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**V. Denise Saunders**  
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April 24, 2017

***Via Electronic Filing***

Public Utility Commission of Oregon  
Filing Center  
PO Box 1088  
Salem OR 97308-1088

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

Attention Filing Center:

Enclosed for filing in Docket UM 1805 is Portland General Electric Company's Motion for Summary Judgment and the Declaration of Shawn Davis in support.

Also enclosed are courtesy copies of the following documents previously filed with the Commission:

1. Attachment 1 – PGE's 2007 Schedule 201 filed January 23, 2007 (Docket UM 1129 as part of PGE Supplemental Advice No. 06-026).
2. Attachment 2 – PGE Standard Contract Power Purchase Agreement filed January 23, 2007 (Docket UM 1129 as part of PGE Supplemental Advice No. 06-026).
3. Attachment 3 – PGE Schedule 201 filed July 12, 2016 (Docket UM 1610).
4. Attachment 4 – PGE Standard Renewable Off-System Variable Power Purchase Agreement filed July 12, 2016 (UM 1610).
5. Attachment 5 – 2010 Pa`Tu Wind Farm, LLC Contract filed September 19, 2014 (Docket RE 143 – Information Filing of Qualifying Facility Contracts).
6. Attachment 6 – 2014 OneEnergy Oregon Solar, LLC Contract filed September 19, 2014 (Docket RE 143 – Information Filing of Qualifying Facility Contracts).

Thank you in advance for your assistance.

Sincerely,

A handwritten signature in blue ink that reads "V. Denise Saunders". The signature is written in a cursive, flowing style.

V. Denise Saunders  
Associate General Counsel

VDS:bop

Enclosure

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UM 1805**

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

Complainants,

vs.

PORTLAND GENERAL ELECTRIC  
COMPANY,

Defendant.

**PORTLAND GENERAL ELECTRIC  
COMPANY’S MOTION FOR  
SUMMARY JUDGMENT**

Pursuant to OAR 860-001-0420 and ORCP 47, Portland General Electric Company (“PGE”) respectfully moves the Public Utility Commission of Oregon (“Commission”) for an order granting summary judgment in favor of PGE and denying all of the relief requested in the complaint.

**I. SUMMARY OF THE ARGUMENT**

The Commission should conclude, as a matter of law, that its orders and policies:<sup>1</sup> (1) limit the availability of fixed prices under a qualifying facility (“QF”) standard contract to the first 15 years of a standard contract term; and (2) allow for a standard contract term to begin when the contract is executed. This conclusion is consistent with the clear language on pages 19 and 20 of Order No. 05-584. PGE’s Schedule 201 and

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<sup>1</sup> In a technical sense, the Commission has not adopted “policies” for standard contracts. Instead it has proceeded to approve separate standard contracts for each Oregon electric utility by issuing a series of orders. An order is an “agency action ... directed to a named person.” ORS 183.310(6)(a). A Rule is an “agency directive ... that implements ... policy...” ORS 183.310(9). The Commission has enacted no generally applicable rules relating to standard contracts despite the invitation of the legislature to establish rules for this purpose. ORS 758.535(2)(a). This statutory provision is acknowledged in paragraph 8 of the complaint.

standard contract forms have provided for such an approach since July 2005 and the Commission has repeatedly approved PGE's rate schedule and form contracts as consistent with the requirements of its orders. The complaint and all of the relief prayed for depend upon Complainants' incorrect legal conclusion that the Commission's orders and policies require fixed prices for 15 years following commercial operation of the QF. The Commission should therefore issue an order granting summary judgment to PGE and denying all of the relief requested in the complaint.

## II. BACKGROUND

### A. The Complaint.

On December 6, 2016, the Complainants filed their complaint with the Commission pursuant to ORS 756.500. The complaint alleges that the Commission's orders and policies require Oregon utilities, including PGE, to offer standard contracts with 15 years of fixed prices beginning on the date a QF achieves commercial operation.<sup>2</sup> The complaint alleges that PGE is violating those orders and policies by openly disputing that its standard contracts offer 15 years of fixed prices measured from commercial operation.<sup>3</sup> The complaint further alleges that PGE has arbitrarily agreed to modify two standard contracts to clarify that PGE will pay fixed prices for 15 years from commercial operation but refuses to provide the same "clarity" to similarly situated QFs.<sup>4</sup> The two contracts under which PGE has allegedly agreed to pay fixed prices for 15 years measured from commercial operation are an April 29, 2010 contract with Pa'Tu Wind Farm LLC and a February 19, 2014 contract with OneEnergy Solar LLC.<sup>5</sup>

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<sup>2</sup> Docket No. UM 1805, Complaint at ¶ 47 (Dec. 6, 2016).

<sup>3</sup> *Id.* at ¶ 50 and at Prayer for Relief ¶ 1 on page 16.

<sup>4</sup> *Id.* at ¶ 55.

<sup>5</sup> *Id.* at ¶¶ 24-25.

The complaint asserts two claims for relief. The first claim for relief—Violation of Commission Orders and Policies Implementing PURPA—alleges: “PGE’s business practice prevents QFs from obtaining 15 years of fixed prices after commencement of operation and violates the plain terms and intent of the Commission’s orders and policy implementing PURPA and associated state law.”<sup>6</sup> The second claim for relief—Arbitrary Implementation of Schedule 201—alleges: “PGE’s refusal to follow Commission policy that all QF’s can obtain 15 years of fixed prices commencing on the Commercial Operation Date is arbitrary, and unjustly harms those QFs who PGE asserts are entitled to 15 years of fixed prices from the Effective Date.”<sup>7</sup> By their express terms, both of these claims for relief are dependent on the complaint’s assertion that the Commission’s orders and policies require a utility to pay fixed prices for 15 years measured from a QF’s commercial operations date.

As a remedy, the complaint seeks an order: (i) declaring that PGE’s standard contract requires PGE to pay fixed prices for 15 years from commercial operation; and (ii) ordering PGE to stop openly disputing that it must pay 15 years of fixed prices from the QFs operation date.<sup>8</sup> In the alternative, the complaint seeks an order requiring PGE to file revised standard contracts clearly stating that the 15 years of fixed prices run from the commercial operations date.<sup>9</sup> None of this relief is appropriate if the Commission’s orders and the “policy decisions” contained in those orders allow PGE to limit fixed prices to the first 15 years of a standard contract term that begins when the contract is executed.

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<sup>6</sup> Docket No. UM 1805, Complaint at ¶ 52 (Dec. 6, 2016).

<sup>7</sup> *Id.* at ¶ 56.

<sup>8</sup> *Id.* at Prayer for Relief ¶¶ 1-2 on page 16.

<sup>9</sup> *Id.* at Prayer for Relief ¶ 3 on page 16.

**B. The Answer.**

On March 28, 2017, PGE filed its answer and affirmative defenses. PGE admitted that neither its Commission-approved Schedule 201 nor its Commission-approved standard contract forms allow QFs to fill in the standard contract in a manner that makes it clear that PGE is offering fixed prices for a period longer than 15 years measured from the effective date of the contract.<sup>10</sup> PGE denied that the Commission has a policy that the 15-year limit on fixed prices begins when a QF achieves operation.<sup>11</sup> PGE also denied that the 2010 Pa'Tu Contract or the 2014 OneEnergy Contract demonstrate that PGE believes payment of 15 years of fixed prices beginning at commercial operation is permissible under Schedule 201.<sup>12</sup> The answer denied both claims for relief and denied that Complainants are entitled to any of the relief prayed for in the complaint.<sup>13</sup>

In the answer PGE asserted six affirmative defenses: (i) failure to state a claim; (ii) lack of standing; (iii) failure to join indispensable parties; (iv) mootness; (v) failure to challenge Order No. 07-065 within the time provided by law; and (vi) failure to bring an action under ORS 756.568 for revision, on a forward-going basis, of the Commission's orders and policy decisions on the 15-year limit on fixed prices.<sup>14</sup>

**C. Stipulated Legal Issue.**

By stipulation filed in this proceeding on March 10, 2017, the Complainants and PGE have agreed that one of the legal issues in this case is the question: "Has PGE violated any statute, rule or Commission order regarding when the 15 years fixed price

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<sup>10</sup> Docket No. UM 1805, Answer at ¶ 41 (Mar. 28, 2017).

<sup>11</sup> *Id.* at ¶ 35.

<sup>12</sup> *Id.* at ¶ 26.

<sup>13</sup> *Id.* at ¶¶ 46-60.

