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June 30, 2017

**VIA ELECTRONIC FILING**

Attention: Filing Center  
Public Utility Commission of Oregon  
201 High Street SE, Suite 100  
P.O. Box 1088  
Salem, Oregon 97308-1088

**Re: Docket UM 1844**  
Evergreen BioPower, LLC Complaint Against Portland General Electric Company

Dear Filing Center:

Attached for filing in the above-captioned docket is Portland General Electric Company's Answer to the First Amended Complaint.

Please contact this office with any questions.

Very truly yours,

Wendy McIndoo  
Office Manager

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UM 1844**

Evergreen BioPower, LLC,  
Complainant,

v.

Portland General Electric Company,  
Respondent.

**PORTLAND GENERAL ELECTRIC  
COMPANY'S ANSWER TO THE FIRST  
AMENDED COMPLAINT**

**I. Introduction**

On May 31, 2017, Evergreen BioPower LLC (Evergreen) filed a Complaint with the Public Utility Commission of Oregon (Commission) against Portland General Electric Company (PGE or Company). On June 13, 2017, Evergreen filed its First Amended Complaint (Complaint), to which PGE now responds. Evergreen's claims against PGE stem from communications between Evergreen and PGE leading up to execution of a standard power purchase agreement (PPA) under the Public Utility Regulatory Policies Act (PURPA) to sell the output of Evergreen's wood biomass co-generation qualifying facility (QF) to PGE under Schedule 201. Evergreen claims that PGE violated the Commission's rules regarding contracting with QFs by failing to recognize that Evergreen is eligible for a standard contract, failing to recognize that PGE has a legally enforceable obligation to purchase Evergreen's output, and incorrectly determining when the PPA's 15-year term for fixed prices commenced. Evergreen's claims are without basis.

In its request for a PPA, Evergreen represented to PGE that its facility had a nameplate capacity of 10 megawatts (MW), which is the maximum capacity eligible for a standard contract. PGE's contract administrator reasonably relied on that information to develop a Schedule 201 PPA for Evergreen—which includes a QF warranty that the project's nameplate capacity does

not exceed 10 MW. It was only in the final stages of reviewing the PPA that the Company became aware of unexplained discrepancies in the information provided by Evergreen, which cast doubt upon Evergreen's representations regarding its nameplate capacity. For this reason, PGE requested that Evergreen provide additional information to enable PGE to make a valid determination as to Evergreen's eligibility for a Schedule 201 contract. Given the fact that new, substantially lower standard contract prices were about to take effect, PGE agreed to execute the Schedule 201 PPA with Evergreen, with the specific understanding that PGE would continue to investigate Evergreen's nameplate capacity and would take steps to terminate the PPA if it determined Evergreen to be in breach of its warranty regarding nameplate capacity. PGE now believes that Evergreen's nameplate capacity exceeds 10 MW and that Evergreen modified its equipment in order to evade the 10 MW cap. Therefore, PGE asserts a counterclaim against Evergreen for breach of the PPA and the warranties contained therein.

For these reasons, and as further alleged below, PGE respectfully requests that the Commission decline to award Evergreen's requested relief, dismiss the Complaint, and find for PGE on its counterclaim.

## **II. Answer**

PGE hereby answers Evergreen's First Amended Complaint. PGE denies any allegation not specifically admitted herein and reserves the right to supplement this Answer if Evergreen amends its Complaint again. As for the initial introductory portion of Evergreen's Complaint entitled, "Overview" and "Preliminary Matters," because these portions simply summarize facts alleged later in the Complaint and provide the contact information for Evergreen's counsel, and because the paragraphs are not numbered, PGE does not need to respond to these sections. However, to the extent a response is deemed necessary, PGE denies the allegations in the "Overview" and "Preliminary Matters" sections. With respect to the particular numbered paragraphs of the Complaint, PGE answers as follows:

### **III. Identity of Parties**

1. PGE has insufficient information or knowledge to admit or deny the truth of the allegations in paragraph 1 of the Complaint, which relate to the identity and corporate structure of Evergreen, and therefore denies the same.
2. PGE admits the allegations in paragraph 2.

