

**BEFORE THE PUBLIC UTILITY COMMISSION**

**OF OREGON**

**UM 1859**

FALLS CREEK HYDRO LIMITED  
PARTNERSHIP,

Complainant,

vs.

PORTLAND GENERAL ELECTRIC  
COMPANY,

Defendant.

COMPLAINANT’S MOTION TO  
COMPEL

**I. INTRODUCTION**

Pursuant to OAR 860-001-0500(7), ORCP 46A(2), and OAR 860-001-0000(1), Complainant, Falls Creek Hydro Limited Partnership (“Falls Creek Hydro”), moves the Oregon Public Utility Commission (“Commission”) for an order compelling Defendant, Portland General Electric Company (“PGE”), to provide a response and produce the documents requested in Falls Creek Hydro’s data requests numbers 8 and 9.

This case could have been avoided if PGE simply executed the draft power purchase agreement (“PPA”) that Falls Creek Hydro provided in its application and request for a standard renewable off-system PPA on June 6, 2017.<sup>1</sup> That PPA contained all of the terms that Falls Creek Hydro asserts it is entitled to in this proceeding, including the appropriate minimum net output and renewable rates. Instead of executing that PPA or properly replicating that information into a new PPA, PGE unilaterally changed a number of terms, including swapping

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<sup>1</sup> See First Amended Complaint at ¶¶ 20-22 and Attachments C and D to First Amended Complaint.

out that standard renewable PPA with a “non-renewable” PPA.<sup>2</sup> PGE concealed all of these changes from Falls Creek Hydro. Falls Creek Hydro discovered some but not all of the change in the contracting process. All Falls Creek Hydro wants is the PPA with the exact same rates, terms and conditions that it originally provided and requested when it first provided all the required information to PGE on June 6, 2017, more than three months before prices dropped on September 18, 2017.

One of the key disputes in this case is whether Falls Creek Hydro is entitled to PGE’s Schedule 201 standard renewable rates as opposed to the non-renewable rates. Falls Creek Hydro is legally entitled to PGE’s Schedule 201 renewable rates because it is a qualifying facility (“QF”) generating electricity from a renewable resource that may be used to comply with the renewable portfolio standard (“RPS”). PGE, however, asserts that Falls Creek Hydro is not entitled to the renewable rates because PGE states that it “cannot use” the environmental attributes from the Falls Creek Hydro project for RPS compliance.<sup>3</sup>

PGE is wrong and is withholding relevant information that may allow Falls Creek Hydro to disprove PGE’s claims. Under the RPS, low-impact hydro is treated different from other renewable resources. Specifically, there is an annual cap of 40 average megawatts of non-utility-

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<sup>2</sup> See First Amended Complaint at ¶¶ 35-36 and Attachments G and H to First Amended Complaint; see also PGE’s Answer at ¶¶ 35-36.

<sup>3</sup> See PGE’s Response to Falls Creek Hydro’s Data Request No. 5 (attached as Attachment A) (“Currently, while PGE understands that Falls Creek Hydro is a certified low impact hydroelectric facility, PGE does not believe that entitles Falls Creek Hydro to a Standard Renewable PPA if PGE cannot utilize the environmental attributes from the project to satisfy its RPS obligations.”); see also PGE’s Answer at ¶ 204 (“Complainant is not eligible for a Renewable Standard PPA because it appears PGE cannot use the renewable attributes associated with the project to satisfy PGE’s Renewable Portfolio Standard requirements.”).

owned, low-impact hydro that may be used to comply with the RPS.<sup>4</sup> Therefore, PGE's argument that it "cannot use" Falls Creek Hydro's environmental attributes for RPS compliance is a factual dispute. The specific issue is whether PGE has contracted for sufficient other non-utility owned, low-impact hydro resources such that it has or will meet or exceed the cap over the term of Falls Creek Hydro's PPA. Requests number 8 and 9 are particularly relevant to this central issue in the case because they ask about PGE's expected contracts with other low-impact hydro facilities and PGE's banked renewable energy certificates ("RECs") attributable to low-impact hydro resources.