<sup>14</sup> *Id.* at ¶¶ 61-66.

period begins under QF standard contracts?”<sup>15</sup> In the same March 10, 2017 filing, PGE provided the Commission with a detailed list of the key facts and developments in Docket No. UM 1129 and Docket No. UM 1610 allowing the Commission to conclude, as a matter of law, that its orders allow PGE to limit fixed prices to the first 15 years of a standard contract term measured from contract execution.<sup>16</sup>

### III. LEGAL STANDARDS

#### A. Standard of Review.

A defendant may move for summary judgment in defendant’s favor against all or any part of the claims asserted against it.<sup>17</sup> The Commission should grant the motion for summary judgment “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 of law.”<sup>18</sup> The Commission should conclude that “[n]o genuine issue as to a material fact exists if, based upon the record before the court viewed in the manner most favorable to the adverse party, no objectively reasonable juror could return a verdict for the adverse party on the matter that is the subject of the motion for summary judgment.”<sup>19</sup>

For purposes of summary judgment, “[a] material fact is one that, under applicable law, might affect the outcome of a case.”<sup>20</sup> The interpretation of a statute, rule, or Commission order is a question of law, and a dispute between the parties regarding the

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<sup>15</sup> Docket No. UM 1805, Joint Statement Listing Facts and Issues Upon Which the Parties Agree, Attachment A at ¶ 10 (Mar. 10, 2017).

<sup>16</sup> *Id.* at Attachment B

<sup>17</sup> ORCP 47 B (“A party against whom any claim . . . is asserted . . . may, at any time, move, with or without supporting affidavits or declarations, for summary judgment in that party’s favor as to all or any part thereof.”).

<sup>18</sup> ORCP 47 C.

<sup>19</sup> *Id.*

<sup>20</sup> *Zygar v. Johnson*, 169 Or App 638, 646, 10 P3d 326 (2000).

meaning of a rule or law does not prevent the Commission from deciding the proper interpretation in response to a motion for summary judgment.<sup>21</sup> If the language of a contract is unambiguous, its construction is generally a matter of law for the court.<sup>22</sup>

**B. Burden of Proof.**

The party moving for summary judgment has the initial burden of showing that there is no genuine issue as to any material fact and that the party is entitled to judgment as a matter of law.<sup>23</sup> The nonmoving party has the burden of producing evidence on any issue raised in the motion as to which the nonmoving party would have the burden of persuasion at trial. The nonmoving party may satisfy this burden of producing evidence with an affidavit under ORCP 47 E.<sup>24</sup>

**IV. MOTION FOR SUMMARY JUDGMENT**

**A. The complaint depends on an erroneous legal conclusion.**

The claims advanced in the complaint, and the relief requested in the complaint, all depend on an erroneous legal conclusion that the Commission's orders and policies require fixed prices for 15-years measured from the date a QF achieves commercial operation.<sup>25</sup> This legal conclusion is wrong because Commission Order No. 05-584 issued on May 13, 2005, in Docket No. UM 1129, authorizes an electric utility to limit

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<sup>21</sup> See e.g., *City of Portland v. PGE*, UM 1262, Order No. 06-636 (Nov. 17, 2006) (Commission granted defendant PGE's motion for summary judgment and dismissed complaint after interpreting statute as a matter of law).

<sup>22</sup> *Britt v. Kinzua Corp.*, 124 Or App 658, 660, 863 P2d 507 (1993); see also, *In the Matter of Pac-West Telecomm, Inc. v. Qwest Corp.*, IC 9, Order No. 05-874 at 5 (Jul. 26, 2005) (noting with approval *Hekker v. Sabre Const. Co.*, 265 Or 552, 555, 510 P2d 347, (1973) for the proposition "As a general rule the construction of a contract is a question of law for the court.").

<sup>23</sup> *Thompson v. Estate of Adrian L. Pannell*, 176 Or App 90, 100, 29 P3d 1184 (2001), *rev. denied*, 333 Or 655 (2002) ("As the party moving for summary judgment ... defendant had the initial burden to establish that there was no genuine issue as to ... material fact.").

<sup>24</sup> ORCP 47 C.

<sup>25</sup> See Docket No. UM 1805, Complaint at ¶¶ 47, 49, 52 and Prayer for Relief ¶¶ 1-3 (Dec. 6, 2016).

fixed prices to the first 15 years of a standard contract term and to provide that the standard contract term begins when the contract is executed.

**B. The utilities are required to comply with the Commission’s standard contract requirements by filing tariffs and standard contract forms for Commission review and approval.**

Most of the Commission’s requirements regarding standard contracts were developed by the Commission in two dockets—Docket No. UM 1129 (“UM 1129”) and Docket No. UM 1610 (“UM 1610”). These two dockets were both contested case proceedings conducted to investigate the purchase of QF output by electric utilities.<sup>26</sup> Both dockets were divided into two phases.<sup>27</sup>

In each of the four phases of investigation, the Commission first identified the specific issues under investigation, then received extensive testimony from the parties, conducted a hearing, received extensive briefing from the parties, and in some cases conducted oral argument.<sup>28</sup> Each of the four phases of investigation culminated in a commission order (the “phase order”), in which: (i) the Commission considered the parties’ positions on each identified issue; (ii) the Commission articulated its “resolution” or “policy decision” on each identified issue; and (iii) the Commission ordered the utilities to file revised tariffs and standard contract forms with terms and conditions that

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<sup>26</sup> See Docket No. UM 1129, Order No. 05-584 at 4 (May 13, 2005) (“On January 20, 2004, the Commission opened an investigation related to electric utility purchases from qualifying facilities (QFs.)”); Docket No. UM 1610, Order No. 14-058 at 1 (Feb. 24, 2014) (“We opened this docket to continue our evaluation of policies and procedures to implement the Public Utility Regulatory Policies Act . . .”).

<sup>27</sup> See Docket No. UM 1129, Order No. 07-360 at 3 (Aug 20, 2007) (noting two phases of Docket No. UM 1129); Docket No. UM 1610, Order No. 16-174 at 1 (May 13, 2016) (noting two phases of Docket No. UM 1610).

<sup>28</sup> See *e.g.*, Docket No. UM 1129, Order No. 05-584 at 4-6 (May 13, 2005) (noting process followed in phase one of Docket No. UM 1129).



were consistent with the issue “resolutions” and “policy decisions” contained in the phase order.<sup>29</sup>

Once the utilities filed proposed tariffs and proposed standard contract forms in compliance with a phase order, the Commission and its Staff reviewed the tariffs and standard contract forms to determine if they were consistent with the “resolutions” and “policy decisions” in the phase order.<sup>30</sup> If the Commission approves a utility’s proposed tariff and standard contract forms, then the tariff and forms are “pre-approved” as compliant with the requirements of the phase order and as compliant with all still-applicable prior Commission orders.<sup>31</sup>

The “issue resolutions” and “policy decisions” contained in Order No. 05-584 and the Commission’s other phase orders are not “self-implementing.” What the utilities are ordered to do in Order No. 05-584, and in the other phase orders, is to file tariffs and standard contract forms that are consistent with the issue “resolutions” and “policy decisions” contained in the phase orders. Once a utility has made such a compliance filing, it has complied with the phase order. If the filing is inadequate, the Commission

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<sup>29</sup> Docket No. UM 1129, Order No. 05-584 at 17-20 (May 13, 2005) (example of phase order considering parties’ positions on the identified issue of standard contract length and articulating the Commission’s resolution of the issue) and 59-60 (example of phase order requiring the utilities to file revised tariffs and standard contract forms with terms and conditions that are consistent with the issue resolutions and policy decisions contained in the phase order).

<sup>30</sup> See *e.g.*, *Id.* at 41-42 (“... [E]ach utility should draft its own standard contract rates, terms and conditions. We ... direct the electric utilities to draft and file one or more standard contract forms as necessary to comply with our decisions in this order. Standard contract forms should accompany revised tariffs. ... We 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. ... **Staff will review each standard contract form and work with each utility to ensure the compliance of submitted standard contract forms.** Filed standard contract forms will be subject to the same suspension and approval process as tariffs.”)(bold emphasis added).

<sup>31</sup> *Id.* at 56 (“... we conclude that ... QF contracts ... provide utilities with sufficient assurances ... that costs incurred under the contracts will be recovered. For example, in this Order [No. 05-584], we have directed utilities to file QF power purchase standard contract forms. Those forms will be pre-approved for compliance with all standards set forth in this Order or still applicable prior orders. ... [U]tilities are assured, to the extent a standard contract is entered into with a QF, that we have pre-approved the rates, terms and conditions of the agreement with the QF.”).

issues a separate compliance order requiring the utility to further revise its tariff and standard contract forms.<sup>32</sup>

**C. In Order No. 05-584 the Commission limited fixed prices to the first 15 years of a standard contract term.**

On May 13, 2005, the Commission issued Order No. 05-584, its phase one order in UM 1129. In that order, the Commission for the first time required the utilities to maintain Commission-approved standard contracts forms for eligible QFs. The Commission also articulated its “resolutions” or “policy decisions” on a number of issues involving standard contracts. One of the issues the Commission addressed was the question of standard contract length.

