

BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UM 1860

Served electronically at Salem, Oregon, 8/7/17, to:

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Re: UM 1860, Complainant RED PRAIRIE SOLAR, LLC
vs. PORTLAND GENERAL ELECTRIC COMPANY, Respondent

Red Prairie Solar, LLC has filed a complaint against Portland General Electric. A copy of the complaint is attached and served on Respondent, under ORS 756.512(1). The Commission has assigned Docket No. UM 1860 to this complaint. Please use this number whenever you refer to this case.

The Public Utility Commission must receive an Answer from the Respondent or their attorney by August 28, 2017, under OAR 860-001-0400(4)(a). A copy must be served on the complainant.

After the filing of the answer, the matter will be set for hearing and you will be notified of the time and place.

PUBLIC UTILITY COMMISSION OF OREGON



Cheryl Walker
Administrative Specialist 2
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Attachments: Complaint
Notice of Contested Case Rights and Procedures

NOTICE OF CONTESTED CASE RIGHTS AND PROCEDURES

Oregon law requires state agencies to provide parties written notice of contested case rights and procedures. Under ORS 183.413, you are entitled to be informed of the following:

Hearing: The time and place of any hearing held in these proceedings will be noticed separately. The Commission will hold the hearing under its general authority set forth in ORS 756.040 and use procedures set forth in ORS 756.518 through 756.610 and OAR Chapter 860, Division 001. Copies of these statutes and rules may be accessed via the Commission's website at www.puc.state.or.us. The Commission will hear issues as identified by the parties.

Right to Attorney: As a party to these proceedings, you may be represented by counsel. Should you desire counsel but cannot afford one, legal aid may be able to assist you; parties are ordinarily represented by counsel. The Commission Staff, if participating as a party in the case, will be represented by the Department of Justice. Generally, once a hearing has begun, you will not be allowed to postpone the hearing to obtain counsel.

Administrative Law Judge: The Commission has delegated the authority to preside over hearings to Administrative Law Judges (ALJs). The scope of an ALJ's authority is defined in OAR 860-001-0090. The ALJs make evidentiary and other procedural rulings, analyze the contested issues, and present legal and policy recommendations to the Commission.

Hearing Rights: You have the right to respond to all issues identified and present evidence and witnesses on those issues. *See* OAR 860-001-0450 through OAR 860-001-0490. You may obtain discovery from other parties through depositions, subpoenas, and data requests. *See* ORS 756.538 and 756.543; OAR 860-001-0500 through 860-001-0540.

Evidence: Evidence is generally admissible if it is of a type relied upon by reasonable persons in the conduct of their serious affairs. *See* OAR 860-001-0450. Objections to the admissibility of evidence must be made at the time the evidence is offered. Objections are generally made on grounds that the evidence is unreliable, irrelevant, repetitious, or because its probative value is outweighed by the danger of unfair prejudice, confusion of the issues, or undue delay. The order of presenting evidence is determined by the ALJ. The burden of presenting evidence to support an allegation rests with the person raising the allegation. Generally, once a hearing is completed, the ALJ will not allow the introduction of additional evidence without good cause.

Record: The hearing will be recorded, either by a court reporter or by audio digital recording, to preserve the testimony and other evidence presented. Parties may contact the court reporter about ordering a transcript or request, if available, a copy of the audio recording from the Commission for a fee set forth in OAR 860-001-0060. The hearing record will be made part of the evidentiary record that serves as the basis for the Commission's decision and, if necessary, the record on any judicial appeal.

Final Order and Appeal: After the hearing, the ALJ will prepare a draft order resolving all issues and present it to the Commission. The draft order is not open to party comment. The Commission will make the final decision in the case and may adopt, modify, or reject the ALJ's recommendation. If you disagree with the Commission's decision, you may request reconsideration of the final order within 60 days from the date of service of the order. *See* ORS 756.561 and OAR 860-001-0720. You may also file a petition for review with the Court of Appeals within 60 days from the date of service of the order. *See* ORS 756.610.

1 federal PURPA statutes. PGE has refused to finalize or execute a power purchase
2 agreement (“PPA”) with Red Prairie Solar.

3 Red Prairie Solar has formed a legally enforceable obligation because it has been
4 ready, willing, and able to sign a PPA with PGE since at least July 27, 2017, and has
5 repeatedly and unequivocally committed itself to sell the net output to PGE at the
6 Schedule 201 avoided cost rates and standard PPA terms and conditions that are currently
7 in effect. This includes Red Prairie Solar obligating itself to provide power or be subject
8 to penalty pursuant to the standard PPA terms and conditions for failing to deliver energy
9 on the scheduled commercial on-line date. PGE should be required to execute a PPA
10 with Red Prairie Solar because the establishment of a legally enforceable obligation turns
11 on Red Prairie Solar’s commitment, and not PGE’s actions.

12 Red Prairie Solar has formed a legally enforceable obligation despite PGE’s
13 failure to execute a PPA because PGE has violated PURPA, the Commission’s and
14 FERC’s rules and policies, and its own Schedule 201. PGE’s actions that have sought to
15 prevent Red Prairie Solar from forming a legally enforceable obligation include, but are
16 not limited to: 1) delaying the PPA negotiation process; 2) seeking interim relief to
17 prevent Red Prairie Solar from being able to execute a PPA;¹ 3) refusing to inform Red
18 Prairie Solar that it was going to make or had made its Solar Limitation Filing;² 4)

¹ Specifically, PGE has proposed to lower the size threshold for standard contract prices to 2 to 3 megawatts (“MW”) and impose a permanent lifetime cap on any owner that prevents them from even requesting more than 10 MW of standard contract QF projects (“Solar Limitation Filing”). PGE has sought interim relief to make the Solar Limitation Filing retroactive to June 30, 2017. If granted, then these restrictions could apply to Red Prairie Solar because it is more than 2 MW and its owner has requested more than 10 MW of QF projects.

² PGE’s purpose in not informing Red Prairie Solar was to ensure that Red Prairie Solar would not complete and execute a PPA prior to June 30, 2017. PGE

1 seeking an early rate effective date for its post Integrated Resource Plan avoided cost rate
2 update;³ 5) failing to inform Red Prairie Solar seeking an early rate effective date for its
3 post Integrated Resource Plan avoided cost rate update; 6) stating that it was not willing
4 to provide Red Prairie Solar with an executable PPA or otherwise execute a PPA; 7)
5 refusing to provide an executable PPA or otherwise execute a PPA that should have been
6 provided;⁴ and 8) claiming that it no longer needs to comply with the law since it has
7 sought interim relief seeking to change the Commission's PURPA policies. PGE is
8 required to comply with Commission orders and policies, and cannot unilaterally refuse
9 to comply with the law or prevent Red Prairie Solar from forming a legally enforceable
10 obligation simply because it has sought, but not yet obtained, equitable relief seeking to
11 retroactively lower the solar size threshold and imposing a permanent lifetime cap on any
12 one owner requesting standard contract and rate PPAs.

decided sometime in early 2017 that it would attempt to delay the PPA negotiation process past June 30, 2017, and that it would refuse to provide an executable PPA, if it was able to delay negotiations past June 30, 2017. But for PGE keeping its plans a secret, Red Prairie Solar's PPA would have been more expeditiously processed and it could have been fully executed.