A second key dispute in this case is whether PGE intentionally made false representations to Falls Creek Hydro or otherwise engaged in inequitable and discriminatory conduct that would entitle Falls Creek Hydro to the contract terms and conditions that Falls Creek Hydro originally requested. If PGE was willing to provide other low impact hydro facilities renewable PPAs, then it undermines and directly contradicts its stated positions in this proceeding as well as showing that PGE has discriminated against Falls Creek Hydro. PGE's communications and actions with other QFs is also relevant to determine whether PGE's actions to intentionally mislead and treat Falls Creek Hydro inequitably was an isolated event or whether it was part of policy to circumvent its obligations under the Public Utility Regulatory Policies Act ("PURPA"). Request number 8 specifically asks whether PGE made the same or different representations to other similarly situated low-impact hydro facilities, and is, therefore, also particularly relevant to this key dispute.

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<sup>4</sup> See ORS 469A.025(5)(b).

## II. BACKGROUND

Falls Creek Hydro is a hydro facility with a 4.1 nameplate capacity located in Linn County, Oregon that has been operating since 1984. The project received the Oregon Governor's Energy Award in 1986 because of its environmental compatibility and was the first project in Oregon certified by the Low Impact Hydropower Institute, which means that it meets the most stringent environmental standards. Falls Creek Hydro has an expected physical life of another 70 years and is the quintessential non-utility owned renewable resource that would not exist but for PURPA.<sup>5</sup>

Falls Creek Hydro sought a standard renewable PPA from PGE and formally provided PGE with complete information, including a filled-out Commission-approved renewable PPA, on June 6, 2017. PGE delayed and obstructed progress towards completion of a PPA by requiring Falls Creek Hydro to designate a point of delivery prior to providing a draft PPA, by responding to Falls Creek Hydro with a non-renewable PPA, by omitting Falls Creek Hydro's minimum net output information, by inserting the wrong nameplate capacity and the wrong county, and by requiring Falls Creek Hydro to endure additional unnecessary contracting phases<sup>6</sup> Falls Creek Hydro filed its complaint on August 7, 2017 after two months of disputes with PGE,

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<sup>5</sup> Additional information on Falls Creek Hydro can be found here: [https://democratherald.com/news/local/power-play-lebanon-fourth-graders-tour-hydroelectric-plant/article\\_314c3b11-d857-5fe2-b454-eb8538af8ca8.html](https://democratherald.com/news/local/power-play-lebanon-fourth-graders-tour-hydroelectric-plant/article_314c3b11-d857-5fe2-b454-eb8538af8ca8.html) and <https://www.facebook.com/FallsCreekHydroProject/>.

<sup>6</sup> See First Amended Complaint at ¶¶ 157-172. A narrative summary of PGE's actions can be read in Falls Creek Hydro's Comments to the PUC. In Re PGE Application to Update Schedule 201 Qualifying Facility Information, Docket No. UM 1728, Falls Creek Hydro Comments (Sept. 1, 2017).

and rates changed more than three months after negotiations began. After settlement discussions failed, Falls Creek Hydro filed its first amended complaint on April 6, 2018.

On May 16, 2018, Falls Creek Hydro sent PGE its first set of data requests in this matter including the following two data requests numbered 8 and 9:

8. Please provide all PPA requests and PGE's response for certified low impact hydroelectric facilities described in 469A.020(4)(b), including those that PGE has not executed? Please provide:
  - a. The name of the facility.
  - b. The expected average megawatts of electricity per year.
  - c. The expected contract term.
  - d. The dates during which PGE expects to acquire the renewable energy certificates.
  - e. For QFs, whether the seller apply for a Standard Non-Renewable PPA or a Standard Renewable PPA.
  - f. For QFs, whether PGE offered those sellers a Standard Non-Renewable PPA or a Standard Renewable PPA in draft, final, or executable form.
  - g. For QFs, whether those sellers requested a Renewable PPA but PGE provided a Non- Renewable PPA, did PGE inform the Seller that it was providing a Non-Renewable PPA.
  - h. For QFs that requested a Renewable PPA but PGE provided a Non-Renewable PPA, did PGE inform the Seller that it believed the facility was not eligible for a Renewable PPA?
  - i. In the alternative to providing the above information requested in this question, please provide the underlying documents containing the requested information.
9. Please provide a list of banked renewable energy certificates PGE currently owns that were generated by certified low impact hydroelectric facilities described in 469A.020(4)(b) including the following information:
  - a. The name of the generating facility,

- b. The vintage year,
- c. The expiration year, and
- d. The quantity.
- e. In the alternative to providing the above information requested in this question, please provide the underlying documents containing the requested information.

