, Order No. 05-584 at 19 (discussing merits of an evergreen provision); see also Re Investigation into Qualifying Facility Contracting and Pricing, Docket No. UM 1610, Renewable Northwest Project Response Testimony at RNP/100, Lindsay/4 (Mar. 18, 2013) (advocating for 20 year contracts); Re Investigation into Qualifying Facility Contracting and Pricing, Docket No. UM 1610, OneEnergy Response Testimony at OneEnergy/100, Eddie 37-38 (Mar. 18, 2013) (advocating for 25 year contracts).

as the appropriate balance between allowing QFs to secure financing and limiting the risks associated with long-range price forecasts for avoided cost prices.²⁰ Both Staff and the Commission relied heavily upon ODOE’s testimony and experience as the financier of SELP projects as evidence of the financing prospects for QFs more generally. This issue was thoroughly briefed, but Complainants are not aware of PGE ever raising this issue that the contract term should begin at the time of signing.

Ultimately, the Commission adopted its current policy in Order No. 05-584. The Commission allows QFs to choose a term up to 20 years, but mitigated the risk associated with longer term contracts by capping the fixed-price period at 15 years. Any contract years above the 15-year fixed-price period is paid a market price.²¹

Next, the Commission revisited the fixed price portion of QF contracts in UM 1610 and reaffirmed its 15-year fixed-price policy.²² The utilities unsuccessfully argued for shorter contract terms. PGE, however, recommended upholding the current practice for new QF projects and limiting QF renewals to five years, unless the facility was

²⁰ See Re Investigation Related to Electric Utility Purchases from Qualifying Facilities, Docket No. UM 1129, Staff Brief at 4-5 (Dec. 23, 2004); Re Investigation Related to Electric Utility Purchases from Qualifying Facilities, Docket No. UM 1129, PacifiCorp Brief at 4-5 (Dec. 22, 2004); Re Investigation Related to Electric Utility Purchases from Qualifying Facilities, Docket No. UM 1129, PGE Brief at 10-11 (Dec. 23, 2004).

²¹ Docket No. UM 1129, Order No. 05-584 at 19-20; see also Re Investigation Related to Electric Utility Purchases from Qualifying Facilities, Docket No. UM 1129, Order No. 07-360 at 11 (Aug. 20, 2007) (“A longer term may be reasonable and we do not preclude it”).

²² Re Investigation into Qualifying Facility Contracting and Pricing, Docket No. UM 1610, Staff’s Proposed Issues List at 5 (Oct. 3, 2012) (“What is the appropriate duration for the fixed price portion of the contract?”).

recently repowered.²³

PacifiCorp's testimony in UM 1610 explicitly explained how the Commission's 15-year policy works. After deciding not to revisit contract term and duration of fixed prices, the Commission considered how renewable energy certificates ("REC") ownership aligned with the Commission's directive in Order No. 05-584. PacifiCorp stated,

For example, assume a QF's scheduled commercial operation date is January 1, 2017. Also assume that the resource deficiency period begins in January 1, 2024, and the QF has selected a 20-year contract term. The QF's 15-year fixed price term begins January 1, 2017, and ends December 31, 2031. For years 2017 through 2023, the QF receives fixed market prices as published in Schedule 37 and retains the RECs.²⁴

PGE participated with the other utilities in all phases of UM 1610 and did not raise any issues as to when the Commission's 15-year fixed prices start.

Finally, the Commission reaffirmed the 15-year fixed-price policy by issuing concurrent decisions in two similar proceedings. In UM 1725, Idaho Power requested the Commission reduce the contract term from 20 to two years. In UM 1734, PacifiCorp requested the Commission reduce the fixed-price term of QF contracts from 15 years to three years. The utilities claimed that a "striking increase" in requests for new long-term QF contracts since the Commission issued its last order confirming the 15-year policy

²³ Re Investigation into Qualifying Facility Contracting and Pricing, Docket No. UM 1610, PGE's Direct Testimony at PGE/100, Macfarlane-Morton/23 (Feb. 4, 2013) ("We recommend the current practice for a newly constructed QF: Setting standard contract terms using the current 20 year (15 fixed) for new contracts and 5 years for existing QFs. The current practice balances the interests of utility customers and fosters new QF development.").