³ On August 4, 2017, PGE announced in its 2016 IRP that PGE will ask the Commission to change its current avoided cost rate process (which re-sets avoided cost rates only after approval of a new rate filing that is made 30 days after the IRP acknowledgment) to instead ensure that the avoided cost prices paid to QFs that enter into contracts or achieve a legally enforceable obligation after the Commission's acknowledgement will no longer to be eligible for the current rates ("August Early Rate Effective Date Request").

⁴ Red Prairie Solar has been working on obtaining a PPA for over three months, and has requested a final and executable PPA. Under FERC's policies and rules, a legally enforceable obligation can be effectuated in less than one month. Under the Commission's policies and Schedule 201, an executable contract can generally be provided in less than two months from initial request. In addition, Red Prairie Solar would have requested and obtained an executable PPA earlier, if PGE had provided advance notice of the May 1, 2017 avoided cost rate update, or its Solar Limitation Filing.

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8 In support of this Complaint, Red Prairie Solar alleges as follows:

9 **III. IDENTITY OF THE PARTIES**

10 1. PGE is an investor-owned public utility regulated by the Commission
11 under ORS Chapter 757. PGE is headquartered at 121 Southwest Salmon Street,
12 Portland, Oregon 97204.

13 2. Red Prairie Solar, a limited liability company organized under the laws of
14 Oregon, is the owner of the Red Prairie Solar Project and will be the seller of the net
15 output of the Red Prairie Solar Project. Red Prairie Solar's mailing address is Red Prairie
16 Solar, c/o TLS Capital, Inc., 3519 NE 15th Ave., #325, Portland, Oregon 97212.

17 **IV. APPLICABLE STATUTES AND RULES**

18 3. The Oregon statutes expected to be involved in this case include:
19 ORS 756.040-756.068, 756.500-756.558, 756.990, and 758.505-758.575. The Oregon
20 rules expected to be involved in this case include: OAR 860-001, and 860-029.

21 4. The federal statute expected to be involved in this case is PURPA, 16
22 United States Code ("USC") 824a-3. The federal rules expected to be involved in this
23 case include: 18 Code of Federal Regulations ("CFR") 292.101-292.602.

24 **V. JURISDICTION**

25 5. FERC has adopted regulations and policies governing utility purchases
26 from QFs under PURPA. 18 CFR 292.101-292.602. State regulatory agencies are
27 required to implement FERC's regulations. See 16 USC 824a-3(f); FERC v. Mississippi,

1 456 U.S. 742, 751, 102 S. Ct. 2126 (1982). FERC’s rules provide each QF with the right
2 to unilaterally create a legally enforceable obligation to sell its energy and capacity at
3 projected avoided cost rates in effect on the date that the QF obligates itself to sell energy
4 and capacity. 18 CFR 292.304(d)(2)(ii); FLS Energy Inc., 157 FERC ¶ 61,211 at PP 23-
5 25 (2016).

6 6. Oregon law also includes a requirement that a QF has the right to legally
7 obligate itself to sell its net output prior to the delivery of its net output. Specifically,
8 ORS 758.525(2)(b) provides: “At the option of the qualifying facility, exercised before
9 beginning delivery of the energy or energy and capacity, such prices may be based on . . .
10 [t]he projected avoided costs calculated at the time the legal obligation to purchase the
11 energy or energy and capacity is incurred.” Thus, the “obligation to purchase power is
12 imposed by law on a utility; it is not voluntarily assumed.” Snow Mountain Pine Co. v.
13 Maudlin, 84 Or. App. 590, 598, 734 P.2d 1366 (1987).

14 7. The Commission is the Oregon state agency that implements the state and
15 federal PURPA statutes. ORS 758.505(3); OAR 860-029-0001; Snow Mountain, 84 Or.
16 App. at 593. Public utilities are defined in ORS 758.505(7), and include PGE. Oregon
17 law provides that the “terms and conditions for the purchase of energy or energy and
18 capacity from a qualifying facility shall . . . [b]e established by rule by the commission if
19 the purchase is by a public utility.” ORS 758.535(2)(a). The Commission has the power
20 and jurisdiction to hear complaints by QFs against public utilities, including PGE. ORS
21 756.040, 756.500-756.558, and 758.505-758.555; OAR 860-001-0010(3), and 860-029-
22 0030.

23 VI. FACTUAL BACKGROUND

1 8. The Red Prairie Solar Project will be a 2.2 megawatt (“MW”) nameplate
2 solar generation facility located in Yamhill County, Oregon.

3 9. The Red Prairie Solar Project will interconnect with PGE.

4 10. Red Prairie Solar is owned by TLS Capital.

5 11. TLS Capital has previously submitted and executed standard PPAs with
6 PGE, including the Willamina Mill Solar Project.

7 12. The Willamina Mill Solar Project will be 2.2 MW nameplate solar
8 generation facility located in Polk County, Oregon.

9 13. The Willamina Mill Solar Project will interconnect with PGE.

10 14. Red Prairie Solar understood that PGE would make its annual avoided
11 cost rate update filing on May 1, 2017, but expected PGE’s avoided cost rates to change
12 in the end of June 2017.

13 15. Red Prairie Solar is aware that PGE’s integrated resource plan is
14 scheduled for acknowledgement at the end of August 2017, and expects PGE’s avoided
15 cost rates to be revised about two months later, or the end of October 2017.

16 16. Before May 1, 2017, PGE decided to prepare an application that would
17 update and lower its Schedule 201 prices and request Commission approval at the May
18 16, 2017 public meeting (“May 1 Update”).

19 17. On May 1, 2017, PGE filed its May 1 Update.

20 18. PGE chose not to inform QFs that it was planning to file its May 1 Update
21 and to seek an early effective date and approval at the May 16, 2017 public meeting.

22 19. On May 5, 2017, Red Prairie Solar initially contacted PGE and requested a
23 standard PPA.

1 20. PGE did not respond to Red Prairie Solar's initial contact.

2 21. On May 10, 2017, Red Prairie Solar again contacted PGE and requested a
3 standard PPA.

4 22. On June 2, 2017, Red Prairie Solar provided complete information to
5 obtain a standard PPA.