### **IV. Applicable Laws and Regulations**

3. Paragraph 3 contains statements and conclusions of law, which require no response.
4. Paragraph 4 contains statements and conclusions of law, which require no response.

### **V. Jurisdiction**

5. Paragraph 5 contains statements and conclusions of law, which require no response.

### **VI. Complaint**

6. PGE admits that Evergreen has represented to PGE that it owns and operates a wood-fired cogeneration facility in Lyons, Oregon. PGE denies that Evergreen's facility is a 10,000 kW facility. PGE has insufficient information or knowledge to admit or deny the truth of the remainder of the allegations in paragraph 6 of the Complaint, and therefore denies the same.
7. PGE has insufficient information or knowledge to admit or deny the truth of the allegations in paragraph 7 of the Complaint regarding Evergreen's relationship with PacifiCorp, and therefore denies the same. PGE admits that Evergreen has requested to sell its output to PGE under a Schedule 201 standard PPA commencing on January 1, 2018.
8. PGE denies the allegations in paragraph 8 of the Complaint.
9. PGE denies the allegations in paragraph 9 of the Complaint.
10. PGE admits that Evergreen submitted an acknowledged copy of its FERC Form 556 on November 15, 2016. PGE admits that Evergreen provided a filled-out copy of PGE's Schedule 201 Initial Information Form on December 10, 2016, and provided additional requested information on December 27, 2016. PGE denies that Evergreen provided

additional information on December 16, 2016. PGE admits that it acknowledged receipt of “sufficient information” from Evergreen to prepare a draft PPA on March 20, 2017. PGE admits that it did not express concern regarding the size of Evergreen’s facility prior to May 25, 2017, but PGE requested accurate information regarding the size of the facility and reasonably relied upon Evergreen to provide such information.

11. PGE admits that it sent Evergreen the May 11 Letter, which is attached to the Complaint as Exhibit 2. PGE admits that Evergreen responded in a letter from Evergreen’s attorney, dated May 15, 2017, which stated, “Although [delivery to BPAT.PGE point of delivery] was never a condition of the Schedule 201 standard PPA or Evergreen’s negotiation with PGE, Evergreen will accept PGE’s offer.” The May 15 letter speaks for itself. PGE denies the remainder of the allegations in paragraph 11.
12. PGE admits the allegations in paragraph 12.
13. PGE admits the allegations in paragraph 13.
14. PGE admits that it received a paper version of the executed PPA on or about May 17, 2017.
15. PGE admits that Evergreen contacted PGE on May 23 and May 25 to ask when PGE intended to execute the PPA. PGE admits that PGE’s attorney spoke with Evergreen’s attorney by telephone on May 25 and conveyed PGE’s concern that Evergreen might not be eligible for a standard PPA. PGE denies that it “threatened” to not execute the PPA or to execute and promptly terminate the PPA. To the best of its knowledge, PGE also denies that it “promised” to send Evergreen a written statement of its position.
16. PGE admits that it sent Evergreen the email attached to the Complaint as Exhibit 6 and quoted in the Complaint, and asserts that the full text of the email communication speaks for itself.
17. PGE admits the allegations in paragraph 17.

18. PGE denies that Evergreen is suffering irreparable harm. PGE has insufficient information or knowledge to admit or deny the remainder of the allegations in paragraph 18 of the Complaint, and therefore denies the same.
19. PGE has insufficient information or knowledge to admit or deny the allegations in paragraph 19 of the Complaint regarding Evergreen's future plans or wishes, and therefore denies the same. PGE denies that it may repeat the actions alleged in the Complaint.

**VII. Legal Claim – Violation of the QF Contracting Rules**

20. In response to paragraph 20, PGE refers to and incorporates herein all the preceding paragraphs.

**Count 1 – Failure to Follow Schedule 201 Timelines**

21. The allegations contained in paragraph 21 constitute legal conclusions or Complainant's characterization of Order No. 06-538 to which no response is required.
22. The allegations in paragraph 22 consist of Complainant's characterization and partial quotation of PGE's Schedule 201 to which no response is required.
23. PGE denies the allegations in paragraph 23.
24. PGE denies the allegations in paragraph 24.
25. PGE denies the allegations in paragraph 25.