²⁴ Re Investigation into Qualifying Facility Contracting and Pricing, Docket No. UM 1610, PacifiCorp's Phase II Opening Testimony at PAC/1000, Griswold/6 (May 22, 2015).

warranted an adjustment.²⁵ The testimony and briefing of all the parties in these proceedings was based on the assumption that the Commission’s policy was for 15 years of fixed prices from power deliveries. Idaho Power and PacifiCorp’s proposals would have effectively meant no meaningful contract if the fixed-price period started at contract execution because the contract would likely expire before the QF even began delivering power. The Commission denied both requests stating its current policy continues to have merit.²⁶

3. Consistent PURPA Policies

Allowing PGE’s interpretation would create inconsistent PURPA practices between the regulated utilities in Oregon. After setting the 15-year fixed-price term in UM 1129, the Commission directed the utilities to file standard contract forms and revised tariffs implementing its policy. The Commission declined to require each utility’s standard contract to be “identically worded across all standard contract forms, so long as the meaning of each term is consistent with the present or past decisions” of the Commission.²⁷ The Commission noted, “[w]e expect each standard contract form to contain terms and conditions that are consistent with the resolution of issues in this order or past orders, as appropriate.”²⁸ Thus, although each public utility “should draft its own standard contract rates, terms and conditions,”²⁹ the Commission did not intend for any of

²⁵ Re PacifiCorp, dba Pacific Power, Application to Reduce the Qualifying Facility Contract Term and Lower the Qualifying Facility Standard Contract Eligibility Cap, Docket No. UM 1734, PacifiCorp Application at 1 (May 21, 2015).

²⁶ Docket No. UM 1734, Order No. 16-130 at 5; see also Docket No. UM 1725, Order No. 16-129 at 9.

²⁷ Docket No. UM 1129, Order No. 05-584 at 41.

²⁸ Id.

²⁹ Id.

the three utilities to have materially different substantive terms in their standard contracts. If PGE's interpretation of policy is correct, then the Commission adopted contract terms and conditions for Idaho Power and PacifiCorp that are inconsistent with its orders.

The Commission's, PacifiCorp's and Idaho Power's historic use of these terms establishes a trade usage and custom in Oregon. PacifiCorp interpreted the Commission's policy as requiring 15 years of fixed prices from scheduled operation of the facility, not the date of contract execution.³⁰ PacifiCorp's standard contract language states that fixed prices are paid "during the first fifteen (15) years after the Scheduled Initial Delivery Date."³¹ This language was in PacifiCorp's original compliance filing after Order No. 05-584 and remains in PacifiCorp's current standard contracts.³² The Commission approved PacifiCorp's compliance filing at a public meeting.³³

Moreover, Idaho Power interpreted the Commission's policy as requiring 15 years of fixed prices from commercial operation as well. Article V of Idaho Power's Schedule 85 standard contract provides, in pertinent part: "Term - Subject to the provisions of paragraph 5.2 below, this Agreement shall become effective on the date first written and shall continue in full force and effect for a period of _____ (not to exceed 20 years)

³⁰ Docket No. UM 1610, PacifiCorp's Phase II Opening Testimony at PAC/1000, Griswold/5-7.

³¹ See, e.g., Oregon Power Purchase Agreement for New Firm QF and Intermittent Resource with MAG at Section 5.2, PACIFICORP, <https://www.pacificpower.net/env/nmcg/qf.html>; see also id. at 1.45 (defining "Scheduled Initial Delivery Date" as the date that "Seller intends to commence delivery of Net Output").

³² Compare Re Investigation Related to Electric Utility Purchases from Qualifying Facilities, Docket No. UM 1129, PacifiCorp's Compliance Filing at 10 (July 12, 2005) with PacifiCorp's Oregon Power Purchase Agreements at Section 5.2, available at <https://www.pacificpower.net/env/nmcg/qf.html>.

³³ Re Investigation Related to Electric Utility Purchases from Qualifying Facilities Docket No. UM 1129, Order No. 05-899 at 3 (Aug. 9, 2005).

Contract Years from the Operation Date.”³⁴ Article VII further provides: “The Seller has selected option _____ from Schedule 85 as the purchase price for the first 15 Contract Years of this Agreement.”³⁵ Under Article I, the “Contract Year” means: “The period commencing each calendar year on the same calendar date as the Operation Date and ending 364 days thereafter.”³⁶ Just like with PacifiCorp’s fixed-price language, this language from Idaho Power was in its original compliance filing, was approved by the Commission, and has remained in effect in Oregon since then.³⁷

Also, as briefly mentioned above, Idaho Power recently requested to reduce its contract term to two years in Oregon³⁸ and PacifiCorp requested three-year contract terms.³⁹ Using PGE’s interpretation of the Commission’s policy, Idaho Power would have been requesting to reduce its contract term to perhaps less than zero operational years. However, Idaho Power was requesting three-year contract terms, from the date of power deliveries, and PacifiCorp was requesting two-year contract terms, from the date of power deliveries.⁴⁰