6 23. On June 16, 2016, TLS Capital inquired regarding its Willamina Mill
7 Solar facility and spoke with PGE regarding the maximum generation numbers. The
8 Willamina Mill Solar PPA was executed by PGE. TLS Capital inquired because PGE
9 offered no guidance regarding the maximum generation number, and informed PGE that
10 it would use 150% of the year 1 generation. PGE accepted this in the Willamina Mill
11 Solar facility without an inquiry.

12 24. On June 22, 2017, PGE did not provide Red Prairie Solar with a draft
13 standard PPA, instead responded with a letter requesting clarifying information regarding
14 the maximum generation.

15 25. TLS Capital submitted substantially the same type of information
16 regarding previous QFs' maximum generation, and PGE did not raise any other issues or
17 ask for any additional clarifying information, with the one exception of inquiring about
18 the maximum generation hourly profile.

19 26. PGE should have at least provided a draft PPA at this time because that
20 TLS Capital had submitted similar information using the exact same methodology and
21 obtained an executed PPA.

1 27. PGE should have provided a draft PPA because Red Prairie Solar had
2 provided all the required information under Schedule 201 and PGE's Initial Information
3 Request.

4 28. On June 28, 2017, Red Prairie Solar provided clarifying information
5 regarding the maximum generation profile.

6 29. On June 29, 2017, PGE responded that they received the additional
7 information and that by July 20, 2017 PGE will send either a draft standard PPA or a
8 request for any additional or clarifying information.

9 30. On or after May 1, 2017, PGE decided to prepare its Solar Limitation
10 Filing. This filing would propose to lower the eligibility cap for a QF to obtain standard
11 avoided cost prices from PGE from 10 MW to 3 MW, and declare that a solar QF project
12 with a capacity above 100 kilowatts ("kW") is not eligible for a standard contract or
13 standard prices from PGE if any owner of the solar QF project has requested or obtained
14 standard prices from PGE for more than 10 MW of solar QF capacity; or in the
15 alternative, lower to 2 MW the eligibility cap for a solar QF project to obtain prices from
16 PGE effective June 30, 2017.

17 31. PGE chose not to inform Red Prairie Solar that PGE intended to make the
18 Solar Limitation Filing.

19 32. PGE did not inform Red Prairie Solar and other QFs that PGE intended to
20 make the Solar Limitation Filing in order to ensure that Red Prairie Solar would not
21 execute a PPA before June 30, 2017.

22 33. Red Prairie Solar was materially prejudiced by PGE's failure to give
23 notice because, among other things, it prevented Red Prairie Solar from having the

1 opportunity to expedite its request and Red Prairie Solar would have processed its PPA
2 request more quickly if it had been aware that PGE intended to make the Solar Limitation
3 Filing.

4 34. On July 20, 2017, PGE did not send either a draft standard PPA or a
5 request for any additional or clarifying information.

6 35. On July 22, 2017, PGE sent a letter once again requesting additional or
7 clarifying information. The additional or clarifying information requested on July 22,
8 2017 was in relation to the year 1 generation profile, which was not inquired about or
9 asked to be clarified in PGE's first request for clarifying information on June 22, 2017.

10 36. On July 24, 2017, Red Prairie Solar responded to PGE requesting that
11 PGE provide a draft Standard PPA immediately and that PGE reduce the time for PGE to
12 provide the final draft PPA for each day of the delay. Red Prairie Solar pointed out that
13 there was no need for additional information because "Everything that was provided as
14 part of the IIR for Red Prairie Solar was the same material provided in previous IIRs for
15 other PPAs which TLS Capital has requested and which PGE deemed complete and
16 ultimately executed."

17 37. PGE ignored Red Prairie Solar's July 24, 2017 email.

18 38. On July 26, 2017, Red Prairie Solar again inquired about the status of its
19 draft PPA, and sent a follow up to email to confirm that the previous email was received
20 and request that PGE immediately provide a draft Standard PPA.

21 39. On July 26, 2017, PGE finally responded stating that they are waiting on
22 additional or clarifying information and that within 15 business days of receiving that
23 information, they would send either a draft Standard PPA or another request for

1 additional or clarifying information. It is not clear if PGE would have ever responded to
2 Red Prairie Solar's inquires if Red Prairie Solar had not followed up.

3 40. On July 27, 2017, almost two months after submitting all the required
4 information, Red Prairie Solar requested that PGE provide a final and executable PPA,
5 and was ready, willing, and able to sign a PPA.

6 41. Red Prairie may have committed and been ready, willing and able to
7 execute a PPA earlier, if PGE had not raised unreasonable objections and requests for
8 additional information.

9 42. On July 27, 2017, Red Prairie Solar explained why the year 1 hourly
10 generation profile should be acceptable to PGE.

11 43. On July 28, 2017, PGE responded by not providing an executable or draft
12 PPA, but again concerns regarding information in the Initial Information Request dated
13 June 28, 2017. PGE stated that it was struggling to understand Red Prairie Solar's
14 "Maximum Annual Net Output value in comparison to the Average Annual Net Output
15 value. This was a new issue that PGE had not previously raised.

16 44. On July 28, 2017, PGE did not clarify whether its separate concern
17 regarding the year 1 hourly generation profile is now acceptable to PGE.

18 45. On July 31, 2017, Red Prairie Solar noted that TLS Capital noted that it
19 previously submitted similar information was deemed acceptable to PGE, and provided
20 the example of the maximum generation numbers for the Willamina Mill Solar Facility
21 that PGE accepted without an inquiry.

22 46. On July 31, 2017, Red Prairie Solar stated that the only difference between
23 the Red Prairie Solar Facility and Willamina Mill Solar Facility is that PGE has requested

1 to change the Commission's policies regarding standard price and contract provisions on
2 June 30, 2017.

3 47. On July 31, 2017, Red Prairie Solar stated that PGE is raising
4 unreasonable and discriminatory questions and issues in an effort to delay the PPA
5 negotiation process so that it does not execute a PPA prior to a Commission order
6 potentially changing its policies.

7 48. On July 31, 2017, Red Prairie Solar requested an executable PPA from
8 PGE prior to the Commission issuing any orders in its Solar Limitation Filing. Red
9 Prairie Solar made it clear that it was again obligating itself to provide power or be
10 subject to penalty pursuant to the standard PPA terms and conditions for failing to deliver
11 energy on the scheduled commercial on-line date.

12 49. On August 1, 2017, PGE informed Red Prairie Solar that it did not agree
13 with all of Red Prairie Solar's characterizations, that is still seeks information that
14 validates the Maximum Annual Net Output value, and that PGE does not expect that both
15 parties will be in full agreement as to all terms and conditions until Red Prairie Solar
16 provides additional information that allows PGE to understand the value proposed by Red
17 Prairie Solar.

18 50. On August 1, 2017, PGE provided Red Prairie Solar a draft PPA.