With regard to standard contract length, the Commission noted that it needed to address two goals:

We conclude that establishing an appropriate maximum term for standard contracts requires us to balance two goals. A primary goal in this proceeding is to accurately price QF power. We also seek ... to ensure that QF projects ... have viable opportunities to enter into a standard contract ... [and to achieve this] goal, it is necessary to ensure that terms of the standard contract facilitate appropriate financing for a QF project.<sup>33</sup>

With these two goals in mind, the Commission noted:

... our fundamental objective is to establish a maximum standard contract term that enables eligible QFs to obtain adequate financing, but limits the possible divergence of standard contract rates from actual avoided costs.<sup>34</sup>

The Commission then stated:

In adopting this objective, we implicitly reject the position advocated by [the Fair Rate Coalition] and [Industrial Customers of Northwest Utilities]

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<sup>32</sup> See e.g., Docket No. UM 1129, Order No. 06-538 (Sep. 20, 2006) (compliance order identifying inadequacies in utility compliance filings made in response to Order No. 05-584 and ordering the utilities to file revised tariff and standard contract forms to address those inadequacies).

<sup>33</sup> Docket No. UM 1129, Order No. 05-584 at 19 (May 13, 2005).

<sup>34</sup> *Id.*

that the life of a QF contract should extend, at the discretion of the QF developer, over the entire economic life of the project.<sup>35</sup>

Instead, the Commission stated:

We conclude that the contract term length minimally necessary to ensure that most QF projects can be financed should be the maximum term for standard contracts.<sup>36</sup>

The Commission then considered the testimony and evidence presented in phase one of UM 1129 and adopted the Oregon Department of Energy's recommendation that the maximum term of a standard contract be raised to 20 years.<sup>37</sup>

In sum, the Commission selected a maximum standard contract term of 20 years to address its goal of establishing "a maximum standard contract term that enables eligible QFs to obtain adequate financing."<sup>38</sup>

The Commission then turned to consideration of its second goal—accurately pricing QF power by limiting "the possible divergence of standard contract rates from actual avoided costs."<sup>39</sup> With regard to this second goal, the Commission noted:

... we acknowledge that 20 years is a significant amount of time over which to forecast avoided costs. Indeed, divergence between forecasted and actual avoided costs must be expected over a period of 20 years.<sup>40</sup>

In order to limit this divergence and protect accurate pricing of QF power, the Commission adopted the following solution:

Given our desire to calculate avoided costs as accurately as possible, and the testimony of several parties that avoided costs should not be fixed beyond 15 years, we are persuaded that standard contract prices should be fixed for only the first 15 years of the 20-year term.<sup>41</sup>

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<sup>35</sup> Docket No. UM 1129, Order No. 05-584 at 19 (May 13, 2005).

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* at 20.

<sup>38</sup> *Id.* at 19.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at 20.

<sup>41</sup> *Id.*

The 15-year limit on fixed prices was not adopted to protect the ability of a QF to obtain financing, as alleged in the complaint.<sup>42</sup> The 20-year maximum term was adopted to protect the ability of a QF to obtain financing. The 15-year limit on fixed prices was adopted by the Commission to protect the accurate pricing of QF power by limiting, to 15 years, the period of time over which forecasted avoided costs are allowed to diverge from actual avoided costs once the forecasted costs become fixed standard contract prices. The Commission was clear that a “primary goal in this proceeding [UM 1129] is to accurately price QF power.”<sup>43</sup>

Having decided that the maximum term of a standard contract is 20 years and that fixed prices will be limited to the first 15 years of the contract term, the Commission then concluded that, “in the event a QF opts for a standard contract with a 20-year term, the QF must take [market-based prices] ... for the final five year of the contract.”<sup>44</sup>

The Commission summarized its resolution of the issue of standard contract length as follows:

Establishing a maximum standard contract term of twenty years. Allowing a QF to select fixed pricing for the first fifteen years of the standard contract, but requiring the selection of a market pricing option for the last five years.<sup>45</sup>

**D. Order No. 05-584 limited fixed prices to the first 15 years of a standard contract term to limit the divergence between forecasted costs and actual avoided costs to 15 years.**

There are two reasons to conclude that the plain language on page 20 of Order No. 05-584 authorizes PGE to limit fixed prices to the first 15 years of a standard

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<sup>42</sup> Docket No. UM 1805, Complaint at ¶ 18 (Dec. 6, 2016) (“In Order No. 05-584, the Commission concluded that 15 years is the minimum term ‘to ensure the terms of the standard contract facilitate appropriate financing for a QF project.’”).

<sup>43</sup> Docket No. UM 1129, Order No. 05-584 at 19 (May 13, 2005).

<sup>44</sup> *Id.* at 20.

<sup>45</sup> *Id.* at 1-2.

contract term measured from the contract effective date. First, the ordinary meaning of the language used in Order No. 05-584 supports this conclusion. Second, the Commission’s express purpose in adopting the 15-year limit on fixed prices supports the conclusion that the 15-year period begins to run when a contract is fully executed and becomes effective.

**1. Plain meaning of “20-year contract term”.**

Order No. 05-584 plainly states that the maximum term of a standard contract is 20 years. And the order plainly states: “... standard contract prices should be fixed for only the first 15 years of the 20-year term.”<sup>46</sup> The question becomes, when does the 20-year term begin?

When interpreting its prior decision on standard contract length in Order No. 05-584, the Commission should employ the regular tools of statutory and regulatory interpretation. The Commission should consider the text and context of the “resolution” that requires interpretation.<sup>47</sup> To that end, “words of common usage typically should be given their plain, natural, and ordinary meaning.”<sup>48</sup>

The ordinary meaning of the phrase “20-year contract term” is a 20-year period during which a contract is effective. In other words, the 20-years occurring from the date a contract becomes effective through the date a contract terminates. Indeed, this is exactly how PGE’s standard contract forms have consistently defined the word “Term” –

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<sup>46</sup> Docket No. UM 1129, Order No. 05-584 at 20 (May 13, 2005).

<sup>47</sup> *Portland General Elec. Co. v. Bureau of Labor and Industries*, 317 Or 606, 610, 859 P2d 1143 (1993).

<sup>48</sup> *Id.*; see also *State v. Gaines*, 346 Or 160, 174, 206 P3d 1042 (2009) (noting with approval that *PGE v. Bureau of Labor and Industries* provides that court ordinarily presumes that legislature intended terms to have plain, natural, and ordinary meaning.).

“‘Term’ shall mean the period beginning on the Effective Date and ending on the Termination Date.”<sup>49</sup>

Apparently, the Complainants want the Commission to conclude that Order No. 05-584 limits the duration of standard contracts to 20-years measured from the date a QF achieves commercial operation, a date that “almost always occurs months to years”<sup>50</sup> after the contract effective date. If the Commission intended to abandon the ordinary concept of a contract term that extends from the contract effective date through the contract termination date, and replace that ordinary meaning with a 20-year “contract term” that begins years after execution on the commercial operation date, the Commission would have needed to expressly state that intent. But the Commission made no mention of the commercial operation date when it established the 20-year maximum term for standard contracts. In the absence of some express statement to the contrary, the most natural and logical assumption is that the Commission was using the phrase “contract term” in its ordinary sense of the period between a contract’s effective date and its termination date.

**2. To give effect to the Commission’s purpose, the standard contract term must begin when the contract becomes effective.**

The Commission’s express purpose in limiting fixed prices to the first 15 years of the contract term was to prevent more than 15 years of divergence between forecasted avoided costs (once they become fixed contract prices) and a utility’s actual avoided costs.<sup>51</sup> Each utility maintains forecasted avoided cost rates in their QF rate schedules.<sup>52</sup>

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<sup>49</sup> See, e.g. Docket No. 1610, PGE’s Schedule 201 Qualifying Facility Information Compliance Filing (July 12, 2016), Schedule 201, *Standard Renewable Off-System Variable Power Purchase Agreement* at Section 1.38.

<sup>50</sup> Docket No. UM 1805, Complaint at ¶ 47 (Dec. 6, 2016).

<sup>51</sup> Docket No. UM 1129, Order No. 05-584 at 20 (May 13, 2005).

These forecasted avoided costs are updated annually to limit the divergence between the forecasted avoided costs contained in a utility's rate schedule and the utility's actual avoided costs.<sup>53</sup>

But the situation changes when a QF secures a standard contract. The forecasted avoided cost rates in effect on the date the contract is executed become fixed prices under the contract.<sup>54</sup> These fixed prices are not adjusted each year to "true them up" with the utility's actual avoided costs. As a result, when forecasted rates become fixed prices, they begin to diverge from the utility's actual avoided costs, and that divergence begins when the contract becomes effective and the prices become fixed.

In Order No. 05-584, the Commission clearly indicated that it was limiting fixed prices to the first 15 years of the 20-year term in order to limit—to 15 years—the period of time over which fixed prices can diverge from actual avoided costs. Forecasted rates become fixed prices when a standard contract is executed. Fixed prices begin to diverge from actual avoided costs as soon as they are fixed (i.e., when the contract is executed). In order to limit divergence to 15 years, the 15-year limit on fixed prices must begin to run when the contract is executed (and the forecasted rates become fixed prices).