On May 30, 2018, PGE responded to Falls Creek Hydro's data request number 8 as follows:

PGE objects to this request on the grounds that the information requested is not relevant to this proceeding, as the only PPA request that is at issue in this proceeding is the Falls Creek request.<sup>7</sup>

PGE did not provide any response or objection to data request number 9. In PGE's May 30, 2018 email enclosing its data responses, PGE specifically states "[p]lease find attached Portland General Electric Company's response to Falls Creek Hydro's Data Requests 1-8, and 10-18." Noticeably absent is any response to data request number 9.

On June 15, 2018, Falls Creek Hydro reiterated to PGE that request number 8 is relevant to this proceeding and requested that PGE provide a response to request number 9. Falls Creek Hydro followed up with PGE's counsel via telephone on at least two subsequent occasions. PGE has still failed to respond.

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<sup>7</sup> PGE's Response to Falls Creek Hydro's Data Request No. 8 (Attached hereto as attachment A).

### III. MOTIONS

Falls Creek Hydro hereby moves this Commission for:

1. An Order compelling PGE to respond in full and provide the documents requested in Falls Creek Hydro's data request number 8; and
2. An Order compelling PGE to respond in full and provide the documents requested in Falls Creek Hydro's data request number 9.

### IV. LEGAL STANDARD

In a proceeding before the Commission, discovery is a matter of right, and the Commission follows the Oregon rules of discovery to the extent not inconsistent with the Commission's administrative rules.<sup>8</sup> Under the ORCP, a party is entitled to discovery of any document that is relevant to a claim or defense.<sup>9</sup> Specifically, "parties may inquire regarding any matter, not privileged, which is relevant to the claim or defense of the party seeking discovery or to the claim or defense of any other party." The Commission's rules also provide parties with the right to written interrogatories.<sup>10</sup> Relevant evidence must: 1) tend to make the existence of any fact at issue in the proceedings more or less probable than it would be without the evidence; and 2) be of the type commonly relied upon by reasonably prudent persons in the conduct of

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<sup>8</sup> OAR 860-001-0000(1); OAR 860-001-0500; In Re Pacific Power & Light, dba PacifiCorp, Docket No. UE 177, Order No. 08-003 at 2 (2008); In Re Portland General Elec. Co., Docket No. UE 102, Order No. 98-294 at 3 (1998) ("[d]iscovery is a right afforded to parties in a legal proceeding by our rules and by the Oregon Rules of Civil Procedure, which we follow except where our rules differ").

<sup>9</sup> ORCP 36(B).

<sup>10</sup> OAR 860-001-0540(1).

their serious affairs.<sup>11</sup> Finally, the Commission expects utilities to err “on the side of producing too much information . . . rather than too little.”<sup>12</sup>

## V. ARGUMENT

Both of the data requests at issue in this motion would tend to make the existence of one or more facts at issue in this proceeding more or less probable, and are of the type of evidence commonly relied upon by a reasonably prudent person in the conduct of their serious affairs. Therefore, both are relevant to this case and the Commission should compel PGE to respond.

### A. **The Discovery Requested in Data Requests 8 and 9 Would Tend to Make PGE’s Defense that it “Cannot Use” the RECs Generated by Falls Creek Hydro More or Less Probable**

The data related to PGE’s low-impact hydro banked RECs and expected PPAs is not only relevant but essential to proving or disproving PGE’s defense that it “cannot use” the RECs generated by Falls Creek Hydro. PGE asserts as its “Third Affirmative Defense” that:

PGE provided Complainant with a Standard Off-System Non-Variable Power Purchase Agreement or “Standard PPA” rather than a Standard Renewable Off-System Non-Variable Power Purchase Agreement or “Renewable Standard PPA” because Complainant is not eligible for a Renewable Standard PPA because it appears PGE **cannot use** the renewable attributes associated with the project to satisfy PGE’s Renewable Portfolio Standard requirements.<sup>13</sup>

Whether PGE can or cannot use the renewable attributes associated with the Falls Creek Hydro project is an issue of fact because it depends on whether PGE has contracted for sufficient other low-impact hydro resources. Under Oregon’s RPS, there is an aggregate annual 40 average megawatt cap on non-utility owned, low-impact hydroelectric resources that may be used for

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<sup>11</sup> OAR 860-001-0450(1).