19 51. On August 4, 2017, PGE announced in its 2016 IRP that PGE will ask the
20 Commission to change its current avoided cost rate process (which re-sets avoided cost
21 rates only after approval of a new rate filing that is made 30 days after the IRP
22 acknowledgment) to instead ensure that the avoided cost prices paid to QFs that enter into

1 contracts or achieve a legally enforceable obligation after the Commission's
2 acknowledgement will no longer to be eligible for the current rates.

3 52. On August 4, 2017, PGE confirmed that the usual Commission process is
4 PGE must file to update avoided cost prices within 30 days of the Commission's IRP
5 acknowledgement, and once PGE files, there is a 90-day review period before prices
6 become effective.

7 53. On August 4, 2017, PGE explained that only QFs that enter into a contract
8 or achieve a legally enforceable obligation prior to acknowledgement of the IRP will be
9 eligible for current avoided cost rates.

10 54. PGE chose not to inform Red Prairie Solar that PGE intended to make the
11 August Early Rate Effective Date Request.

12 55. PGE did not inform Red Prairie Solar that PGE intended to make the
13 August Early Rate Effective Date Request in order to ensure that Red Prairie Solar would
14 not timely execute a PPA.

15 56. Red Prairie Solar was materially prejudiced by PGE's failure to give
16 notice because, among other things, it prevented Red Prairie Solar from having the
17 opportunity to expedite its request and Red Prairie Solar would have processed its PPA
18 request more quickly if it had been aware that PGE intended to make the August Early
19 Rate Effective Date Request.

20 57. PGE's intent and purpose for requesting that QFs that have not entered
21 into a contract or achieve a legally enforceable obligation prior to acknowledgment of the
22 IRP not being eligible for current avoided cost rates is to prevent Red Prairie Solar and
23 other QFs from being able to complete and execute a PPA at current rates.

1 58. On August 7, 2017, Red Prairie Solar executed the standard draft PPA.

2 59. On August 7, 2017, Red Prairie Solar informed PGE that it was again
3 committing itself to sell power to PGE under the currently effective Schedule 201 rates,
4 and the terms and conditions of the partially executed PPA, and obligating itself to
5 provide power or be subject to penalty for failing to deliver energy on the scheduled
6 commercial on-line date.

7 VII. LEGAL CLAIMS

8 Complainant's First Claim for Relief

9 **Red Prairie Solar is entitled to PGE's standard contract with currently effective**
10 **Schedule 201 rates because Red Prairie Solar legally obligated itself to sell the net**
11 **output prior to the filing of this Complaint**

12
13 60. Red Prairie Solar re-alleges all the preceding paragraphs.

14 61. PGE has an obligation to purchase a QF's net output that is directly or
15 indirectly made available to PGE. 18 CFR 292.303(a)&(d), 292.304(d); ORS
16 758.525(2)(b), 758.535(2)(a)&3(b); OAR 860-029-0030(1).

17 62. PGE has an obligation to purchase the net output of a QF pursuant to
18 either a contract or a legally enforceable obligation. 18 CFR 292.304(d); Order No. 69,
19 FERC Stats. & Regs. ¶ 30,128, 45 Fed. Reg. 12,214 at 12,219-20, 12,224 (1980). A
20 legally enforceable obligation is broader than a simple contract between an electric utility
21 and a QF, and may exist without a written, executed contract. FLS Energy, 157 FERC ¶
22 61,211 at PP 24, 26; Grouse Creek, LLC, 142 FERC ¶ 61,187 at P 38 (2013).

23 63. The establishment of a legally enforceable obligation turns on the QF's
24 commitment to sell its net output to the electric utility. FLS Energy, 157 FERC ¶ 61,211
25 at P 24; JD Wind 1, LLC, 129 FERC ¶ 61,148, at P 25 (2009). A QF can enter into a

1 legally enforceable obligation by committing itself to sell power to an electric utility.
2 FLS Energy, 157 FERC ¶ 61,211 at P 25; Cedar Creek Wind, LLC, 137 FERC ¶ 61,006
3 at PP 36, 39 (2011); Snow Mountain, 734 P.2d at 1371.

4 64. A QF can require a utility to purchase its net output, even if the utility has
5 refused to enter into a contract. Id. at 1370-71; FLS Energy, 157 FERC ¶ 61,211 at P 24;
6 Murphy Flat Power, 141 FERC ¶ 61,145 at P 24 (2012); Grouse Creek, 142 FERC ¶
7 61,187 at P 38. A utility cannot refuse to sign a contract “so that a later and lower
8 avoided cost is applicable.” FLS Energy, 157 FERC ¶ 61,211 at P 25; Cedar Creek
9 Wind, 137 FERC ¶ 61,006 at P 36. Similarly, a QF cannot be required to tender an
10 executed interconnection agreement to form a legally enforceable obligation because that
11 requirement would allow “the utility to control whether and when a legally enforceable
12 obligation exists.” FLS Energy, 157 FERC ¶ 61,211 at PP 23, 26.

13 65. The Commission has confirmed the process for obtaining a PPA includes:
14 “(1) a QF initiates the process by submitting certain information, the utilities then have
15 15 days to provide a draft standard contract; (2) the QF may agree to the terms of the
16 draft contract and ask the utility to provide a final executable contract, or suggest
17 changes; (3) the utility provides iterations of the draft standard contract no later than 15
18 days after each round of comments by the negotiating QF; and (4) when the QF indicates
19 that it agrees to all the terms in the draft contract, the utility has 15 days to forward a final
20 executable contract to the QF.” Re Investigation Into QF Contracting and Pricing,
21 Docket No. UM 1610, Order No. 16-174 at 24 (May 13, 2016). Thus, when the QF
22 informs PGE that it has agreed to all terms and conditions in the draft PPA, then PGE is
23 required to provide an executable PPA to the QF.

1 66. The Commission has determined that a legally enforceable obligation will
2 be established “once a QF signs the final draft of an executable contract provided by a
3 utility to commit itself to sell power to the utility.” Re Investigation Into QF Contracting
4 and Pricing, Docket No. UM 1610, Order No. 16-174 at 3, 27-28 (May 13, 2016).
5 However, a legally enforceable obligation “may be established earlier if a QF
6 demonstrates delay or obstruction of progress towards a final draft of an executable
7 contract, such as a failure by a utility to provide a QF with required information or
8 documents on a timely basis.” Id.

9 67. The Commission has determined that a PPA can be executed and a legally
10 enforceable obligation can be created in less than two months under normal
11 circumstances. Re Investigation Into QF Contracting and Pricing, Docket No. UM 1610,
12 Order No. 16-174 at 24, 27-28 (May 13, 2016).

