BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1863, UM 1864, UM 1865, UM 1866, UM 1867, UM 1868, UM 1869, UM 1870, UM 1871, UM 1872, UM 1873, UM 1874 and UM 1883

SSD MARION 4 LLC (UM 1863), SSD CLACKAMAS 4 LLC (UM 1864), SSD MARION 1 LLC (UM 1865), SSD CLACKAMAS 7 LLC (1866), SSD MARION 2 LLC (1867), SSD CLACKAMAS 6 LLC (UM 1868), SSD CLACKAMAS 1 (UM 1869), SSD CLACKAMAS 2 (UM 1870), SSD MARION 3 (UM 1871), SSD MARION 5 (UM 1872), SSD MARION 6 (UM 1873), SSD YAMHILL 1 (UM 1874), and SSD CLACKAMAS 3 LLC (UM 1883) Complainants, v. PORTLAND GENERAL ELECTRIC COMPANY, Defendant.	)	**RESPONSE TO PORTLAND GENERAL ELECTRIC COMPANY'S MOTION FOR REQUEST FOR EMERGENCY STAY AND CONFERENCE**

I. INTRODUCTION

SSD Clackamas 1, SSD Clackamas 2, SSD Clackamas 3, SSD Clackamas 4, SSD Clackamas 6, SSD Clackamas 7, SSD Marion 1, SSD Marion 2, SSD Marion 3, SSD Marion 4, SSD Marion 5, SSD Marion 6, and SSD Yamhill 1 ("Complainants") respectfully request that Oregon Public Utility Commission (the "Commission" or "OPUC") Administrative Law Judge ("ALJ") Allan Arlow deny Portland General Electric's ("PGE's" or the "Company's") motion for request for emergency stay and set a schedule that requires PGE to file its answer no later than Wednesday August 30, 2017.

Consolidation of the above-referenced complaints is warranted because they were developed and are owned by the same company (Strata Solar Development, LLC), but Complainants object to any consolidated treatment with other complaints filed against PGE or any other proceeding in which PGE is involved. A prehearing conference should be scheduled immediately to process these complaints, but the prehearing conference should not include any unrelated complaints or other administrative proceedings that happen to include PGE and/or counsel for Complainants. Complainants strongly object to their filings being delayed simply because PGE may have violated the law against other QFs that also need redress from the Commission.

No additional time is warranted because PGE's claims about its workload are overblown and irrelevant, the Company has already had sufficient time to prepare its answers, and these complaints should come as no surprise to PGE given the Company's unilateral decision to stop processing their requests and regulatory efforts to prevent contract completion. PGE has already had 20 days to prepare its answers, has been unable to complete even one, and has instead focused on making regulatory filings to prevent the Complainants from being able to complete contract negotiations before rates change.[1] PGE made yet another filing just today again urging the Commission to

[1] Re PGE Application to Update Schedule 201 Qualifying Facility Information, Docket No. UM 1728, Order No. 17-177 (May 19, 2017) (lowering avoided cost rates ahead of Complainants' expectations); Re PGE Application to Lower the Standard Price and Standard Contract Eligibility Cap for Solar QFs, Docket No. UM 1854, PGE's Motion for Interim Relief at 1 (June 30, 2017) (seeing to lower eligibility for standard contract rates); Re PGE Updates to Schedule 201 QF (10 MW or Less) Avoided Cost, Docket No. UM 1728, PGE's Motion for Temporary Relief From Schedule 201 Prices at 1-4 (Aug. 18, 2017) (lowering avoided cost rates ahead of Complainants' expectations).

expeditiously grant its request to retroactively lower its avoided cost rates.[2] PGE obviously has sufficient time to make numerous and aggressive regulatory filings when it chooses to allocate its resources toward its preferred goals.

Providing additional time to PGE would cause substantial harm to Complainants because there are substantial costs associated with delay. Each day of delay in establishing a power purchase agreement ("PPA") costs the Complainants money and puts the potential operations of their projects at risk.

Despite that PGE has the means and ability to submit answers and the significant harm associated with any delay, the Complainants were willing to provide PGE until September 15, 2017 to submit its answers, but only if PGE would follow its established Schedule 201 process and continue processing its PPA requests, as is required by law. PGE withheld this information from the Commission regarding the Complainants willingness to work with PGE, if only PGE would refrain from violating the law when PGE sought to extend the time for its answers. PGE also long knew that it was going to seek additional time to file its answers, and waited until they were almost due and contacted counsel only one day before filing its motion to seek additional time. PGE's litigation and contract delay tactics should not be rewarded with more time.

Finally, if the Commission does not process according to its existing rules, then Complainants will have no other option, but to go directly to the Federal Energy Regulatory Commission ("FERC") or relevant court for redress.

II. BACKGROUND

Complainants are qualifying facilities ("QFs") with projects ranging in size from

[2] Re PGE Application to Update Schedule 201 Qualifying Facility Information, Docket No. UM 1728, PGE's Response to Staff's Motion to Stay (August 28, 2107).