### **3. Conclusions.**

The Commission should conclude that Order No. 05-584 set a maximum 20-year term for standard contracts measured from the contract effective date: (i) because that is the most natural and ordinary interpretation of the concept of a *20-year contract term*;

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<sup>52</sup> See e.g. Docket No. UM 1610, PGE's Schedule 201 Qualifying Facility Information Compliance Filing, Schedule 201 at Sheet 201-6 through Sheet 201-11 (Jul. 12, 2016).

<sup>53</sup> Docket No. UM 1610, Order No. 14-058 at 25 (Feb 24, 2014) ("We direct electric utilities to update their avoided cost rates ... on May 1 every year.").

<sup>54</sup> Docket No. UM 1610, PGE's Schedule 201 Qualifying Facility Information Compliance Filing, Schedule 201 at Sheet 201-4 (Jul. 12, 2016) ("Standard Fixed Price Option ... Prices will be as established at the time the Standard PPA is executed and be equal to the Standard Avoided Costs in Tables [contained in Schedule 201].").

and (ii) because the Commission's purpose in limiting fixed prices to the first 15 years of the 20-year term is only given full effect if the 20-year term begins on the contract effective date. There is no basis in the text or context of Order No. 05-584 to conclude that the Commission intended the maximum 20-year term of a standard contract to be measured from the commercial operation date, a date that almost always occurs months or years after the contract effective date. Indeed, the concept of a commercial operation date is not mentioned or even alluded to in the Commission's discussion of standard contract length.

The text of Order No. 05-584 is not the only place to look to understand when the 15-year limit on fixed prices begins to run. As discussed in detail below, PGE's Commission-approved tariff and standard contract forms unambiguously provide for a contract term that begins when the contract is fully executed and they unambiguously limit fixed prices to the first 15 years of the contract term. Because the Commission has repeatedly approved this approach as consistent with Order No. 05-584, the Commission should conclude, as a matter of law, that Order No. 05-584 allows a utility to limit fixed prices to the first 15 years of a standard contract term that is measured from contract execution.

**E. In February 2007, the Commission approved PGE's tariff and PGE's standard contract forms as consistent with the requirements of Order No. 05-584.**

As discussed above, in Order No. 05-584, the Commission limited the maximum term of a standard contract to 20 years, the Commission limited the availability of fixed prices to the first 15 years of the standard contract term, and the Commission provided



that market prices apply to the last five years of a 20-year contract.<sup>55</sup> To implement these decisions, the Commission ordered the utilities to file revised tariffs and standard contract forms that were consistent with the requirements of Order No. 05-584.<sup>56</sup>

PGE, PacifiCorp and Idaho Power filed revised tariffs and contract forms on July 12, 2005.<sup>57</sup> The Commission allowed the filed tariffs and contract forms to become effective but opened a compliance investigation to review the filed documents for consistency with the requirements of Order No. 05-584.<sup>58</sup> The compliance investigation took 14 months to complete. In that time, the Commission identified the compliance issues under investigation, received extensive written testimony from the parties, conducted a hearing, and received briefs from the parties.<sup>59</sup> The compliance investigation culminated in a compliance order—Order No. 06-538—issued in UM 1129 on September 20, 2006. The compliance order considered and resolved over 80 specific compliance issues.<sup>60</sup> However, during the 14-month compliance investigation, no one challenged any of the utilities on their respective approaches to the maximum 20-year term or to the 15-year limit on fixed prices.

In response to Order No. 06-538, each utility filed revised tariffs and standard contract forms in late 2006. The filings were reviewed by Commission Staff, which was specifically charged by the Commission in Order 05-584 to “work with each utility to ensure the compliance of submitted standard contract forms.”<sup>61</sup> PGE filed a revised tariff and standard contract forms on October 20, 2006, and then supplemented that filing on

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<sup>55</sup> Docket No. UM 1129, Order No. 05-584 at 20 (May 13, 2005).

<sup>56</sup> *Id.* at 59-60.

<sup>57</sup> Docket No. UM 1129, Order No. 06-538 at 6 (Sep. 20, 2006) (“On July 12, 2005, the electric companies each filed avoided costs, revised tariffs and new standard power purchase contracts for QFs.”).

<sup>58</sup> Docket No. UM 1129, Order No. 05-899 (August 9, 2005).

<sup>59</sup> *See* Docket No. UM 1129, Order No. 06-538 at 6-7 (September 20, 2006).

<sup>60</sup> *Id.* at 1-6.

<sup>61</sup> Docket No. UM 1129, Order No. 05-584 at 41 (May 13, 2005).

January 23, 2007, in response to comments received from Staff.<sup>62</sup> These revised documents were intended to bring each utility's tariff and form contracts into full compliance with Order No. 05-584 by addressing any compliance issues identified in Order No. 06-538.

Each utility's compliance filing was ultimately approved by the Commission in early 2007. PGE's January 23, 2007 tariff and contract forms were approved by Order No. 07-065, issued on February 27, 2007, in UM 1129.<sup>63</sup> By approving the tariffs and form contracts, the Commission found each utilities' tariffs and forms to be consistent with the requirements of Order No. 06-538 and Order No. 05-584, including the 15 year limit on fixed prices established on page 20 of Order No. 05-584.

As discussed below, the PGE tariff and contract forms approved by Order No. 07-065 unambiguously provided for a standard contract term that begins when the contract is executed. And PGE's Commission-approved tariff and contract forms unambiguously limited the availability of fixed prices to the first 15 years of the standard contract term. This means, that in February of 2007, the Commission determined, after 14 months of investigation, that PGE complies with Order No. 05-584 and the policy decisions in that order when PGE offers standard contracts that limit fixed prices to the first 15 years of the contract term *measured from the date the contract is executed*. It is now too late for the Complainants to challenge that 2007 determination.<sup>64</sup>

The next section of this brief provides a detailed review of the PGE tariff and standard contract forms that were approved by the Commission on February 23, 2007, for

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<sup>62</sup> Docket No. UM 1129, Supplemental Filing of Advice No. 06-26, UM 1129 Compliance Filing to Order No. 06-538 (Jan. 23, 2007).

<sup>63</sup> Docket No. UM 1129, Order No. 07-065 (Feb. 27, 2007).

<sup>64</sup> Pursuant to ORS 756.561, any party to a proceeding may request rehearing of a Commission order within 60 days from the date of service of the order. No party timely sought rehearing of Order No. 07-065.

the purpose of demonstrating that PGE’s Commission-approved tariff and contract forms clearly limited fixed prices to the first 15 years of a contract term that begins at contract execution.

**F. The PGE tariff and standard contract forms approved by the Commission in February 2007 limited fixed prices to the first 15 years of a contract term that begins when the contract is executed.**

On January 23, 2007, PGE filed a revised Schedule 201 tariff (the “2007 Schedule 201”) and two standard contract forms (the “2007 Contract Forms”).<sup>65</sup> The Commission approved these three documents on February 27, 2007, in Order No. 07-065.<sup>66</sup> For ease of reference, PGE has provided a courtesy copy of the 2007 Schedule 201<sup>67</sup> and a courtesy copy of one of the 2007 Contract Forms.<sup>68</sup> This section of the brief will review the key provisions of the 2007 Schedule 201 and the 2007 Contract Forms to demonstrate: (i) that they clearly provided for a standard contract term that began when the contract was executed; and (ii) that they clearly limited fixed prices to the first 15 years of a standard contract term.

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<sup>65</sup> Docket No. UM 1129, PGE’s Supplemental Filing of Advice No. 06-26, UM 1129 Compliance Filing to Order No. 06-538 (Jan. 23, 2007). The submission consisted of one revised version of PGE’s Schedule 201 tariff and two proposed standard contract forms, a *Standard Contract Power Purchase Agreement* and a *Standard Contract Off System Power Purchase Agreement*. The contract provisions discussed in this brief were the same in both versions of the standard contract forms.

<sup>66</sup> Docket No. UM 1129, Order No. 07-065 (Feb. 27, 2007).

<sup>67</sup> Attachment 1 to this motion is a courtesy copy of the 2007 Schedule 201 approved by the Commission in Order No. 07-065. PGE has provided courtesy copies of six documents as Attachments 1 through 6. All six of the documents provided as courtesy copies are documents that are publicly available in the files of the Commission and were made part of the Commission’s files in the regular course of the Commission’s duties. As a result, the Commission and Administrative Law Judge may take official notice of the documents pursuant to OAR 860-001-0460(1)(d) and it is not necessary for PGE to introduce the documents into evidence through a declaration, affidavit, or similar means. Any fact of which the Commission takes official notice should be noted during hearing, or in an ALJ ruling or Commission order. OAR 860-001-0460(2).

<sup>68</sup> Attachment 2 to this motion is a courtesy copy of one of the 2007 Contract Forms—the *Standard Contract Power Purchase Agreement*—approved by the Commission in Order No. 07-065. PGE has not provided a copy of the second of the 2007 Contract Forms—the *Standard Contract Off System Power Purchase Agreement*—because it has the same key provisions as the first contract form and would be redundant for the purposes of this brief.

PGE's 2007 Schedule 201 provided in most relevant part:

A Seller must execute a Power Purchase Agreement with the Company prior to delivery of power to the Company. The agreement will have a term of up to 20 years as selected by the QF.<sup>69</sup> ...