Finally, although PGE has a unique interpretation of the Commission’s policy on fixed prices, it is worth noting that PGE used effectively the same language as the other

³⁴ Re Investigation Related to Electric Utility Purchases from Qualifying Facilities
Docket No. UM 1129, Idaho Power’s Compliance Filing at 12 (Nov. 3, 2006).
³⁵ See id. at 13.
³⁶ See id. at 2.
³⁷ See Idaho Power Advice No. 16-14, Staff Report at 2 (Oct. 31, 2016)
(acknowledging that withdrawal of Schedule 85 “if approved, will have no effect
on QF contracting practices or avoided cost prices”).
³⁸ Docket No. UM 1725, Order No. 16-129 at 1.
³⁹ Docket No. UM 1734, Order No. 16-130 at 2.
⁴⁰ Re Idaho Power Co., Application to Lower Standard Contract Eligibility Cap and
to Reduce the Standard Contract Term, Docket No. UM 1725, Order No. 16-175
at 2-3 (May 16, 2016).

utilities without making any distinctions as to its position. For example, in UM 1610 PGE argued “a term of 20 years (with 15 year fixed pricing) is appropriate.”⁴¹ PacifiCorp concurrently argued “the current term length of up to 20 years be continued with the fixed-price period in the contract changed from the initial 15 years to the initial 10 years.”⁴² Yet as PacifiCorp’s standard contracts clarify, PacifiCorp interprets the “initial” years of its contract starts at the time of commercial operation. Likewise, Idaho Power phrased its proposal in UM 1610 as “the currently authorized 15-year fixed price portion of the contract should be reduced to 10 years.”⁴³ If PGE had a different interpretation of Commission policy, or a recommendation based on a view of the world different from all other parties in UM 1129, UM 1610, UM 1725 and UM 1734, then it should have clearly and unambiguously expressed it.

B. Complainants’ Position Is Consistent with Standard Industry Treatment and Other State Commission Decisions

The common industry understanding of how fixed prices work with respect to contract term is that the fixed-price period begins when power deliveries begin. The term of fixed pricing in a power sale agreement has been understood in the industry to commence at the project’s in-service date. This logical requirement – to match the

⁴¹ Re Investigation into Qualifying Facility Contracting and Pricing, Docket No. UM 1610, PGE Direct Testimony at PGE/300, Macfarlane-Morton/5 (Apr. 29, 2013).

⁴² Re Investigation into Qualifying Facility Contracting and Pricing, Docket No. UM 1610, Pacific Power’s Direct Testimony at PAC/200, Griswold/4-5 (Feb. 4, 2013); see also Re Investigation into Qualifying Facility Contracting and Pricing, Docket No. UM 1610, PacifiCorp Direct Testimony at PAC/101, Dickman/4 (Feb. 4, 2013).

⁴³ Re Investigation into Qualifying Facility Contracting and Pricing, Docket No. UM 1610, Idaho Power’s Post-Hearing Brief at 3 (June 17, 2013).

revenue stream to the term – is consistent with basic utility ratemaking for utility-owned plants.

As the Commission is well aware, a utility-owned plant is not placed in rates until its in-service date, and the plant’s depreciable life and recovery of and on the investment does not begin until that time.⁴⁴ For example, PGE made the decision to commit to acquire the Carty Generating Station on June 3, 2013, and the plant was not committed to be placed in service until July 31, 2016.⁴⁵ But PGE did not forego two years of recovery of the depreciation expense and return on undepreciated balances scheduled over the long-term year depreciable life of its the plant because it took two years to construct the plant and place it in service. Rather, and quite logically, the commencement of recovery of the long term depreciable life and recovery of the years of the depreciation expense and return on undepreciated balances commenced on the in-service date of the plant.

This basic treatment has long existed for third-party power sales agreements as well. In fact, PGE’s recent request for proposals (“RFP”) demonstrate that similar treatment as Carty’s would have existed for a power purchase agreement, or a tolling agreement from an independently owned gas-fired plant. In the RFP that resulted in Carty, issued in 2012, PGE’s own term sheet for bids stated that the “[m]inimum term is 10 years and preferred term is 20 years, starting no earlier than 2013 and no later than 2015.”⁴⁶ Likewise, PGE’s renewable RFP, issued later in 2012, also sought bids where

⁴⁴ ORS 757.140, 757.355(1).

⁴⁵ See Re PGE Request for General Rate Revision, Docket No. UE 294, Order No. 15-356 at 5-6 (Nov. 3, 2015).