13 68. FERC has found that legally enforceable obligations have been created in
14 about one month. Rainbow Ranch Wind, LLC, 139 FERC ¶ 61,077 at PP 2-5, 24 (2012);
15 Grouse Creek Wind Park, LLC, 142 FERC ¶ 61,187, at PP 37-43 (2013).

16 69. Red Prairie Solar has repeatedly committed itself to sell power to PGE
17 under the currently effective Schedule 201 rates, and the terms and conditions of the draft
18 PPA, including to provide power or be subject to penalty for failing to deliver on the
19 scheduled commercial on-line date. These commitments include but are not limited to
20 Red Prairie Solar’s request for an executable PPA on July 27, 2017, Red Prairie Solar’s
21 demand letter sent on July 31, 2017, and Red Prairie Solar’s execution of the draft PPA
22 on August 7, 2017.

1 70. Red Prairie Solar has continued to commit, and is still committing, itself to
2 sell the net output of the Red Prairie Solar Project to PGE at the Schedule 201 rates,
3 terms, and conditions in the partially executed final PPA.

4 71. PGE is required to purchase the net output of the Red Prairie Solar Project
5 at the Schedule 201 rates, terms, and conditions in the partially executed final PPA,
6 despite PGE's refusal to execute the partially executed final PPA.

7 72. Red Prairie Solar's execution of the draft PPA, continuing commitment to
8 sell the net output of the Red Prairie Solar Project, and efforts to obtain PGE's execution
9 of the partially executed final PPA establish a legally enforceable obligation at the
10 currently effective Schedule 201 rates, and all the terms and conditions in the partially
11 executed final PPA.

12 **Complainant's Second Claim for Relief**

13 **Red Prairie Solar is entitled to PGE's standard contract with currently effective**
14 **Schedule 201 rates because Red Prairie Solar legally obligated itself to sell the net**
15 **output prior to the filing of this Complaint, and PGE violated the OPUC's and**
16 **FERC's policies and rules, and Schedule 201**

17
18 73. Red Prairie Solar re-alleges all the preceding paragraphs.

19 74. The Commission has established rules, policies, standard contracts, and
20 rate schedules to facilitate and direct the process by which a QF and an Oregon electric
21 utility enter into a contract. Re Investigation Relating to Electric Utility Purchases from
22 QFs, Docket No. UM 1129, Order No. 05-584 at 6-12, 16 (May 13, 2005). The purpose
23 of the Commission approving standard contacts and schedules for each utility is to pre-
24 establish "rates, terms and conditions that an eligible QF can elect without any
25 negotiation with the purchasing utility" and to "eliminate negotiations" Id. at 12, 16.

1 75. PGE’s failure to abide by the terms of PURPA, the Commission’s rules
2 and policies, FERC’s rules and policies, and/or Schedule 201 can result in the creation of
3 a legally enforceable obligation. Re Investigation Into QF Contracting and Pricing,
4 Docket No. UM 1610, Order No. 16-174 at 3, 27-28 (May 13, 2016); Snow Mountain,
5 734 P.2d at 1371; International Paper v. PacifiCorp, Docket No. UM 1449, Order No. 09-
6 439 at 6 (Nov 4, 2009).

7 76. The Commission’s polices include that, “when the QF indicates that it
8 agrees to all the terms in the draft contract, the utility has 15 days to forward a final
9 executable contract to the QF.” Re Investigation Into QF Contracting and Pricing,
10 Docket No. UM 1610, Order No. 16-174 at 24 (May 13, 2016).

11 77. PGE’s Schedule 201 includes timelines and requirements that a utility
12 should follow when entering into a PPA with a QF 10 MWs and under. Schedule 201
13 provides that: “When both parties are in full agreement as to all terms and conditions of
14 the draft Standard PPA, the Company will prepare and forward to the Seller a final
15 executable version of the agreement within 15 business days.”

16 78. The Commission’s rules and policies prevent a utility from delaying or
17 obstructing “progress towards a final draft of executable contract”. Re Investigation Into
18 QF Contracting and Pricing, Docket No. UM 1610, Order No. 16-174 at 27-28 (May 13,
19 2016).

20 79. PGE must continue to comply with the Commission’s rules and policies,
21 even though PGE has requested interim relief in the Solar Limitation Filing.

1 80. By no later than August 7, 2017, Red Prairie Solar had agreed to all terms
2 and conditions, and Red Prairie Solar requested executed a final executable version of the
3 PPA.

4 81. PGE did not provide and has not provided a final executable version of the
5 PPA.

6 82. PGE violated the Commission's rules and policies, FERC's rules and
7 policies, and Schedule 201 when it refused to notify prior to filing or serve Red Prairie
8 Solar and other QFs with its May 1 Update, Solar Limitation Filing and August Early
9 Rate Effective Date Request with the intention to prevent Red Prairie Solar from timely
10 executing a PPA.

11 83. PGE violated the Commission's rules and policies, FERC's rules and
12 policies, and Schedule 201 when it stated that no binding PPA will exist between PGE
13 and Red Prairie Solar unless and until PGE has provided Red Prairie Solar with an
14 executable PPA.

15 84. PGE violated the Commission's rules and policies, FERC's rules and
16 policies, and Schedule 201 when it stated that no binding PPA will exist between PGE
17 and Red Prairie Solar unless Red Prairie Solar and PGE both have executed the PPA.

18 85. PGE violated the Commission's rules and policies, FERC's rules and
19 policies, and Schedule 201 when it stated that it did not expect to provide and would not
20 provide an executable PPA before the Commission has ruled on PGE's motion for
21 interim relief in the Solar Limitation Filing.

1 86. PGE violated the Commission's rules and policies, FERC's rules and
2 policies, and Schedule 201 when it delayed and obstructed progress toward executing a
3 PPA.

4 87. PGE violated the Commission's rules and policies, FERC's rules and
5 policies, and Schedule 201 when it raised concerns regarding year 1 hourly generation
6 profile and maximum annual net output.

7 88. PGE violated the Commission's rules and policies, FERC's rules and
8 policies, and Schedule 201 when it refused to provide an executable PPA or to execute
9 the draft PPA.

10 89. PGE's violations of the Commission's rules and policies, FERC's rules
11 and policies, and Schedule 201, and Red Prairie Solar's execution of the final PPA,
12 continuing commitment to sell the net output of the Red Prairie Solar Project, and efforts
13 to obtain PGE's signature resulted in a legally enforceable obligation at the currently
14 effective Schedule 201 rates, and all the terms and conditions in the partially executed
15 final PPA.