The Standard Contract pricing will be based on the Avoided Cost in effect at the time the agreement is executed. Four pricing options are available for Standard Contracts. The pricing options include one Fixed Rate Option and three Market Based Options. ... The Fixed Price Option ... is available for a maximum term 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 will be equal to the Avoided Costs in Tables 1 and 2 effective at execution for a term of up to 15 years.<sup>70</sup> ...

TERM OF AGREEMENT[:] Not less than one year and not to exceed 20 years.<sup>71</sup>

The language quoted above clearly provides: (i) that Sellers may select a standard contract term between one and 20 years; (ii) that fixed prices are available for a maximum term of 15 years; (iii) that Sellers with contracts exceeding 15 years must select a market-based price for all years up to five in excess of the initial 15; and (iv) that the avoided costs in effect when a contract is executed become the fixed prices at execution for a term of up to 15 years.

The 2007 Contract Forms approved by Order No. 07-065 unambiguously provided that the Term of the standard contract runs from the date the contract is executed by both parties—called the “Effective Date”—until the “Termination Date” which is the earlier of a date selected by the Seller or a date that is 20 years after the Effective Date.

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<sup>69</sup> Docket No. 1129, PGE's Supplemental Filing of Advice No. 06-26, UM 1129 Compliance Filing to Order No. 06-538 (Jan. 23, 2007) at Schedule 201, First Revision of Sheet No. 201-2.

<sup>70</sup> *Id.* at Schedule 201, First Revision of Sheet No. 201-6 and First Revisions of Sheet No. 201-7.

<sup>71</sup> *Id.* at Schedule 201, Original Sheet No. 201-18.

Specifically, Section 1.30 defined “Term” as meaning “the period beginning on the Effective Date and ending on the Termination Date.”<sup>72</sup> Section 1.8 defined “Effective Date” as having “the meaning set forth in Section 2.1.”<sup>73</sup> Section 2.1 stated: “This Agreement shall become effective upon execution by both Parties (‘Effective Date’).”<sup>74</sup> Finally, Section 2.3 defined “Termination Date” by stating:

This Agreement shall terminate on \_\_\_\_\_, \_\_\_\_ [*date to be chosen by Seller*], up to 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”).<sup>75</sup>

The 2007 Contract Forms also unambiguously limited fixed prices to the first 15 years of the contract Term. Specifically, Section 5 of the standard contract forms stated:

#### SECTION 5: CONTRACT PRICE

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 its choice below with an X. If 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<sup>76</sup>

Pursuant to Section 1.29, “Tariff” was defined as meaning “PGE rate Schedule 201 filed with the Oregon Public Utility Commission in effect on the Effective Date of

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<sup>72</sup> Docket No. 1129, PGE’s Supplemental Advice No. 06-26, UM 1129 Compliance Filing to Order No. 06-538 (Jan. 23, 2007), *Standard Contract Power Purchase Agreement* at Section 1.30 (courtesy copy provided as Attachment 2).

<sup>73</sup> *Id.* at Section 1.8.

<sup>74</sup> *Id.* at Section 2.1.

<sup>75</sup> *Id.* at Section 2.3.

<sup>76</sup> *Id.* at Section 5.

this Agreement and attached hereto as Exhibit E.”<sup>77</sup> Pursuant to Section 1.7, “Contract Year” meant “each twelve (12) month period commencing at 00:00 hours on January 1 and ending on 24:00 hours on December 31 falling at least partially in the Term of this Agreement.”<sup>78</sup>

Under the plain text and unambiguous meaning of Section 5 of the 2007 Contract Forms, if a Seller selected fixed prices, it was also required to select a market-based price for all Contract Years in excess of 15 until the remainder of the Term. And under the plain text and unambiguous meaning of Section 1.7 of the standard contract form, the first Contract Year was the year in which the contract was executed and “Contract Years in excess of 15” referred to any portion of the contract Term that occurred more than 15 years after the contract was executed by both parties.

This close review of the terms and conditions of the Schedule 201 and the standard contract forms approved in Order No. 07-065 makes it clear that PGE’s documents limited fixed prices to the first 15 years of a standard contract term that began when both parties executed the contract.

**G. The Commission has not modified its requirements on standard contract length or the 15-year limit on fixed prices.**

The Commission has not issued any order that has changed its determination on standard contract length contained in Order No. 05-584. The Commission’s most recent order on standard contracts is Order No. 16-174 issued May 13, 2016, in UM 1610. In Order No 16-174, the Commission resolved a number of issues related to standard contracts and ordered the utilities to file revised rate schedules and revised standard

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<sup>77</sup> Docket No. 1129, PGE’s Supplemental Advice No. 06-26, UM 1129 Compliance Filing to Order No. 06-538 (Jan. 23, 2007), *Standard Contract Power Purchase Agreement* at Section 1.29 (courtesy copy provided as Attachment 2).

<sup>78</sup> *Id.* at Section 1.7.

contract forms consistent with the resolutions made in the order.<sup>79</sup> Order No. 16-174 reiterated:

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.<sup>80</sup>

On July 12, 2016, PGE filed a revised Schedule 201 and eight revised standard contract forms in compliance with Order No. 16-174.<sup>81</sup> In Order No. 16-377 issued in UM 1610 on October 11, 2016, the Commission approved PGE's July 12, 2016 documents.<sup>82</sup> These documents are now PGE's currently effective, Commission-approved Schedule 201 and PGE's currently effective, Commission-approved standard contract forms. Because the documents were approved by Order No. 16-377, they have been found by the Commission to be consistent with the requirements of Order No. 16-174 and consistent with the requirements of all still-applicable Commission orders, such as Order No. 05-584.<sup>83</sup>

PGE's currently effective Schedule 201 and currently effective standard contract forms: (i) continue to unambiguously provide for a standard contract term that begins when a contract is executed; and (ii) continue to unambiguously limit fixed prices to the first 15 years of a standard contract term. For ease of reference, PGE has attached a

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<sup>79</sup> Docket No. UM 1610, Order No. 16-174 at 31 (May 13, 2016) ("IT IS ORDERED that ... each utility will file ... revised standard contract forms that set forth standard rates, terms and conditions that are consistent with the resolutions made in this order. ... Each electric utility will also file revised avoided cost schedules that implement the resolutions made in this order.").

<sup>80</sup> *Id.* at 5.

<sup>81</sup> Docket No. UM 1610, PGE's Schedule 201 Qualifying Facility Information Compliance Filing (Jul. 12, 2016).

<sup>82</sup> Docket No. UM 1610, Order No. 16-377 (Oct. 11, 2016).

<sup>83</sup> *See* Docket No. UM 1129, Order No. 05-584 at 56 (May 13, 2005) (noting that standard contract forms filed in compliance with the Commission's phase orders are reviewed by the Commission and pre-approved for compliance with all standards set forth in the phase order and all still applicable prior orders).

courtesy copy of PGE’s currently effective Schedule 201<sup>84</sup> and a courtesy copy of one of its eight currently effective standard contract forms.<sup>85</sup>

Specifically, PGE’s current standard contract forms state that the “Term” of the contract is “the period beginning on the Effective Date and ending on the Termination Date.”<sup>86</sup> The “Effective Date” of the contract is the date the contract is executed by both parties.<sup>87</sup> The “Termination Date” is a date selected by the QF Seller.<sup>88</sup> However, the Seller must select a date that is within 20 years of the Effective Date because PGE’s current Schedule 201 has been incorporated by reference as part of the standard contract form,<sup>89</sup> and PGE’s current Schedule 201 provides: “The agreement will have a term of up to 20 years as selected by the QF.”<sup>90</sup> Taken together, the terms of PGE’s current standard contract forms clearly provide for a standard contract term that begins when the contract is executed by both parties and terminates, at most, 20 years after the contract is executed by both parties.

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<sup>84</sup> Attachment 3 to this motion is a courtesy copy of PGE’s currently effective Schedule 201 approved by the Commission in Order No. 16-377.

<sup>85</sup> Attachment 4 to this motion is a courtesy copy of one of PGE’s currently effective standard contract forms—the *Standard Renewable Off-System Variable Power Purchase Agreement*—approved by the Commission in Order No. 16-377. PGE has not provided courtesy copies of the other seven versions of PGE’s standard contract forms approved by Order No. 16-377 because they have the same key provisions as the contract provided in Attachment 4 and would be redundant for the purposes of this brief.

<sup>86</sup> Docket No. 1610, PGE’s Schedule 201 Qualifying Facility Information Compliance Filing (July 12, 2016), Schedule 201, *Standard Renewable Off-System Variable Power Purchase Agreement* at Section 1.38 (courtesy copy provided as Attachment 4).

<sup>87</sup> *Id.* at Section 1.8 (“‘Effective Date’ has the meaning set forth in Section 2.1.”) and Section 2.1 (“This Agreement shall become effective upon execution by both Parties (‘Effective Date’).”).