⁴⁶ PGE Request for Proposals for Renewable Resources, Docket No. UM 1535, PGE’s final draft Request for Capacity and Baseload Energy Resources at 35

the “minimum bid term is 10 years, with a start date no earlier than January 1, 2013.”⁴⁷

Notably, these RFPs allowed QFs and non-QF independent power producers to compete against utility-owned generation resources, demonstrating that PGE’s treatment here is indeed unique and discriminatory against small QFs.

Precedent from numerous other states establish that PGE’s own treatment in its recent RFP is not an outlier, but instead PGE’s position in this case for standard PURPA contracts is the industry outlier. For example, in apt order during the early stages of implementing PURPA, the Idaho Public Utilities Commission explained the rationale for similar treatment to the commencement of the fixed price term for QF contracts. The Idaho Commission reasoned:

The avoided cost rules, 18 CFR 292.304(d)(2), state that long term rates shall, ...

“at the option of the qualifying facility exercised prior to the beginning of the specified term, be based on either: (i) The avoided costs calculated at the time of delivery; or (ii) The avoided costs calculated at the time the obligation is incurred.”

Avoided cost rates calculated under the methodology prescribed herein represent “... avoided costs calculated at the time the obligation is incurred.” Although we recognize the risks (both ‘upside’ and ‘downside’) we believe that long lead time QFs should receive full benefit of avoided costs as estimated “at the time the obligation is incurred.” Therefore, we find it reasonable that avoided costs computed under the methodology prescribed herein shall be published for six years, including the year of computation.⁴⁸

(Jan. 25, 2012); see also id. at 15 (containing tables demonstrating that the term runs from the in-service date).

⁴⁷ PGE Request for Proposals for Renewable Energy Resources, Docket No. UM 1613, PGE’s Revised Draft Request for Proposals at 30 (Sept. 10, 2012).

⁴⁸ Re Review of the Idaho Public Utilities Commission’s Policies Establishing Avoided Costs Under the Public Utility Regulatory Policies Act of 1978, IPUC Case No. U-1500-170, Order No. 22636 at 59 (July 27, 1989).

The Idaho Commission then reaffirmed its prior policy to make published prices available for a 20-year contract term, as a means to ensure reasonable comparability to utility-owned generation.⁴⁹ It further explained:

[W]e find that the avoided cost rates shall be published for on-line dates up to six years in the future. . . . The purpose is to provide developers with adequate rates for facilities with long construction times and to provide utilities with a basis for negotiating delayed QF on-line date contracts where desirable.⁵⁰

More recent Idaho Commission rulings in QF and non-QF power purchase agreements are in accord with this treatment.⁵¹

As a further example, the Idaho Commission recently shortened its PURPA contract term from a twenty-year fixed-rate contract to a two-year fixed-rate contract.⁵² PacifiCorp's and Idaho Power's Idaho service territory contracts are consistent with Idaho's policy that contract terms means the term of power delivery, and do not include the period of time between contract execution and power delivery.⁵³ PGE's interpretation

⁴⁹ Id. at 63-65.

⁵⁰ Id. at 73.

⁵¹ See, e.g., Re Application of Idaho Power Co. for Approval of an Agreement to Purchase Capacity and Energy from USG Oregon, LLC, IPUC Case No. IPC-E-09-34, Order No. 31087 at 3 (May 20, 2010) (approving non-QF power purchase agreement for unbuilt geothermal facility with 20 years of fixed rates commencing after in-service date after noting this extensive delay between contract execution and the guaranteed online date.).

⁵² Re Idaho Power Company's Petition to Modify Terms and Conditions of PURPA Purchase Agreements, IPUC Case No. IPC-E-15-01, Order No. 33357 (Aug. 20, 2015).

⁵³ See, e.g., PacifiCorp Application for Power Purchase Agreement with Consolidated Irrigation Company, IPUC Case No. PAC-E-15-11, Application Attachment at 4, 17 (Sept. 18, 2015) (requiring payment for each Billing Period in each Contract Year after Commercial Operation Date); Idaho Power Amendment to Power Purchase Sales Agreement with Telocaset, IPUC Case No. IPC-E-15-09, Application Attachment at 12, 14 (Apr. 1, 2015) (requiring payment for all Net Energy delivered from the Operation Date, with full 20 years of payments).

of the fixed-price period would lead to an absurd result in Idaho, because two years does not provide enough time for a QF to become operational, so new QFs likely would not be able to make any power deliveries if their two-year contract began upon execution.