16 **VIII. PRAYER FOR RELIEF**

17 WHEREFORE, Red Prairie Solar respectfully requests the Commission issue an
18 order:

19 1. Finding PGE in violation of: 1) the mandatory purchase obligation of the Oregon
20 PURPA; 2) the mandatory purchase obligation of the federal PURPA; 3) FERC's
21 PURPA regulations, policies, and orders; 4) the Commission's PURPA
22 regulations, policies, and orders; and 5) PGE's Schedule 201;

- 1 2. Requiring PGE to purchase the net output of the Red Prairie Solar Project at the
- 2 currently effective Schedule 201 rates, and all the terms and conditions in the
- 3 partially executed final PPA;
- 4 3. Requiring PGE to enter into a PURPA PPA with Red Prairie Solar at the currently
- 5 effective Schedule 201 rates, and all the terms and conditions in the partially
- 6 executed final PPA;
- 7 4. Instituting penalties up to \$10,000 pursuant to ORS 756.990 against PGE and paid
- 8 by PGE's shareholders for each violation of ORS 758.525(2), 758.535(2)(b),
- 9 18 CFR 292.303(a), 292.304(d), and Commission Order Nos. 05-584 and 16-174.
- 10 5. Granting any other such relief as the Commission deems necessary.

Dated this 7th day of August, 2017.

Respectfully submitted,

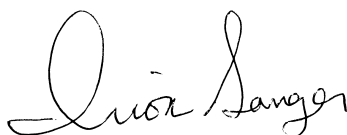


Irion A. Sanger
Sanger Law, PC
1117 SE 53rd Avenue
Portland, OR 97215
Telephone: 503-756-7533
Fax: 503-334-2235
irion@sanger-law.com

Of Attorneys for Red Prairie Solar

CERTIFICATE OF FILING

I certify that on August 7, 2017, I filed the foregoing Complaint on behalf of Red Prairie Solar with the Oregon Public Utility Commission by electronic communication as consistent with OAR 860-001-0170.



Sanger Law, PC
1117 SE 53rd Avenue
Portland, OR 97215
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Fax: 503-334-2235
irion@sanger-law.com

Attachment A

Red Prairie

Power Purchase Agreement

STANDARD RENEWABLE IN-SYSTEM VARIABLE POWER PURCHASE

AGREEMENT

[Redacted]

[Redacted]

[Redacted]

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To PGE: Contracts Manager
 QF Contracts, 3WTC0306
 PGE - 121 SW Salmon St.
 Portland, Oregon 97204

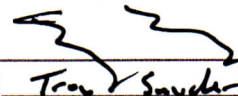
20.2 The Parties may change the person to whom such notices are addressed, or their addresses, by providing written notices thereof in accordance with this Section 20.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in their respective names as of the Effective Date.

PGE

By: _____
Name: _____
Title: _____
Date: _____

Red Prairie Solar, LLC
(Name Seller)

By: 
Name: Troy Sanyal
Title: Manager
Date: 8/7/17

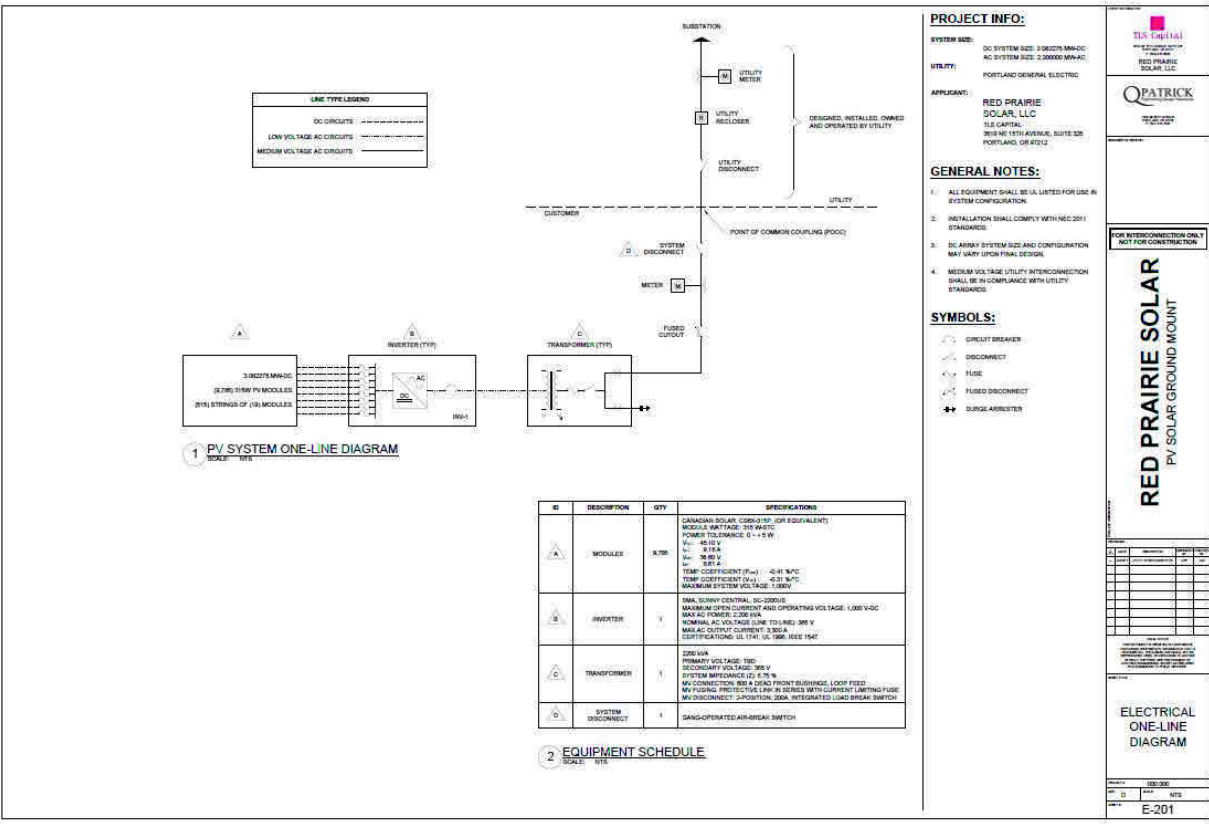
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Contract Information	
a. Seller Legal Name	Red Prairie Solar, LLC
b. Type of facility (solar, or wind for example)	Solar
c. County and GPS Coordinate to 3 decimals	Yamhill - 45°05'14.6"N 123°25'02.5"W
d. State	Oregon
e. Name Plate Rating in kW	2200
f. Section 1.11 Electric system to interconnect to and the Point of Delivery	PGE
g. Section 2.2.1 date to begin delivery	6/30/2018
h. Section 2.2.3 date of Commercial Operation Date	7/31/2018
i. Section 2.3 Termination Date	20 Years from Effective Date
j. Corporation type	Limited Liability Corporation
k. State of organization	Oregon
l. Net Dependable Capacity in kW	2200
m. Estimated average annual Net Output	2141023
n. Maximum of kWh	4787807
o. Notice address line 1	Red Prairie Solar, LLC
p. Notice address line 2	C/O TLS Capital, Inc
q. Notice address line 3	7455 SW Bridgeport Road, Ste 220
r. Notice address line 4	Tigard, OR 97224
s. Copy to address line 1	TLS Capital, Inc
t. Copy to address line 2	3519 NE 15th Ave, #325
u. Copy to address line 3	Portland, OR 97212
v. Copy to address line 4	
w. On a separate sheet include a detailed facility description, including one-line diagram	Attached
2. Status of Seller's incorporation	Filed - 3/14/17
3. Seller's financial statements:	
a. Income statement	N/A
b. Balance sheet	N/A
4. D & B report on seller, of the project sponsor if the seller is not in D & B	Does not exist
5. List of all entities with an ownership interest in the facility	TLS Capital, Inc
6. List all natural persons or persons or any legal entity or entities who:	TLS Capital, Inc & List of Entities on Attached List
a. Share common ownership with Seller	
b. Share common management with Seller	
c. Act jointly or in concert with Seller	
d. Exercise influence over the policies or actions of Seller	
7. The legal name of the manager of the Facility, if applicable	TLS Capital, Inc
8. Proof of site control (lease, title to land, property tax bill, or other)	Lease - Attached
9. FERC Form 556 and docket number as proof of submittal and acceptance by FERC	QF17-807-000 - Attached
10. Map adjoining QF sites owned by the same seller at this time, or within the past 12 months	Attached
11. Staffing plan for getting the project online	Hire EPC Contractor
12. Status of interconnection and transmission agreements	Interconnection Application Filed
13. Does Seller have FERC Market Based Rate Authority? If yes provide docket #.	No
Generation information	
1. Motive force plan	Solar PV
2. Expected energy delivery start date	6/30/2018
3. Expected Availability of generation	90%
4. PVsyst (or equivalent) simulation results detail, including but not limited to:	
a. Annual MWh (AC) for the first calendar year of commercial operation and an annual degradation factor	3568
b. Average 24-hr profile of generation MWh (AC) for each month during the first calendar year	Attached
c. Maximum 24-hr profile of generation MWh (AC) for each month during the first calendar year	Attached
d. Maximum annual output (monthly MWh detail)	Attached
e. Loss Diagram	Attached
Location of facility	
1. GPS Coordinates (rounded to three decimal - please provide in decimal format)	45°05'14.6"N 123°25'02.5"W
2. Facility physical address	Red Prairie Rd, Sheridan, OR
3. Legal description of parcel (proof of site control to be attached)	Yamhill County Taxlots R5634 01600, R6604 00200/00100
4. Aerial Facility site boundary map	Attached