<sup>88</sup> *Id.* at Section 2.3 (“This Agreement shall terminate on \_\_\_\_\_, \_\_\_\_ [date to be chosen by Seller], or the date the Agreement is terminated in accordance with Section 8 or 11, whichever is earlier (‘Termination Date’).”).

<sup>89</sup> *Id.* at Section 1.33 (“‘Schedule’ shall mean PGE Schedule 201 filed with the Oregon Public Utility Commission (‘Commission’) in effect on the Effective Date of this Agreement and attached hereto as Exhibit D, the terms of which are hereby incorporated by reference.”).

<sup>90</sup> Docket No. 1610, PGE’s Schedule 201 Qualifying Facility Information Compliance Filing (July 12, 2016), Schedule 201 at Sheet No. 201-1 (courtesy copy provided as Attachment 3).



The price provision in PGE’s current standard contract forms states: “PGE shall pay Seller the Contract Price for all delivered Net Output.”<sup>91</sup> The term “Contract Price” means “the applicable price, including on-peak and off-peak prices, as specified in the Schedule.”<sup>92</sup> The term “Schedule” means “PGE Schedule 201 filed with the ... Commission ... in effect on the Effective Date of this Agreement and attached hereto as Exhibit D, the terms of which are hereby incorporated by reference.”<sup>93</sup> So, under the clear language of PGE’s current standard contract forms, PGE agrees to pay the applicable price specified in Schedule 201.

There are two prices provided for in PGE’s current Schedule 201—a standard fixed price and a renewable fixed price. Schedule 201 provides that either fixed price is available for a maximum term of 15 years and that contracts exceeding 15 years will receive a market price—the Mid-C Index Price—for all years (up to five) exceeding the initial 15. Specifically, PGE’s current Schedule 201 states:

The Standard Fixed Price Option is ... available to all QFs. This option is available for a maximum term of 15 years. Prices will be as established at the time the Standard PPA is executed and will be equal to the Standard Avoided Costs in [referenced] Tables<sup>94</sup> ... 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.<sup>95</sup> ...

The Renewable Fixed Price Option is ... available only to Renewable QFs ... This option is available for a maximum term of 15 years. Prices will be as established at the time the Standard PPA is executed and will be equal to the Renewable Avoided Costs in [referenced] Tables ... Sellers with

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<sup>91</sup> Docket No. 1610, PGE’s Schedule 201 Qualifying Facility Information Compliance Filing (July 12, 2016), Schedule 201, *Standard Renewable Off-System Variable Power Purchase Agreement* at Section 4.2 (courtesy copy provided as Attachment 4).

<sup>92</sup> *Id.* at Section 1.6.

<sup>93</sup> *Id.* at Section 1.33.

<sup>94</sup> Docket No. 1610, PGE’s Schedule 201 Qualifying Facility Information Compliance Filing (July 12, 2016), Schedule 201 at Sheet No. 201-4 (courtesy copy provided as Attachment 3).

<sup>95</sup> *Id.* at Sheet No. 201-5.

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.<sup>96</sup>

From this review of PGE's current Schedule 201 and PGE's current standard contract forms, it is clear that PGE's current documents unambiguously provide for a standard contract term that begins when the contract is executed by both parties and that PGE's current documents limit fixed prices to the first 15 years of the standard contract term.

**H. PacifiCorp and Idaho Power have chosen to offer fixed prices for the first 15 years of a maximum 20-year period measured from the date a QF begins to deliver power and the Commission has approved this approach as also consistent with the requirements of Order No. 05-584.**

Both PacifiCorp and Idaho Power filed tariffs and contract forms in response to Order 05-584 and Order No. 06-538. PacifiCorp's contracts became effective at execution but allowed for a maximum term of 20-years measured from the Scheduled Initial Delivery Date.<sup>97</sup> The Scheduled Initial Delivery Date is the date the QF plans to begin delivering power during start-up testing. It is a date that occurs after execution but before commercial operation.<sup>98</sup> Idaho Power's contracts also became effective at execution and had a maximum term of 20-years measured from the Operation Date.<sup>99</sup> The Operation Date is the day after the QF meets its commercial operations

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<sup>96</sup> Docket No. 1610, PGE's Schedule 201 Qualifying Facility Information Compliance Filing (July 12, 2016), Schedule 201 at Sheet No. 201-12 (courtesy copy provided as Attachment 3).

<sup>97</sup> Docket No. UM 1129, PAC Advice No. 06-019, Power Purchase Agreement [a new Qualifying Facility with 10,000 kW Facility Capacity Rating, or Less] at Section 2.1 and Section 2.4 (Oct. 20, 2006).

<sup>98</sup> *Id.* at Recital B and Section 1.37.

<sup>99</sup> Docket No. UM 1129, IPC Advice No. 06-10, Energy Sales Agreement (10 MW or Less) at Section 5.1 (Nov. 3, 2006) ("... 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*) Contract Years from the Operation Date.").

milestones.<sup>100</sup> So both utilities proposed contracts that became effective at execution but had a maximum term of more than 20-years when measured from the effective date.

In addition, PacifiCorp's contract forms limited fixed payments to 15 years from the Scheduled Initial Delivery Date.<sup>101</sup> This means that under PacifiCorp's contract, the QF is eligible for fixed payments for more than 15 years measured from the contract effective date (but less than 15 years measured from the commercial operations date). Idaho Power's proposed contract forms also limited fixed payments to 15 years but it is unclear whether the 15-year period should be measured from contract execution or from the Operations Date.<sup>102</sup>

The Commission ultimately approved both PacifiCorp's and Idaho Power's tariffs and form contracts as consistent with Order No. 06-538 and Order No. 05-584.<sup>103</sup> As a result, even though PGE's approach is the most logical approach given the language of Order No. 05-584 and the purpose of the 15-year limit on fixed prices, the Commission has determined that it is *also* permissible to offer fixed prices for 15 years measured from the Scheduled Initial Delivery Date.

One way to harmonize both results is to conclude that Order No. 05-584 clearly limits the standard contract term to 20 years and clearly limits fixed prices to the first 15 years of the 20-year term, but does not specify when the 20-year contract term begins.

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<sup>100</sup> Docket No. UM 1129, IPC Advice No. 06-10, Energy Sales Agreement (10 MW or Less) at Section 1.16 (Nov. 3, 2006) (defining "Operation Date" as the "day ... following the day that all requirements of paragraph 5.2 have been completed.") and Section 5.2 (enumerating a list of requirements that must be fulfilled before the Operation Date will be deemed to have occurred).

<sup>101</sup> Docket No. UM 1129, PAC Advice No. 06-019, Power Purchase Agreement [a new Qualifying Facility with 10,000 kW Facility Capacity Rating, or Less] at Section 5.1 and 5.2.

<sup>102</sup> Docket No. UM 1129, IPC Advice No. 06-10, Energy Sales Agreement (10 MW or Less) at Section 7.1 ("Seller may not select ... Fixed Price[s] ... for any Contract Years past the first 15 Contract Years.") and Section 1.4 (defining "Contract Year" in such a way that it is unclear whether the term includes the years between the effective date and the Operation Date).

<sup>103</sup> Docket No. UM 1129, Order No. 07-120 (Apr. 2, 2007) (order approving PacifiCorp's Advice No. 06-019); Docket No. UM 1129, Order No. 07-197 (May 18, 2007) (order approving Idaho Power's Advice No. 06-10).

PGE’s approach of measuring the maximum 20-year contract term from the date the contract becomes effective is consistent with the ordinary meaning of a “20-year contract term” and is logically consistent with the Commission’s goal of limiting the divergence between fixed prices and actual avoided costs to a period of 15 years. The fact that the Commission has repeatedly approved PGE’s approach as consistent with the Commission’s requirements establishes, as a matter of law, that the Commission’s orders do not *require* fixed prices for 15 years measured from commercial operation. But, given that the Commission has also approved PacifiCorp’s approach of limiting fixed prices to the first 15 years of a 20-year term that begins on the Scheduled Initial Delivery Date, it is evidently permissible for a utility to adopt either approach.<sup>104</sup> Because both approaches have been approved by the Commission, there is no “policy” for one over the other.

**I. There is no basis upon which to conclude that the 2010 Pa’Tu Contract provides for 15 years of fixed prices measured from the commercial operation date.**

On April 29, 2010, PGE and Pa’Tu Wind Farm LLC entered into a power purchase agreement (the “Pa’Tu Contract”). The complaint alleges that the Pa’Tu Contract has a Commercial Operation Date of May 31, 2011, and a Termination Date of May 31, 2031, and that this represents a contract term of 20 years measured from the Commercial Operation Date, and a term of over 20 years measured from the date the contract was executed.<sup>105</sup> The complaint is wrong.

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<sup>104</sup> See Docket No. UM 1129, Order No. 05-584 at 41 (May 13, 2005) (The Commission acknowledged that each utility might adopt different contract terms and noted: “It is not necessary . . . that particular terms be identically worded across all standard contract forms, so long as the meaning of each term is consistent with the [Commission’s] present or past decisions.”).