Some parties suggested that Idaho adopt a policy similar to Oregon's, where prices could be adjusted after 10 years of fixed prices. The Idaho Commission rejected this idea stating that "the same result can be accomplished through successive short-term contracts."⁵⁴ The fact that the Idaho Commission believed that prices would naturally sync up in the same manner as successive short-term contracts is further evidence of the common industry understanding of fixed-price periods beyond Oregon.

Other states have maintained 15-20 year standard PURPA contracts from the date of power deliveries on the grounds that this time period was necessary for QFs to obtain financing. The Wyoming Commission, for example, recently denied a request from PacifiCorp to reduce the maximum term of its standard PURPA contract to three years.⁵⁵ The Wyoming Commission required 20-year contracts with fixed pricing, which PacifiCorp asked to be shortened to three years. Ultimately, the Wyoming Commission rejected PacifiCorp's request and retained its 20-year fixed-price contract term.⁵⁶

The Utah Commission also recently denied a request from PacifiCorp to reduce the contract term of its standard PURPA contract to three years. The Utah Commission required 20-year contracts with fixed pricing, which PacifiCorp asked be shortened to

⁵⁴ IPUC Case No. IPC-E-15-01, Order No. 33357 at 24.

⁵⁵ WPSC Docket No. 20000-481-EA-15, Record No. 14220 at 21.

⁵⁶ The Wyoming Commission characterized its goal as establishing "a PURPA QF contract term that advances the policy interests and goals underlying PURPA of encouraging development, while not discriminating against QFs in Wyoming, and without unduly burdening Wyoming ratepayers with excessive price risk." *Id.* at P. 95.

three years. Several parties testified that QF projects needed 20 years to establish financing.⁵⁷ Although the Utah Commission rejected PacifiCorp’s request, it reduced the PURPA contract term to 15 years, explaining it “strikes the balance . . . by mitigating a fair portion of the fixed-price risk ratepayers would otherwise bear while allowing QF developers and their financiers a reasonable opportunity to adjust to this more modest change in business practice.”⁵⁸ PacifiCorp’s Utah and Wyoming contracts, similar to its Idaho and Oregon contracts, are all consistent with these orders and establish that the fixed price term begins at commercial operation and not contract execution.⁵⁹

⁵⁷ UPSC Docket No. 15-035-53, Final Order at 9 (“a three-year PPA term would almost certainly prevent project financing for almost any new renewable energy project”); *id.* at 12 (“[a] three year contract . . . will make it impossible for these projects to secure financing” and “QF developers will be unable to obtain financing under a three-year PPA”); *id.* at 13 (“a 20-year term ‘reduces the risk of the income stream upon which financing for [QF] projects is based’”); *id.* at 6 (“the 20-year term is a benefit to developers and that reducing that benefit will likely reduce development”).

⁵⁸ *Id.* at 20.

⁵⁹ PacifiCorp’s Oregon PPA at 12, https://www.pacificpower.net/content/dam/pacific_power/doc/About_Us/Rates_Regulation/Oregon/Approved_Tariffs/PURPA_Power_Source_Agreement/Power_Purchase_Agreement_for_New_Firm_QF_Not_An_Intermittent_Resource.pdf (providing fixed prices “during the first fifteen (15) years after the Schedule Initial Delivery Date”); PacifiCorp’s Utah PPA at 8, https://www.rockymountainpower.net/content/dam/pacificorp/doc/Efficiency_Environment/Net_Metering_Customer_Generation/Power_Purchase_Agreement_for_Utah.pdf (requiring PacifiCorp to pay purchase prices “for all deliveries of Net Output. . .”); PacifiCorp’s Wyoming PPA at 2, https://www.rockymountainpower.net/content/dam/rocky_mountain_power/doc/About_Us/Rates_and_Regulation/Wyoming/Approved_Tariffs/Rate_Schedules/Avoided_Cost_Purchases_from_Non_Standard_Qualifying_Facilities.pdf (indicating that “typical generic power purchase agreements may be obtained from the Company’s website at www.pacificcorp.com”); *see, e.g.*, PacifiCorp Application for Power Purchase Agreement with Consolidated Irrigation Company, IPUC Case No. PAC-E-15-11, Application Attachment at 4, 17 (Sept. 18, 2015) (requiring payment for each Billing Period in each Contract Year after Commercial Operation Date); Idaho Power Amendment to Power Purchase Sales

In addition to the Pacific Northwest and Rocky Mountain states, there are numerous examples throughout the country over a span of several decades that demonstrate that a power sales contract for a new generating facility generally has a term that runs from the in-service date, including from California,⁶⁰ Michigan,⁶¹ New York,⁶² South Dakota,⁶³ and Florida.⁶⁴

⁶⁰ Agreement with Telocaset, IPUC Case No. IPC-E-15-09, Application Attachment at 12, 14 (Apr. 1, 2015) (requiring payment for all Net Energy delivered from the Operation Date, with full 20 years of payments).