<sup>12</sup> Re Portland General Electric Co., Docket No. UE 196, Order No. 09-046 at 8 (Feb. 5, 2009).

<sup>13</sup> PGE’s Answer at ¶ 204 (emphasis added).



RPS compliance.<sup>14</sup> Therefore, in order to determine whether a utility has met or exceeded this cap and thus whether the utility can or cannot use additional RECs, depends on the utility's contracts with other low-impact hydro facilities subject to the cap, or other sources of RECs such as PGE's REC bank or potential but not finalized PPAs. Falls Creek Hydro already requested and PGE provided information on contracts with other low-impact hydro facilities currently in effect when Falls Creek Hydro submitted its PPA request.<sup>15</sup> There was only one PPA in effect at that time which terminates in 2024.<sup>16</sup> Since Falls Creek Hydro's PPA would go through 2034 and PGE has the ability to bank RECs for use in future years, it is unlikely that this contract alone is sufficient proof that PGE "cannot use" Falls Creek Hydro's RECs for RPS compliance. Therefore, it is essential to investigate other sources of low-impact hydro RECs such as from PGE's REC bank or contracts in negotiation but not yet executed. Data requests 8 and 9 ask for exactly that.

Data request 9 is essential to proving or disproving PGE's defense. It asks PGE to provide a list of banked RECs generated by certified low impact hydroelectric facilities that are eligible to be used for RPS compliance and subject to the 40 average megawatt cap. Specifically, it asks PGE to provide the name of the generating facility, vintage year of the RECs, expiration year, and quantity of RECs. If PGE has no banked RECs attributable to non-utility owned, low-impact hydro resources, then it becomes less probable that PGE has met or exceeded its cap or otherwise "cannot use" Falls Creek Hydro's RECs. Similarly, if PGE has

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<sup>14</sup> ORS 469A.025(5)(b).

<sup>15</sup> PGE's Responses to Falls Creek Hydro's Data Requests Nos. 6 and 7 (attached as Attachment A).

<sup>16</sup> See id.

some RECs of this type, but they are of the type with no expiration date, then it also becomes less probable that PGE “cannot use” Falls Creek Hydro’s RECs. This is because those indefinite RECs could be saved and used in a later year. On the other hand, if PGE has an abundance of banked low-impact hydro RECs that must be used during the period of Falls Creek Hydro’s PPA, then it may become more probable that PGE “cannot use” Falls Creek Hydro’s RECs.

Therefore, the discovery requested in data request 9 is not only relevant to PGE’s defense but essential.

PGE has not provided any response or even an objection to data request 9. It would be inequitable to allow PGE to assert such a defense but not permit Falls Creek Hydro access to the data that would prove or disprove that defense. As such, the Commission should compel PGE to respond and provide the requested data.

Data request 8 also asks for information relevant to PGE’s defense. It asks PGE to provide information regarding its expected PPAs with other low-impact hydroelectric facilities. Specifically, it asks for the name of the facility, the expected average megawatts per year, the expected contract term, and the dates during which PGE expects to acquire the RECs. This information may be relevant to whether PGE believed that Falls Creek Hydro was entitled a renewable contract, or if this was simply another PGE tactic to delay and obfuscate progress towards execution of a PPA. In addition, similar to the banked RECs, if PGE has received no other PPA requests from low-impact hydroelectric facilities then it becomes less probable that PGE has met or exceeded its cap or otherwise “cannot use” Falls Creek Hydro’s RECs. Similarly, if PGE has received other PPA requests, but the projects are expected to generate only a small number of RECs, then it also becomes less probable that PGE “cannot use” Falls Creek Hydro’s RECs because those RECs could be combined with Falls Creek Hydro’s and still not

exceed the cap. On the other hand, if PGE has an abundance of PPA requests from other low-impact hydro facilities or requests from large projects, then it may become more probable that PGE “cannot use” Falls Creek Hydro’s RECs. Therefore, the discovery requested in data request 8 is also relevant to PGE’s defense. As such, the Commission should also compel PGE to provide the requested data.