<sup>105</sup> Docket No. UM 1805, Complaint at ¶ 24 (Dec. 6, 2016).

For ease of reference, PGE has attached a courtesy copy of the PaʻTu Contract, which was filed by PGE in Docket No. RE 143.<sup>106</sup> Pursuant to Section 2.1 of the PaʻTu Contract, the contract “became effective upon execution by both Parties (‘Effective Date’).”<sup>107</sup> Pursuant to the first line of the PaʻTu Contract, the contract was “... entered into this 29<sup>th</sup> day, April 2010 ....”<sup>108</sup> As a result, the PaʻTu Contract had an Effective Date of April 29, 2010.

The PaʻTu Contract had a scheduled Commercial Operation Date of May 31, 2011. Specifically, Section 2.2.2 of the contract provides: “By 5/31/2011 Seller shall have completed all requirements under Section 1.6 and shall have established the Commercial Operation Date.”<sup>109</sup>

Finally, Section 2.3 of the PaʻTu Contract provides:

This Agreement shall terminate on 5/31/2031 [date to be chosen by Seller], up to 20 years from the Effective Date, or the date the Agreement is terminated in accordance with Section 9 or 12, whichever is earlier (“Termination Date”).<sup>110</sup>

Section 2.3 of the PaʻTu Contract clearly states that the Termination Date is the *earlier* of May 31, 2031 (the date selected by Seller), or 20 years from the April 29, 2010 Effective Date, which would be April 29, 2030. Because April 29, 2030, is the earlier of the two dates, the Termination Date of the PaʻTu Contract is April 29, 2030.

Because the Termination Date of the PaʻTu Contract is 20 years after the Effective Date of the contract, paragraph 24 of the complaint is wrong, as a matter of law,

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<sup>106</sup> Attachment 5 to this motion is a courtesy copy of the PaʻTu Contract.

<sup>107</sup> Docket No. RE 143, Informational Filing – PaʻTu Wind Farm LLC (Sept. 19 2014) at Section 2.1; *see also* Section 1.9 (defining “Effective Date” as having “the meaning set forth in Section 2.1.”).

<sup>108</sup> *Id.* at page 1.

<sup>109</sup> *Id.* at Section 2.2.2.

<sup>110</sup> *Id.* at Section 2.3.

when it asserts that the term of the PaʻTu contract is “a full 20 years after the Commercial Operation Date and over 20 years after the date the contract was executed.”<sup>111</sup>

**J. The 2014 OneEnergy Contract does not justify the conclusion that PGE should be ordered to provide all QFs with fixed prices for 15 years measured from the date a QF achieves commercial operation.**

The complaint alleges that the February 19, 2014 contract between PGE and OneEnergy Solar LLC (the “OneEnergy Contract”) provides for a Commercial Operation Date of August 19, 2015, and provides that PGE will pay OneEnergy a “Fixed Price (for the first 15 years following the Commercial Operation Date)”.<sup>112</sup> The complaint alleges that the OneEnergy Contract demonstrates “PGE’s belief that payments of 15 years of fixed process commencing upon commercial operation is permissible under Schedule 201.”<sup>113</sup> PGE has denied this allegation.<sup>114</sup>

For ease of reference, PGE has attached a courtesy copy of the OneEnergy Contract, which was filed by PGE in Docket No. RE 143.<sup>115</sup> The OneEnergy Contract includes PGE’s February 2014 Schedule 201, which was attached in its entirety to the OneEnergy Contract as Exhibit E.<sup>116</sup> Among other things, the express terms of Exhibit E to the OneEnergy Contract provide: (a) “The agreement will have a term of up to 20 years as selected by the QF.”<sup>117</sup> (b) “Any Seller may elect to negotiate a Power Purchase Agreement with the Company.”<sup>118</sup> (c) “The Standard Contract pricing will be based on

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<sup>111</sup> Docket No. UM 1805, Complaint at ¶ 24 (Dec. 6, 2016).

<sup>112</sup> Docket No. 1805, Complaint at ¶ 25 (Dec. 6, 2016).

<sup>113</sup> *Id.* at ¶ 26.

<sup>114</sup> Docket No. UM 1805, Answer at ¶ 26 (Mar. 28, 2017).

<sup>115</sup> Attachment 6 to this motion is a courtesy copy of the OneEnergy Contract.

<sup>116</sup> Docket No. RE 143, Informational Filing – OneEnergy Oregon Solar, LLC (Sept. 19 2014) at Section 1.29 (Schedule 201 is attached to the contract as Exhibit E).

<sup>117</sup> *Id.* at Exhibit E, Schedule 201, Sheet 201-2.

<sup>118</sup> *Id.*

the Avoided Cost in effect at the time the agreement is executed.”<sup>119</sup> (d) “Four pricing options are available for Standard Contracts. The pricing options include one Fixed Rate Option and three Market Based Options.”<sup>120</sup> (e) “The Fixed Price Option is ... available for a maximum term 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.”<sup>121</sup> and (f) “Under the Fixed Price Option, prices will be as established at the time the Standard Contract is executed and will be equal to the Avoided Costs in Tables 1 and 2 effective at execution for a term of up to 15 years.”<sup>122</sup>

Under the express terms of the OneEnergy Contract, the contract Term began when both parties executed the contract. Section 2.1 of the OneEnergy Contract provides: “This Agreement shall become effective upon execution by both Parties (‘Effective Date’).”<sup>123</sup> The first sentence of the OneEnergy Contract states that the Agreement was “... entered into this 19<sup>th</sup> day, of February 2014 ...”<sup>124</sup> and both parties executed the Agreement. Under the plain language of the OneEnergy Contract, the Agreement became effective upon execution on February 19, 2014.

Section 2.3 provides: “This Agreement shall terminate on February 19, 2034, up to 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’).”<sup>125</sup> February 19, 2034 is 20 years from the Effective Date, so February 19, 2034 is the Termination Date of the Agreement.

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<sup>119</sup> *Id.* at Exhibit E, Schedule 201, Sheet 201-3.

<sup>120</sup> Docket No. RE 143, Informational Filing – OneEnergy Oregon Solar, LLC (Sept. 19 2014) at Exhibit E, Schedule 201, Sheet 201-4.

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> *Id.* at Section 2.1.

<sup>124</sup> *Id.* at page 1.

<sup>125</sup> *Id.* at Section 2.3.

Section 1.30 provides that “Term” means “the period beginning on the effective Date and ending on the Termination Date.”<sup>126</sup> So the Term of the OneEnergy Contract is from the February 19, 2014 Effective Date until the February 19, 2034 Termination Date, a 20-year total term.

Section 1.7 defines “Contract Year” to mean “each twelve (12) month period commencing at 00:00 hours on January 1 and ending on 24:00 hours on December 31 falling at least partially in the Term of this Agreement.”<sup>127</sup> As discussed above, the Term of the Agreement is from February 19, 2014 through February 19, 2034. So the first Contract Year under the OneEnergy Contract is the 12-month period running from January 1, 2014, until December 31, 2014, and the last Contract Year is the 12-month period running from January 1, 2034, until December 31, 2034.

Section 5 of the OneEnergy Contract addresses “Contract Price” and provides:

#### SECTION 5: CONTRACT PRICE

PGE shall pay Seller for the price options 5.1, 5.2, 5.3 or 5.4, as selected below, pursuant to Schedule 201. Seller shall indicate which price option it chooses by marking its choice below with an X. If 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 (for the first 15 years following the Commercial Operation Date)

5.2  Deadband Index Gas Price (for the 16th year following the Commercial Operation Date and continuing until the end of Term)

5.3  Index Gas Price

5.4  Mid-C Index Rate Price<sup>128</sup>

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<sup>126</sup> Docket No. RE 143, Informational Filing – OneEnergy Oregon Solar, LLC (Sept. 19 2014) at Section 1.30.

<sup>127</sup> *Id.* at Section 1.7.

<sup>128</sup> *Id.* at Section 5.



The parentheticals that appear in Section 5.1 and Section 5.2 are not part of PGE’s Commission-approved standard contract form that was in effect when the OneEnergy Contract was executed. The complaint asserts that the parentheticals are a “clarification” that demonstrates “PGE’s belief that payment of 15 years of fixed prices commencing upon commercial operation is permissible under Schedule 201.”<sup>129</sup> PGE has denied this allegation.<sup>130</sup>

The plain language of Section 5 contradicts the parenthetical language of Section 5.1 and Section 5.2. Section 5 states: “If 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.*”<sup>131</sup> Seller OneEnergy chose the option in Section 5.1, so it was obligated under the language of Section 5 to select 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.* The Term of the Agreement runs until February 19, 2034. Pursuant to Section 1.7, the first Contract Year is 2014 and the fifteenth Contract Year is 2028. So “all Contract Years in excess of 15 until the remainder of the Term” would be January 1, 2029 through February 19, 2034. Section 5 therefore states that Seller must mark a single option from Section 5.2, 5.3, or 5.4 for January 1, 2029 through February 19, 2034.