⁶¹ Order Instituting Rulemaking to Continue Implementation and Administration of California Renewables Portfolio Standard Program, Cal. Pub. Util. Comm'n. Decision 07-07-027, 2007 Cal. PUC LEXIS 348 at *46 (Jan. 1, 2001) (for purposes of implementing a standard contract under the state's renewable portfolio standard, "Each respondent proposes including a contract term that is materially the same as the Commission-adopted [Standard Terms and Conditions] with regard to delivery for periods of 10,15 or 20 years we adopt respondents' proposals").

⁶² Re Midland Cogeneration Partnership, Mich. Pub. Serv. Comm'n. Case No. U-8871 et al.; Case No. U-10127, 1993 Mich. PSC LEXIS 58 at *41 (Mar. 31, 1993) (approving settlement PPA where on QF "will receive a rate of 3.62 cents per kWh for the first ten years after commercial operation" and five other QFs will receive a different rate structure for first 10 years after commercial operation).

⁶³ Re Value of Distributed Energy Resources, N.Y. Pub. Serv. Comm'n., Case Nos. 15-E-0751 & 15-E-0082, 2017 N.Y. PUC LEXIS 121 at *22 (Mar. 9, 2017) ("For customers served under Phase One [Net Energy Metering], the Commission adopts Staff's recommendation that they receive Phase One NEM compensation for a 20-year term from their in-service date. As noted in the Staff Proposal, this is consistent with other programs and trends in other jurisdictions.") (footnotes omitted); Electric Utilities - Standardized contracts for eligible on-site generation, N.Y. Pub. Serv. Comm'n., Case 29318, 1987 N.Y. PUC LEXIS 18 at *118 (July 24, 1987) (Administrative Law Judge recommending Commission approval of standard PURPA contract where, "If the IPP begins construction within 24 months (30 months for non-hydro over 5 MW) after Commission approval of the contract, and begins commercial operation within 42 months (48 months for hydro over 5 MW and 60 months for non-hydro over 5 MW) after such approval, the IPP is entitled to receive the fixed payments of the contract starting with the year commercial operations commence").

⁶⁴ Re Complaint by Oak Tree Energy LLC, S. Dakota Pub. Serv. Comm'n., Case No. EL11-006, 2013 S.D. PUC LEXIS 84 at **13-14, 28 & App. A (May 17, 2013) (finding that "the appropriate contract term for the Project was 20 years to

Finally, FERC established the concept of long-term PURPA contracts, but has never specifically addressed what the required duration is. FERC regulations do, however, allow a QF to choose to have avoided cost rates for the purchase of its power calculated in one of two ways: (1) at the time of delivery; or (2) at the time it enters into the contract/obligation for the delivery of power.⁶⁵ FERC has recently explained that the entire purpose of its rule requiring long-term contracts is to facilitate financing, stating as follows:

[FERC] has long held that its regulations pertaining to legally enforceable obligations are intended to reconcile the requirement that the rates for purchases equal to the utilities' avoided cost with the need for qualifying facilities to be able to enter into contractual commitments, by necessity, on estimates of future avoided costs and has explicitly agreed with previous commenters that stressed the need for certainty with regard to return on investment in new technologies. Given this need for certainty with regard to return on investment, coupled with Congress' directive that [FERC] encourage QFs, a legally enforceable obligation should be long enough to allow QFs reasonable opportunities to attract capital from potential investors.⁶⁶

enable the Project to obtain financing” and “actual annual calculated value or the levelized value over the 20-year power purchase obligation contract term” adopted was “\$53.31/MWh if operation begins in 2013 and \$55.34/MWh if operation begins in 2014;” also providing rate tables demonstrating 20 years or rates running from the operation date).

⁶⁴ Re Standard offer contract for the purchase of firm capacity and energy from a qualifying facility between Panda-Kathleen, L.P. and Florida Power Corp., Florida Pub. Service Comm'n., Order No. PSC-96-0221-PHO-EI, 1996 Fla. PUC LEXIS 368 at *8 note (Feb. 15, 1996) (“The Panda contract originally provided for a Contract In-Service Date of April 1, 1995 and an expiration date of March 31, 2025, which amounted to a term of 30 years.”); Re: Proceedings to Implement Cogeneration Rules, Florida Pub. Service Comm'n., Order No. 13247, 1984 Fla. PUC LEXIS 637 at *19 (May 1, 1984) (“Assuming a contract term extending ten years beyond the in-service date of the statewide avoided unit, the following standard offer capacity payments result . . .”).