1. Generation	
a. PVsyst (or equivalent) simulation results detail, including but not limited to:	
i. Annual MWh (AC) for the first calendar year of commercial operation	3568
ii. Annual degradation factor	2.65
iii. Average 24-hr profile of generation MWh (AC) for each month during the first calendar year	Attached
iv. Expected Solar Capacity Factor	18.31%
v. Maximum annual output (monthly MWh detail)	Attached
vi. Loss Diagram	Attached
2. Description of Modules:	
a. Module type	Poly-crystalline
b. # of modules	9785
c. Max power voltage	36.6W
d. Max power current	9.18V
e. Max system voltage	1000V
f. Total DC system size	3,082,275
3. Description of Racking	
a. Racking	
i. Type: (fixed tilt, single-axis tracking, or dual-axis tracking, etc.)	Fixed
ii. Tilt angle (if fixed-tilt)	25
iii. Azimuth (default = south-facing)	180
4. Description of Inverters:	
a. Number of Inverters	1
b. Model	SMA SC-2200US
c. Maximum Power (kW)	2200 kW
d. Operating Voltage (VAC)	347V-424V
e. Max. Output Current (A)	3300 A
f. Rated DC Voltage	1000V
g. Rated DC current	4110A
h. Maximum Output (kW)	
g. Facility AC Capacity Rating	2200
h. Inverter loading ratio	1.4/1.0
i. Facility AC rating	2200
5. Description of transformers	
a. # of transformers	1
b. Model	Cooper 210-12
c. High Voltage Rating	
d. Low Voltage Rating	
e. MVA rating	
f. High voltage connection	
g. Low voltage connection	
6. Description of metering, communications, and monitoring	PGE Supplied
7. Description of station service requirements	PGE Supplied
8. Description and timeline of interconnection and transmission plan	Interconnection application submitted
9. Transaction Service Request Number, Interconnection Queue number, and System impact/Interconnection study documentation	Interconnection Application Attached

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Red Prairie Solar, LLC			
Monthly Generation Profile			
AC System Output (kWh)			
Month	Year 1	Avg	Max
1	118,744	71,246	178,115
2	201,517	120,910	302,276
3	257,854	154,712	386,781
4	326,604	195,962	489,905
5	408,263	244,958	612,394
6	410,432	246,259	615,648
7	488,363	293,018	732,544
8	468,046	280,827	702,069
9	380,570	228,342	570,855
10	244,223	146,534	366,334
11	137,552	82,531	206,327
12	126,207	75,724	189,310
	3,568,372	2,141,023	5,352,558

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Grid-Connected System: Simulation parameters

Project : Red Prairie
Geographical Site : Portland, OR Country USA
Situation : Latitude 45.5°N Longitude 122.7°W
 Time defined as Legal Time Time zone UT-8 Altitude 50 m
Meteo data : Portland, OR, Synthetic Hourly data

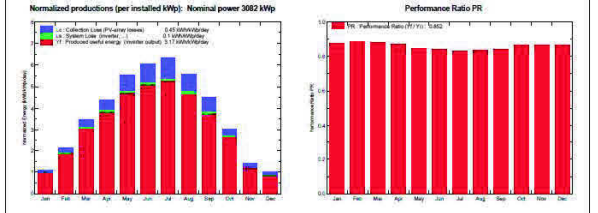
Simulation variant : Red Prairie
 Simulation date 15/05/17 19h25