But then, the parties agreed to the addition of a parenthetical clause to Section 5.1 that reads: “Fixed Price (for the first 15 years following the Commercial Operation Date)”. And the parties agreed to the addition of a parenthetical clause to Section 5.2 that

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<sup>129</sup> Docket No. UM 1805, Complaint at ¶¶ 25-26 (Dec. 6, 2016).

<sup>130</sup> Docket No. UM 1805, Answer at ¶ 26 (Mar. 28, 2017).

<sup>131</sup> Docket No. RE 143, Informational Filing – OneEnergy Oregon Solar, LLC (Sept. 19 2014) at Section 5 (emphasis added).

reads: “Deadband Index Gas Price (for the 16th year following the Commercial Operation Date and continuing until the end of Term)”.

Pursuant to Section 2.2.2 the Commercial Operation Date is to occur by August 19, 2015.<sup>132</sup> If the parentheticals are read to mean that the Fixed Price will apply for the first 15 years following August 19, 2015, then the Fixed Price applies from August 19, 2015 through August 19, 2030. And the Deadband Index Gas Price would apply from August 20, 2030 through the Termination Date of February 19, 2034. But this outcome is in direct conflict with the language of Section 5 and in direct conflict with the language of Exhibit E, which is PGE’s Schedule 201 and which provides that “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.”<sup>133</sup>

The proper approach is to consider the OneEnergy Contract to be a *negotiated* contract under Schedule 202 because it contains the parenthetical clauses added to Sections 5.1 and 5.2 in deviation from the standard contract form and the requirements of Schedule 201.<sup>134</sup> To the extent that the parenthetical clauses added to Sections 5.1 and 5.2 are deemed to prevail over Section 5 and the requirements of Schedule 201, then the OneEnergy Contract should properly be considered a negotiated contract under Schedule 202.

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<sup>132</sup> Docket No. RE 143, Informational Filing – OneEnergy Oregon Solar, LLC (Sept. 19 2014) at Section 2.2.2.

<sup>133</sup> *Id.* at Exhibit E, Schedule 201 at Sheet 201-4.

<sup>134</sup> *Pa’Tu Wind Farm LLC v. PGE*, Docket No. UM 1566, Order No. 12-316 at 5 (May 21, 2012) (In rejecting a QF’s assertion that non-price substantive terms of a standard contract can be modified the Commission noted: “[W]e envision an exchange of draft revised standard contracts between a small QF and a utility to particularize a standard contract to some degree, this process is intended to address administrative not substantive individualization of the contract. If a QF believes the substantive terms of a standard contract would be commercially unworkable for its facilities, then that QF—despite being qualified to take a standard contract—should negotiate a non-standard contract.”).

Finally, even if the OneEnergy Contract is considered to be a standard contract under Schedule 201 (notwithstanding the negotiated changes to Sections 5.1 and 5.2), the OneEnergy Contract should be recognized as an isolated mistake and not considered to be a model for the terms that PGE must agree to with all QFs. Indeed, more than a year before the complaint was filed in the instant case, PGE informed OneEnergy that the changes to Section 5.1 and Section 5.2 in the OneEnergy Contract were an error and PGE refused to enter into similar changes in a new standard contract sought by OneEnergy for a different QF project.<sup>135</sup> PGE has entered into over 90 standard contracts and the OneEnergy Contract is the only time PGE has signed an agreement that contained changes to Section 5.1 and Section 5.2 that suggest the fixed price period might extend for more than 15 years from the date the contract was executed. This solitary and unrepresentative contract does not invalidate PGE's currently effective Commission-approved Schedule 201 or PGE's currently effective Commission-approved standard contract forms, all of which limit fixed prices to the first 15 years of a contract term that clearly starts when the contract is executed.

## V. CONCLUSION

For the reasons detailed above, there are no genuine issues of material fact and the Commission should conclude, as a matter of law, that the Commission's orders authorize PGE to limit fixed prices to the first 15 years of a standard contract term and to provide that a standard contract's term will begin when the contract is executed by both parties. The Commission should also conclude, as a matter of law, that PGE's currently effective

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<sup>135</sup> See Docket No. UM 1805, Declaration of Shawn Davis in Support of PGE's Motion for Summary Judgment (Apr. 24, 2017) (declaration regarding November 4, 2015 email from PGE to OneEnergy identifying the changes in the OneEnergy Contract as an error that PGE will not agree to replicate in subsequent contracts; copy of November 4, 2015 email provided as Exhibit 1).

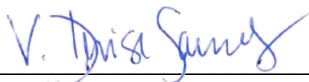
Schedule 201 and currently effective standard contract forms unambiguously limit fixed prices to the first 15 years of the standard contract term and unambiguously provide that a standard contract term begins when the contract is executed by both parties.

Having reached these conclusions, the Commission should conclude, as a matter of law, that its orders and policies do not require an electric utility to offer fixed prices for 15 years measured from the date a QF achieves commercial operation. Finally, the Commission should grant summary judgment in favor of PGE and deny all of the relief requested in the complaint, because both claims for relief advanced by the complaint and all of the relief requested in the complaint depend on the Complainants' erroneous assertion that the Commission's orders and policies require a utility to offer fixed prices for 15 years measured from commercial operation.

For the reasons detailed above, PGE respectfully requests that the Commission issue an order: (1) holding that the Commission's existing orders allow an electric utility to limit fixed prices to the first 15 years of a standard contract term measured from the date the contract is executed; and (2) granting summary judgment in favor of PGE and denying all of the relief requested in the complaint.

Dated this 24<sup>th</sup> day of April 2017.

Respectfully submitted,



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**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UM 1805**

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

Complainants,

vs.

PORTLAND GENERAL ELECTRIC  
COMPANY,

Defendant.

**DECLARATION OF SHAWN DAVIS  
IN SUPPORT OF PORTLAND  
GENERAL ELECTRIC COMPANY'S  
MOTION FOR SUMMARY  
JUDGMENT**

STATE OF OREGON            )  
  ) ss.  
County of Multnomah        )

I, Shawn Davis, being first duly sworn, depose and say:

1. I am an employee of Portland General Electric Company ("PGE"), the defendant in the above-captioned complaint proceeding. I have been an employee of PGE continuously since October 9, 2008.

2. I make this declaration in support of PGE's motion for summary judgment. All facts and statements contained in this declaration are within my personal knowledge. If called as a witness at hearing, I could testify to all matters referred to in this declaration.

3. From August 1, 2015 until September 1, 2016, I worked for PGE as a Project Manager. In that capacity I worked with PGE employee Bruce True to manage PGE's qualifying facility contracts.

4. I am familiar with the February 19, 2014 contract between PGE and OneEnergy Solar LLC (the “OneEnergy Contract”) referenced in paragraph 24 of the complaint in OPUC Docket UM 1805.

5. The QF project that is the subject of the OneEnergy Contract is known as the Steel Bridge project. PGE and OneEnergy Solar LLC sometimes refer to the OneEnergy Contract as the “Steel Bridge contract.”

6. Attached as Exhibit 1 is a true and correct copy of a November 4, 2015 email from PGE employee Bruce True to OneEnergy president Bill Eddie. The November 4, 2015 email includes the text of several prior emails between Mr. True and Mr. Eddie.

7. In the November 4, 2015 email, Mr. True states that the adjustment to the term of the Steel Bridge contract was in error. The “adjustment” that Mr. True was referring to is the language in parenthesis that was added to Section 5.1 and Section 5.2 of the OneEnergy Contract.

8. In the November 4, 2015 email, Mr. True informed Mr. Eddie that PGE was not willing to add language to future contracts to clarify that the 15-year fixed price payment period begins on the commercial operation date. Mr. True stated that PGE’s standard contract form provides a 15 year fixed price term starting on the contract effective date. Mr. True stated that PGE was not willing to move the start of the fixed price term to the Commercial Operation Date. And Mr. True stated that PGE’s position is consistent with Schedule 201 and Commission Order No. 05-584.

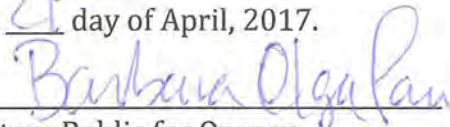
9. PGE has entered into more than 90 standard contracts with QFs. The OneEnergy Contract is the only contract in which PGE has agreed to a modification of

Section 5.1 and Section 5.2. The remainder of PGE's more than 90 executed standard contracts limit fixed prices to the first 15 years of the standard contract term, which begins when the contract is fully executed.

SIGNED this 24<sup>th</sup> day of April, 2017

  
Shawn Davis

SUBSCRIBED AND SWORN TO before me this 24<sup>th</sup> day of April, 2017.

  
Notary Public for Oregon  
My commission expires: April 05, 2021



**UM 1805**

**Exhibit 1 to**

**Declaration of Shawn Davis in Support of  
Portland General Electric Company's  
Motion for Summary Judgment**

**November 4, 2015 Email from PGE Employee Bruce True  
to OneEnergy President Bill Eddie**



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