⁶⁵ 18 C.F.R. § 292.304(d).

⁶⁶ Windham Solar LLC, 157 FERC ¶ 61,134, at P. 8 (Nov. 22, 2016) (quotations omitted).

Thus, FERC's understanding of contract duration is also based on the number of years in which the QF can count on revenues, which means that the term cannot start at contract execution.

C. PGE's Contract Can, and Should, Be Implemented Consistent with The Commission's Policy

PGE's standard QF contracts can be implemented consistent with the Commission's policy because they allow for 15 years of fixed prices starting from power deliveries or commercial operation. The logical reading of PGE's Commission approved standard contracts does not support a conclusion that the fixed price term begins at contract execution. 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 the Commission's policy.

The Commission's Staff appears to agree with Complainants on this point. In docket UM 1725, the OPUC Staff filed a response in which it argued:

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 contract 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 COD, this cannot be known from the form of the contract reviewed and approved by the Commission.⁶⁷

⁶⁷ See Re Idaho Power Co., Application to Lower Standard Contract Eligibility Cap and to Reduce the Standard Contract Term, Docket No. UM 1725, Staff's Response to Motion for Clarification at 4 (May 6, 2016).

Staff even went on to note that one of PGE’s standard contract forms directly contracted PGE’s position regardless of how the parties complete the blank spaces, arguing as follows:

Second, at least one section of this standard contract form is 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. Section 4.5 of PGE’s Standard Renewable Off-System Variable Power Purchase Agreement Form provides that QFs keep RECs during the utility’s sufficiency period and during any period within the term of the contract after completion of the first fifteen years after the QF’s COD:

4.5. During the Renewable Resource Deficiency Period, Seller shall provide and PGE shall acquire the RPS Attributes for the Contract Years as specified in the Schedule and Seller shall retain ownership of all other Environmental Attributes (if any). *During the Renewable Resource Sufficiency Period, and any period within the Term of this Agreement after completion of the first fifteen (15) years after the Commercial Operation Date, Seller shall retain all Environmental Attributes in accordance with the Schedule.*

Section 1.7 of the contract defines “contract year” as “each twelve (12) month period commencing upon the Commercial Operation Date or its anniversary during the Term, except the final Contract Year will be the period from the last anniversary of the Commercial Operation Date during the Term until the end of the Term.”⁶⁸

The OPUC declined to address the question in that case because the case specifically regarded only Idaho Power, but it did clarify its prior order in UM 1725. While the Commission did not specifically address PGE’s contract, the Commission explained that Idaho Power “did not seek to change the status quo ante in any other regard” and that it made no changes to Idaho Power’s contract and schedules.⁶⁹

Unlike PacifiCorp and Idaho Power, which have not materially changed their standard contracts since 2005, PGE’s standard contract has undergone relevant revisions.

⁶⁸

Id.

⁶⁹

Docket No. UM 1725, Order No. 16-175 at 2.

For example, PGE recently removed the portion of its standard contract noted above by Staff in UM 1725, which had specifically and unambiguously linked the start of the fixed-price period to the commercial operation date. This language was removed for an unrelated reason due a clarification in Commission policy regarding REC ownership.⁷⁰

Specifically, in 2011, the Commission established separate avoided cost price streams for renewable QFs to account for the value of the renewable attributes of renewable energy.⁷¹ The Oregon Commission explained that when QFs are willing to sell power and cede their RECs, they should be compensated for the value of green power.⁷² A question arose regarding the meaning of the Commission’s prior order and who owned the green tags during the last five years of a 20-year PPA during which prices paid to the QF are at market.⁷³ While the Commission investigated this issue, PGE and other parties agreed to an interim settlement in which the QF owned the RECs during the last five years of a 20-year PPA.⁷⁴ During this interim period, PGE’s contract allowed QFs to own the RECs during the last five years, and specifically stated that the 15-year fixed price term started at the “Commercial Operation Date.”⁷⁵

In 2016, the Commission issued an order concluding that, once the utility was resource deficient, the utility owned the RECs for the remaining term of a 20-year

⁷⁰ Docket No. UM 1610, Order No. 16-174 at 31 (directing PGE to file revised standard contract forms consistent with Commission direction on Phase II issues, which did not include this 15 year fixed price issue).