**Count 2 – Failure to Recognize a Legally Enforceable Obligation (Offer and Acceptance)**

26. The allegations contained in paragraph 26 constitute legal conclusions or Complainant's characterization of Order No. 16-174 to which no response is required.
27. The allegations in paragraph 27 are legal conclusions and require no response.
28. The allegations in paragraph 28 are legal conclusions and require no response.
29. PGE denies the allegations in paragraph 29.

**Count 3 – Failure to Recognize a Legally Enforceable Obligation (Detrimental Reliance)**

30. The allegations in paragraph 30 consist of Complainant's characterization of PGE's May 11 letter. The letter speaks for itself, and no response is required
31. PGE denies that Evergreen's reliance on PGE's letter was foreseeable in light of the fact that Evergreen provided PGE with inaccurate, incomplete, and/or misleading information.
32. PGE has insufficient information or knowledge to admit or deny the allegations in paragraph 32 of the Complaint, and therefore denies the same.
33. PGE denies the allegations in paragraph 33.

**Count 4 – Failure to Properly Determine a Facility's Eligibility for a Schedule 201 PPA**

34. The allegations in paragraph 34 consist of Complainant's quotation of Order No. 05-584 to which no response is required.
35. The allegations in paragraph 35 consist of Complainant's characterization and partial quotation of PGE's Schedule 201 to which no response is required.
36. PGE denies the allegations in paragraph 36.
37. PGE denies the allegations in paragraph 37.

**Count 5 – Failure to Properly Determine the 15-Year Fixed Price Period**

38. The allegations contained in paragraph 38 constitute legal conclusions or Complainant's characterization of Order No. 05-584 to which no response is required.
39. PGE admits that Evergreen requested fixed prices for 15 years. PGE has no recollection that Evergreen made an oral request that the 15-year period commence on January 1, 2018, and PGE is in the process of determining whether a written request was made. Therefore, PGE denies this allegation at this time.
40. PGE admits that it calculates the term of a PPA from the date of execution.
41. PGE denies the allegations in paragraph 41.

42. PGE denies the allegations in paragraph 42. PGE acted consistent with the law and Commission policy in specifying that the term of a PPA begins on the date of execution.<sup>1</sup>

### **VIII. Evergreen's Prayer for Relief**

43. PGE denies the allegations in paragraph 43.  
44. PGE denies the allegations in paragraph 44.  
45. PGE denies the allegations in paragraph 45.  
46. PGE denies the allegations in paragraph 46.  
47. PGE denies the allegations in paragraph 47.  
48. PGE denies the allegations in paragraph 48.

### **IX. PGE's Counterclaim**

In support of PGE's Counterclaim, PGE alleges as follows:

49. Evergreen requested a Standard Renewable Off-System Non-Variable PPA on November 15, 2016. Over the next several months, PGE requested and Evergreen provided additional information about the facility. Based on the information provided by Evergreen, PGE provided Evergreen with a draft PPA. Evergreen then requested an executable PPA, which—after resolving an issue regarding Evergreen's requested point of delivery—PGE provided.
50. Evergreen's application for a PPA stated that the nameplate capacity of the turbine generator was 10 MW. During the final stages of review prior to executing the PPA with Evergreen, PGE became aware of an unexplained discrepancy regarding the nameplate capacity of Evergreen's facility. PGE promptly notified Evergreen about its concerns and requested additional information and explanation. However, because an update to PGE's avoided cost prices—which would decrease the prices available to Evergreen—was about to take effect, PGE agreed to execute the PPA with Evergreen with the specific

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<sup>1</sup> This issue already is fully briefed and before the Commission for determination in Docket No. UM 1805.





**X. PGE's Prayer for Relief**

PGE respectfully requests that the Commission deny Evergreen's requested relief and dismiss the Complaint. PGE also requests that the Commission find that Evergreen is in default under the executed PPA, such that PGE may terminate the PPA and is entitled to the remedies provided for therein. In addition, PGE requests that the Commission grant such other relief as the Commission deems appropriate.

Dated June 30, 2017

**MCDOWELL RACKNER & GIBSON PC**



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