**B. The Discovery Requested in Data Request 8 Would Also Tend to Make Falls Creek Hydro’s Claim that PGE Engaged in Inequitable Conduct More or Less Probable and Would Tend to make PGE’s Conduct More or Less Egregious**

Whether PGE engaged in inequitable conduct and the degree of that inequitable conduct is an issue of fact relevant to Falls Creek Hydro’s claim for reformation of its contract.<sup>17</sup> In order to prove that it is entitled to reformation of its contract to include the renewable rate, Falls Creek Hydro may need to prove either a mutual mistake or a unilateral mistake on the part of Falls Creek Hydro and inequitable conduct on the part of PGE.<sup>18</sup> PGE denies that it made a

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<sup>17</sup> One of the legal arguments Falls Creek Hydro is making in this proceeding is that its partially executed PPA should be reformed under Oregon law. Even if Falls Creek Hydro has failed to meet the specific requirements for contract reformation, the Commission retains the inherent power to determine the terms and conditions associated with Falls Creek Hydro delivering its net output to PGE under the terms of a contract or legally enforceable obligation. This would include simply requiring PGE to enter into a contract based on the terms that Falls Creek Hydro initially requested on June 6, 2017 because PGE intentionally failed to provide Falls Creek Hydro with the PPA it requested.

<sup>18</sup> See Pioneer Res., LLC v. DR Johnson Lumber Co., 187 Or App 341, 364 (2003) (quoting Jensen v. Miller, 280 Or 225, 228-29 (1977)) (“To be entitled to reformation, a party must prove, by clear and convincing evidence, the following three elements: ‘(1) that there was an antecedent agreement to which the contract can be reformed; (2) that there was a mutual mistake or a unilateral mistake on the part of the party seeking reformation and inequitable conduct on the part of the other party; and (3) that the party seeking reformation was not guilty of gross negligence.’”).

mistake in providing Falls Creek Hydro a contract with non-renewable rates.<sup>19</sup> Therefore, in order to prove its claim, Falls Creek Hydro may need to show that PGE engaged in inequitable conduct. “[T]he range of misconduct termed ‘inequitable’ is quite broad, varying from the most egregious and concrete, such as fraud, to more amorphous and somewhat less egregious misconduct, sometimes described as ‘overreaching’ or ‘sharp practice.’”<sup>20</sup> For example,

a party’s explicit or *implicit* misrepresentation about a material term of a written agreement can constitute inequitable conduct. See Restatement at § 166 (if one party’s “fraudulent misrepresentation as to the contents or effect of a writing evidencing or embodying in whole or in part an agreement” induces the other party’s assent to that agreement, the court “may reform the writing to express the terms of the agreement as asserted”). That principle encompasses not only express misrepresentations *but also circumstances in which one party knows that the other party is materially mistaken as to a writing’s scope and effect, but remains silent, hoping to take advantage of the others’ mistake. Id.* at comment a (*the misrepresentation principle applies where “only one party is mistaken and the other, although aware of the mistake, says nothing to correct it. In that case his nondisclosure is equivalent to an assertion that the writing is as the other understands it to be.”*).<sup>21</sup>

Therefore, in this case Falls Creek Hydro may need to prove either that PGE acted with explicit fraudulent intent to induce Falls Creek Hydro’s assent to a non-renewable PPA or otherwise PGE’s knowledge that Falls Creek Hydro was mistaken in thinking the contract provided by PGE was a renewable contract and PGE’s failure to correct that mistake.

Data request 8 asks for information relevant to proving whether PGE acted inequitably and the degree of any inequitable conduct. PGE admits that it knew Falls Creek Hydro requested

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<sup>19</sup> PGE’s Answer at ¶ 45 (“PGE admits that it intended to provide Complainant with the Standard Off-System Non-Variable PPA and denies that it provided the document by mistake”).