⁷¹ Re Investigation Into Resource Sufficiency Pursuant to Order No. 06-538, Docket No. UM 1396, Order No. 11-505 at 9 (Dec. 13, 2011).

⁷² Id.

⁷³ Docket No. UM 1610, Order No. 16-174 at 1.

⁷⁴ Docket No. UM 1610, Order No. 15-130 at 1.

⁷⁵ See Re Investigation into Qualifying Facility Contracting and Pricing, Docket No. UM 1610, PGE’s Compliance Filing (July 12, 2016).

standard contract, “QFs will continue to be paid avoided cost prices based on the utility's next avoidable renewable resource for the first 15 years and market prices thereafter.”⁷⁶ The Commission’s explanation of its order only makes sense if the 15-year fixed price term starts at the time of power deliveries, and not contract execution. Specifically, the Commission stated that QFs would “**be paid** avoided cost prices” over a 20-year period (fixed prices for the first 15 years and market rates during the last five years), which only makes sense if they are actually paid for all 20 years.⁷⁷

Following the Commission’s Order No. 16-174, PGE changed its standard contract to be consistent with the order. PGE revised the contract, so that PGE, rather than the QF, owned the RECs during the last five years of a 20-year PPA. Section 4.5 was modified to read, “During the Renewable Resource Sufficiency Period, ~~and any period within the Term of this Agreement after completion of the first fifteen (15) years after the Commercial Operation Date,~~ Seller shall retain all Environmental Attributes in accordance with the Schedule.”⁷⁸ In removing this separate language on REC ownership from Section 4.5 of its renewable QF contracts, PGE happened to also remove a portion of its contract that was explicitly consistent with the Commission’s 15-year policy.

Finally, PGE’s contracts have executed to remove any potential ambiguity by QFs where the blank spaces in PGE’s standard contract were filled out in a way that more clearly allowed those QFs to obtain the full 15 years of fixed prices from commercial

⁷⁶ Docket No. UM 1610, Order No. 16-174 at 1.

⁷⁷ Id. at 1, 4 (emphasis added).

⁷⁸ Compare Re Investigation into Qualifying Facility Contracting and Pricing, Docket No. UM 1610, PGE’s Compliance Filing at 4.5 (May 27, 2015) with Re Investigation into Qualifying Facility Contracting and Pricing, Docket No. UM 1610, PGE’s Compliance Filing at 4.5 (July 12, 2016).

operation.⁷⁹ PGE admits to the contents of these PPAs.⁸⁰

In summary, PGE's standard contract does not specifically require the fixed price term to start at contract execution, and is most naturally read to be that the 15 years of fixed prices QFs are paid should start at the time of power deliveries. The Commission should interpret PGE's standard contracts as being consistent with its established policy, and prevent PGE from taking any action in support of its erroneous claim that the fixed price term begins at the time of contract signing.

D. If the Commission Finds that PGE's Standard Contracts Are Unclear or Inconsistent with Commission Policy, then the Commission Should Require PGE to File Revised Standard Contracts that Are Explicitly Consistent with Commission Policy

The Commission may determine that PGE's standard contracts should be more explicit, like those of PacifiCorp and Idaho Power, with respect to its 15-year fixed-price policy. Because Complainants believe PGE's standard contracts can be implemented consistent with Commission policy, the terms of any particular executed contract need not be interpreted in this proceeding. Nevertheless, should the Commission affirm its 15-year fixed-price policy begins at the time of power deliveries, but determine that PGE's standard contract does not conform with that policy, then PGE should modify its contract accordingly.

⁷⁹ Re PGE – Qualifying Facility Contracts, Docket No. RE 143, Informational Filing - PaTu Wind Farm, LLC (Sept. 19, 2014) (allowing full 20 year contract term from commercial operation date rather than upon execution); Re PGE – Qualifying Facility Contracts, Docket No. RE 143, Informational Filing - OneEnergy Oregon Solar, LLC at 8 (Sept. 19, 2014) (allowing 15 years of fixed pricing from commercial operation date rather than from contract execution).

⁸⁰ PGE's Answer at ¶¶ 24-25 (Mar. 28, 2017).

IV. CONCLUSION

For the reasons described above, the Complainants respectfully request the Commission again reaffirm its policy of allowing QFs 15 years of fixed prices, and confirm whether PGE's standard contract is consistent with that policy. Should the Commission determine that PGE's standard contracts do not allow for 15 years of fixed pricing, the Complainants respectfully request the Commission order PGE revise its standard contracts to clearly state that the 15 years of fixed prices run from the time a facility delivers its net output rather than upon contract execution.

Dated this 24th day of April 2017.

Respectfully submitted,



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