Simulation parameters
Collector Plane Orientation : Tilt 25° Azimuth 0°
Horizon : Free Horizon
Near Shadings : No Shadings
PV Array Characteristics
PV module : Si-poly Model CS6X - 315P
 Manufacturer Canadian Solar Inc.
 In series 19 modules In parallel 515 strings
 Total number of PV modules 9785 Unit Nom. Power 315 Wp
 Array global power Nominal (STC) 3082 kWp At operating cond. 2707 kWp (50°C)
 Array operating characteristics (50°C) U mpp 618 V I mpp 4476 A
 Total area 18776 m² Cell area 17148 m²
Inverter : Sunny Central 2200CP-US
 Manufacturer SMA
 Characteristics Operating Voltage 545-820 V Unit Nom. Power 2200 kW AC
PV Array loss factors
 Thermal Loss factor Uc (const) 29.0 W/m²K Uv (wind) 0.0 W/m²K / m/s
 => Nominal Oper. Coll. Temp. (G=800 W/m², Tamb=20°C, Wind=1 m/s.) NOCT 45 °C
 Wiring Ohmic Loss Global array res. 2.3 mOhm Loss Fraction 1.5 % at STC
 Array Soiling Losses Loss Fraction 3.2 %
 Module Quality Loss Loss Fraction 0.1 %
 Module Mismatch Losses Loss Fraction 2.0 % at MPP
 Incidence effect, ASHRAE parametrization IAM = 1 - bo (1/cos i - 1) bo Parameter 0.05
System loss factors
 AC wire loss inverter to transfo Inverter voltage 385 Vac tri
 Wires 83 m 2x5000 mm² Loss Fraction 1.5 % at STC
 External transformer Iron loss (24H connection) 3034 W Loss Fraction 0.1 % at STC
 Resistive/Inductive losses 0.0 mOhm Loss Fraction 0.0 % at STC
User's needs : Unlimited load (grid)

Grid-Connected System: Main results

Project : Red Prairie
Simulation variant : Red Prairie
Main system parameters System type Grid-Connected
 PV Field Orientation tilt 25° azimuth 0°
 PV modules Model CS6X - 315P Prnom 315 Wp
 PV Array Nb. of modules 9785 Prnom total 3082 kWp
 Inverter Model Sunny Central 2200CP-US Prnom 2200 kW ac
 User's needs Unlimited load (grid)

Main simulation results
 System Production Produced Energy 3568372 kWh/year Specific prod. 1158 kWh/kWp/year
 Performance Ratio PR 85.2 %



Red Prairie
Balances and main results

	GlobHor kWh/m²	T.Amb °C	GlobInc kWh/m²	GlobE# kWh/m²	E.Array kWh	E_Grid kWh	PRArray %	PRYSR %
January	27.0	4.90	94.5	33.2	97297	92783	15.03	14.34
February	48.0	8.70	95.2	98.1	166913	164111	15.82	14.82
March	91.0	7.90	108.1	194.5	304909	293370	14.59	14.40
April	123.0	10.50	131.8	127.5	364099	353770	14.72	14.30
May	166.0	13.60	171.5	155.4	461279	446461	14.32	13.63
June	194.0	16.40	191.5	175.9	494449	471142	14.22	13.83
July	198.0	18.80	196.1	169.0	516248	501013	13.90	13.61
August	194.0	18.90	173.4	169.0	460549	447336	14.14	13.75
September	115.0	16.20	134.7	130.4	265362	249574	14.21	13.78
October	74.0	12.20	94.0	90.7	259362	251420	14.70	14.25
November	33.0	8.20	42.1	40.8	117322	112514	14.94	14.24
December	22.0	6.00	31.3	30.1	67712	62337	14.63	14.18
Year	1245.0	11.70	1350.1	1315.2	3679421	3568372	14.41	13.68

Legends: GlobHor Horizontal global irradiation E.Array Effective energy at the output of the array
 T.Amb Ambient Temperature E_Grid Energy injected into grid
 GlobInc Global incident in cell plane PRArray Effc. Ecol array / rough area
 GlobE# Effective Global, corr. for IAM and shadings PRYSR Effc. Ecol system / rough area

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Grid-Connected System: Loss diagram

Project : Red Prairie
Simulation variant : Red Prairie

Main system parameters	System type	Grid-Connected		
PV Field Orientation	tilt	25°	azimuth	0°
PV modules	Model	CS6X - 315P	Pnom	315 Wp
PV Array	Nb. of modules	9785	Pnom total	3082 kWp
Inverter	Model	Sunny Central 2200CP-US	Pnom	2200 kW ac
User's needs	Unlimited load (grid)			

Loss diagram over the whole year

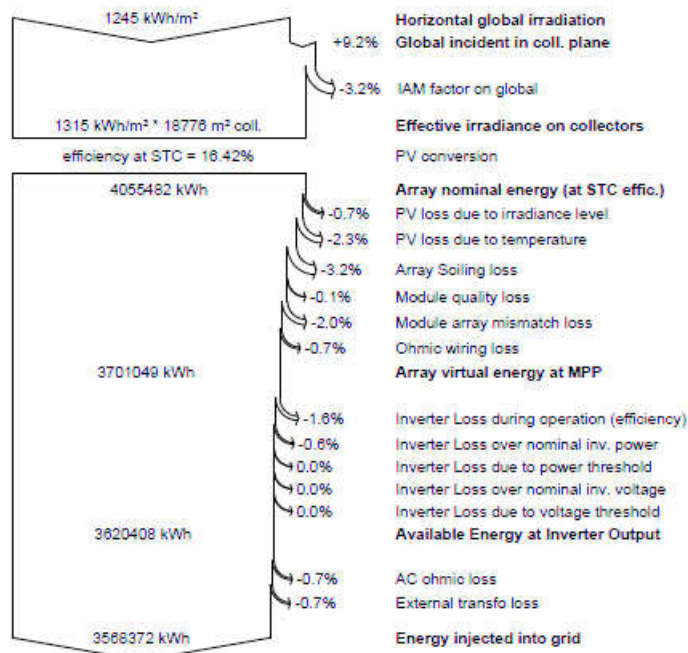


Exhibit C									
Required Testing									
Required start-up test are those checks and tests necessary to determine that all features and equipment, systems, and subsystems have been properly designed, manufactured, installed and adjusted, function properly, and are capable of operating simultaneously in such condition that the Facility is capable of continuous delivery into BPA/EIM/PGE's electrical system for delivery to PGE, which may include but are not limited to (as applicable) the following:									
1. Safety plan during startup and commissioning (including the expected number of individuals covered)									
2. Review of all QA/QC testing									
3. Confirm testing and energizing inverters in conformance with manufacturer's recommended procedures; note operating voltages; and confirm inverter is performing as expected									
4. Energizing transformers									
5. Under full sun conditions, and after at least 15 minutes of operation, taking and recording PV Plant operating data—such as but not limited to MWDC, MWAC, VDC, VAC, IDC, IAC, Solar Radiation, etc.									
6. Testing the system control and monitoring system to verify that it is performing correctly									
7. Testing the communication system for offsite monitoring and all requirements of the Western Energy Imbalance Market									
8. Testing the Plant metering and protective relaying to verify they meet utility requirements									
9. Documentation of successful startup and commissioning procedure									
10. Written notification submitted by Contractor to Owner that the completion of Acceptance Testing and Commissioning has occurred									
11. Testing to meet the requirements of Section 1.5.3.									

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