<sup>20</sup> Pioneer at 375 (quoting Murray v. Laugsand, 179 Or App 291, 302 (2002)).

<sup>21</sup> Pioneer at 375-76 (quoting Restatement (Second) of Contracts § 166) (emphasis added).

a renewable contract.<sup>22</sup> PGE's letters show that it failed to inform Falls Creek Hydro that it did not think Falls Creek Hydro was eligible for a renewable contract or at least that it was not providing one, but PGE simply swapped out the contract.<sup>23</sup>

This conduct is inequitable to at least some degree; however, depending on how PGE engaged with other similarly situated low-impact hydro facilities, PGE's conduct here may tend to be more or less egregious. Data request 8 asks about those communications with other similarly situated facilities. Specifically, it asks for the name of the facility, the PPA request, PGE's response, whether the facility asked for a renewable or non-renewable PPA, whether PGE offered the facility a renewable or non-renewable PPA, and whether PGE specifically informed the facility that it was not providing a renewable PPA or that PGE believed the facility wasn't eligible for one.

For example, PGE may have received a request for a renewable PPA from another low-impact hydro facility but responded by informing that facility that PGE did not believe it to be eligible or at least pointing out that it was not providing the requested renewable PPA. With that context in mind, PGE's failure to inform Falls Creek Hydro here would tend to be more egregious and more likely to constitute "inequitable conduct" sufficient to entitle Falls Creek Hydro to reformation. Therefore, the information requested in data request 8 is relevant to this case and the Commission should compel PGE to produce that information.

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<sup>22</sup> PGE's Answer at ¶ 18 ("PGE admits that the Application requested a Standard Renewable Off-System Non-Variable PPA with the Schedule 201 Renewable Fixed Price Option.").

<sup>23</sup> See Attachments G, H, I, and J to the First Amended Complaint.

Alternatively, PGE's conduct could also be inequitable if PGE has a corporate policy of unilaterally making substantive changes to PPA requests but failing to inform the QFs. Falls Creek Hydro alleged that PGE has recently engaged in a comprehensive scheme evidenced by a pattern and practice of illegal behavior with the goal of not executing contracts with QFs. PGE employed a variety of tactics including intentionally revising contract requests and failing to inform QFs which result in unreasonable delays, especially when avoided cost rates are scheduled to drop. Falls Creek Hydro is entitled to submit evidence to determine if PGE's actions in this proceeding are an isolated event, or if Falls Creek Hydro was merely caught up in PGE's overall plan to deny QFs their legally entitled rights to timely enter into contracts with terms and conditions of their choosing.

**C. Data Request 8 Can Demonstrate that PGE Unlawfully Discriminated Against Falls Creek Hydro**

As further support for its claims that PGE engaged in fraudulent or inequitable conduct, Falls Creek Hydro may demonstrate that PGE is guilty of unjust discrimination. PGE must not give undue or unreasonable preference or advantage to any person and must not subject any person to undue or unreasonable prejudice or disadvantage in any respect or else PGE is guilty of unjust discrimination.<sup>24</sup>

The information requested in data request 8 is relevant to whether PGE subjected Falls Creek Hydro to undue or unreasonable prejudice or disadvantage, or whether PGE gave other similarly situated QFs undue or unreasonable preference or advantage. Specifically, data request 8 asks for information related to how PGE treated other low-impact hydro facilities including

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<sup>24</sup> ORS 757.325.

whether the facilities similarly requested a renewable PPA like Falls Creek Hydro, and whether PGE treated those facilities similarly by simply providing a non-renewable PPA without informing those facilities that it wasn't providing a renewable PPA. Data request 8 also asks whether PGE eventually provided a renewable PPA to other similarly situated facilities. In this case, PGE has continued to assert that Falls Creek Hydro is not eligible for renewable rates because PGE "cannot use" Falls Creek Hydro's RECs. If PGE has offered a renewable PPA to other low-impact hydro facilities then presumably PGE has determined that it *can* use additional low-impact hydro RECs, and therefore, its assertions in this case would simply be an effort to prejudice and disadvantage Falls Creek Hydro. Alternatively, if PGE still believed that it "cannot use" any low-impact hydro RECs but offered a renewable PPA to other low-impact hydro facilities, then PGE has given undue or unreasonable preference or advantage to those other facilities. Therefore, because the information produced in response data request 8 would tend to make it more or less probably that PGE unjustly discriminated against Falls Creek Hydro, it is relevant to this case and should be compelled.

**D. Data Requests 8 and 9 are the Type of Evidence Commonly Relied Upon by Reasonably Prudent People in the Conduct of their Serious Affairs**

The data requested in requests 8 and 9 are relevant and essential to the facts at issue in this case and it is difficult to discern what other types of evidence would be more appropriate.

The data requested in request number 9 is essentially the same as data PGE is required to submit in its annual RPS compliance report. Each year PGE prepares an RPS Compliance Report detailing how it is meeting its RPS target.<sup>25</sup> Among other things, PGE reports on the

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<sup>25</sup> See e.g. Re PGE 2017 RPS Compliance, Docket No. UM 1958.

number of RECs acquired in the compliance year and used for compliance, and the number of banked RECs used for compliance including the vintage year of the RECs.<sup>26</sup> The Commission and parties rely on this data to determine whether PGE has met its RPS target. The data requested in request number 9 is essentially the same and requested for a similar purpose: to determine whether PGE has met its low-impact hydro cap under the RPS. Therefore, the data requested in request number 9 is of the type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs.

Additionally, the data requested in request number 8 is very similar to data the Commission requested from PGE in Docket No. UM 1854 and one of the only ways Falls Creek Hydro can discern PGE's intent. In UM 1854, the Commission required PGE to submit compliance reports detailing qualifying facility contracting activity to ensure that PGE adheres to the required process.<sup>27</sup> Each report required PGE to disclose milestones in the contracting process with each QF that seeks to enter a contract with PGE but did not yet have an executed contract.<sup>28</sup> Here, Falls Creek Hydro seeks information on the RECs PGE may acquire from facilities that are expected to sell to PGE but that don't have a contract yet. This data is very similar to the data requested in UM 1854 but just have a little more detail into the specific facts at issue here. Further, while Falls Creek Hydro may not have relied on PGE's comments to other facilities in its negotiation with PGE, a reasonably prudent person looking at those comments

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<sup>26</sup> Re PGE 2017 RPS Compliance, Docket No. UM 1958, PGE 2017 RPS Compliance Report Initial Filing (June 1, 2018).

<sup>27</sup> Re PGE Application to Lower the Standard Price and Standard Contract Eligibility Cap for Solar Qualifying Facilities, Docket No. UM 1854, Order No. 17-310 at 5 (Aug., 18, 2017).

<sup>28</sup> Id.



could discern whether PGE acted with more ill-intent towards Falls Creek Hydro than it did towards those other facilities. Therefore, the data requested in response number 8 is also the type of evidence that a reasonably prudent person would rely on.

## VI. CONCLUSION

In sum, the evidence requested by Falls Creek Hydro in data requests numbers 8 and 9 are relevant because they would tend to make critical facts at issue in this case (whether PGE can or cannot use Falls Creek Hydro's RECs for RPS compliance, and whether PGE acted fraudulently or inequitably in its dealings with Falls Creek Hydro) more or less probable, and are of the type of evidence that a reasonably prudent person would rely on in the conduct of their serious affairs. PGE has failed to respond to these data requests. As such, the Commission should compel PGE to respond and provide the requested documents.

Dated this 2nd day of July 2018.

Respectfully submitted,



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Of Attorneys for Falls Creek Hydro Limited  
Partnership

**Attachment A**

**Complainants' Motion to Compel**

May 30, 2018

TO: Irion A. Sanger  
Sanger Law, PC

FROM: Karla Wenzel  
Manager, Pricing and Tariffs

**PORTLAND GENERAL ELECTRIC  
UM 1859  
PGE Response to Falls Creek Hydro Limited Partnership Data Request No. 5  
Dated May 16, 2018**

**Request:**

**Does PGE agree that Falls Creek Hydro is a certified low impact hydroelectric facility described in 469A.020(4)(b)?**

**Response:**

Based on the information provided by the Seller within the submitted Initial Information Request form (including attachments) dated 6/14/17, PGE was unable to determine whether Falls Creek Hydro was a certified low impact hydroelectric facility. Currently, while PGE understands that Falls Creek Hydro is a certified low impact hydroelectric facility, PGE does not believe that entitles Falls Creek Hydro to a Standard Renewable PPA if PGE cannot utilize the environmental attributes from the project to satisfy its RPS obligations.

May 30, 2018

TO: Irion A. Sanger  
Sanger Law, PC

FROM: Karla Wenzel  
Manager, Pricing and Tariffs

**PORTLAND GENERAL ELECTRIC  
UM 1859  
PGE Response to Falls Creek Hydro Limited Partnership Data Request No. 6  
Dated May 16, 2018**

**Request:**

**Please provide copies of all power purchase agreements that PGE had in effect on June 6, 2017 for the purchase of electricity generated by certified low impact hydroelectric facilities described in 469A.020(4)(b).**

**Response:**

PGE objects that this request is overly broad and unduly burdensome. Notwithstanding and without waiving this objection, PGE responds as follows:

As of June 6, 2017, PGE did not have any executed Schedule 201 or Schedule 202 PPAs which provided PGE with certified low impact hydro RECs.

As of June 6, 2017, PGE had a long term power purchase obligation for approximately 54 MWa of output.

May 30, 2018

TO: Irion A. Sanger  
Sanger Law, PC

FROM: Karla Wenzel  
Manager, Pricing and Tariffs

**PORTLAND GENERAL ELECTRIC  
UM 1859  
PGE Response to Falls Creek Hydro Limited Partnership Data Request No. 7  
Dated May 16, 2018**

**Request:**

**For each facility that PGE purchases electricity from that is generated by certified low impact hydroelectric facilities described in 469A.020(4)(b), please provide:**

- a. The name of the facility,**
- b. The average megawatts of electricity per year,**
- c. The date purchases began under the current power purchase agreement,**
- d. The termination date of the power purchase agreement, and**
- e. The dates during which PGE is acquiring renewable energy certificates.**

**Response:**

The following terms are from the power purchase obligation mentioned in PGE's response to Falls Creek Hydro Limited Partnership Data Request No. 6:

- a. PGE omits the name of the facility.
- b. Three year rolling average based on billing statements (2015 through 2017): 54 MWa
- c. 1/1/2015
- d. 12/31/2024
- e. Entire term of the purchase obligation.

May 30, 2018

TO: Irion A. Sanger  
Sanger Law, PC

FROM: Karla Wenzel  
Manager, Pricing and Tariffs

**PORTLAND GENERAL ELECTRIC  
UM 1859  
PGE Response to Falls Creek Hydro Limited Partnership Data Request No. 8  
Dated May 16, 2018**

**Request:**

**Please provide all PPA requests and PGE's response for certified low impact hydroelectric facilities described in 469A.020(4)(b), including those that PGE has not executed? Please provide:**

- a. The name of the facility.**
- b. The expected average megawatts of electricity per year.**
- c. The expected contract term.**
- d. The dates during which PGE expects to acquire the renewable energy certificates.**
- e. For QFs, whether the seller apply for a Standard Non-Renewable PPA or a Standard Renewable PPA.**
- f. For QFs, whether PGE offered those sellers a Standard Non-Renewable PPA or a Standard Renewable PPA in draft, final, or executable form.**
- g. For QFs, whether those sellers requested a Renewable PPA but PGE provided a Non-Renewable PPA, did PGE inform the Seller that it was providing a Non-Renewable PPA.**
- h. For QFs that requested a Renewable PPA but PGE provided a Non-Renewable PPA, did PGE inform the Seller that it believed the facility was not eligible for a Renewable PPA?**
- i. In the alternative to providing the above information requested in this question, please provide the underlying documents containing the requested information.**

**Response:**

PGE objects to this request on the grounds that the information requested is not relevant to this proceeding, as the only PPA request that is at issue in this proceeding is the Falls Creek request.