2 to 4 megawatts ("MWs") that will interconnect with PGE. Complainants began negotiating with PGE as early as April, but PGE has not negotiated in good faith.[3] PGE has recently unilaterally decided to completely cease negotiations with Complainants and decided to no longer process Complainant's pending requests due to PGE's request for interim relief seeking to change the Commission's PURPA policies and the fact that these complaints have been filed. These facts are critically important for consideration of PGE's request to delay filing its answers in that PGE does not have clean hands and should not be rewarded with additional time when it is now completely refusing to process its PPA requests or comply with Schedule 201. Given PGE's past and continuing efforts to prevent the Complainants from completing a PPA or forming a legally enforceable obligation, the Commission should process these complaints with haste rather than excessive delay.

PGE took numerous illegitimate actions to keep Complainants from establishing a PPA or legally enforceable obligation. For example, by missing deadlines, requiring unnecessary information, and failing to provide drafts in a timely manner. The timing of PGE's recent filings and its negotiations with Complainants establishes a pattern of delay with the intention of changing the rules and rates before Complainants were able to finalize their PPAs. Overall, although PGE was planning several filings that would impact or limit Complainants' ability to enter into a PPA during the time that the parties were exchanging information and negotiating standard PPAs, PGE never informed Complainants that it was considering making these filings or explaining their consequences.

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[3] See e.g., SSD Clackamas 1 LLC v. PGE, Docket No. UM 1869, Complaint (Aug. 7, 2017).

Worse yet, PGE has not been forthcoming with Complainants. For example, after informing the Complainants that it would not expedite a request for an executed PPA and would instead follow its normal Schedule 201 timelines, PGE privately planned on not executing any PPAs before the Commission ruled on its request for interim relief, which is inconsistent with its normal Schedule 201 timelines. PGE was either intentionally providing inaccurate information, or has changed its position regarding whether it would comply with Schedule 201 without discussing those changes with Complainants.

Overall, PGE has relied upon creative means to drag out its negotiations, including using its Schedule 201 timelines to preclude Complainants from finalizing their PPAs and then abandoning that timeline when doing so suited PGE. PGE's actions of knowingly providing false and inaccurate information, and hiding information from Complainants about its recent OPUC filings were not accidents of circumstance, but part of a plan designed to preclude Complainants from finalizing their PPAs. If PGE had spent the time it has used to attempt to prevent Complainants from executing a PPA on preparing its answers, then PGE could have filed its answers today.

PGE has now moved from processing the Complainants' PPA requests with glacial speed to an outright stop, and is refusing to provide draft PPAs when due or even respond to email communications. PGE may be punishing and/or discriminating against the Complainants for their insistence on having their complaints processed in a timely manner. PGE's failure to process and negotiate in good faith with Complainants (or even process or negotiate at all at this point) is the reason that Complainants now object to a stay of their complaint proceedings, and support the ALJ requiring PGE to expeditiously file its answers.

III. ARGUMENT

A. Complainants Object to Consolidated Treatment with Other Complainants

OAR 806-01-0600 provides for the consolidation of proceedings at the discretion of the Commission or ALJ. The Complainants are owned by the same company, Strata Solar Development LLC, being developed by the same or similar companies, and support consolidation of their own complaints, but object to any additional consolidation with other complaints filed against PGE. PGE's own motion points out, "each complaint involves a unique set of facts . . . is relatively complex," and "involves a series of dozens of communications between PGE and the Complainant."[4] Yet, PGE chose to lump all of its complaints together rather than address the fact that some of its complaints, like Complainants', will in fact be prejudiced by any delay.

PGE's Motion suggests that because many of the complaints against PGE were filed by the same counsel, and the same PGE employees are needed to review the facts, that they should all be subject to the same types of delays.[5] This just does not make any sense given the costs such delay inflicts upon these Complainants. The fact that Complainants' attorney has filed complaints against PGE from other QFs with different owners should be irrelevant to the unique facts and circumstances surrounding Complainants' projects. PGE and Complainants' counsel are also involved in a number of other previously filed unrelated complaints,[6] PGE-specific regulatory proceedings,[7]

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4 PGE's Motion at 2.

5 Id.

6 Blue Marmot V, LLC v. PGE, Docket No. UM 1829 (April 28, 2017); Blue Marmot VI, LLC v. PGE, Docket No. UM 1830 (April 28, 2017); Blue Marmot VII v. PGE, Docket No. UM 1831 (April 28, 2017); Blue Marmot VIII, LLC v. PGE, Docket No. UM 1832 (April 28, 2017); Blue Marmot IX v. PGE, Docket

and other generic proceedings regarding PURPA and independent power producers that PGE is an active party to,[8] none of which should be consolidated with these complaints because of the similar counsel, legal or factual issues. Complainants therefore request that PGE be required to proceed with its complaints according to the Commission's established process, and without delay.

B. Complainants Will Seek FERC Redress If the Commission Allows PGE to Disregard Its Rules for Timely Processing Complaints

If the Commission does not process according to its existing rules, then

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No. UM 1833 (April 28, 2017) (Counsel representing Blue Marmot V, VI, VII, VIII and IX QFs against PGE for failure to execute PPAs).

7 Re PGE Application to Update Schedule 201 Qualifying Facility Information, Docket No. UM 1728 (Counsel representing Renewable Energy Coalition ("REC") in PGE's avoided cost rate update); Re PGE 2016 Integrated Resource Plan, Docket No. LC 66 (Counsel representing Northwest and Intermountain Power Producers Coalition ("NIPPC") and REC in PGE's integrated resource plan); Re Northwest and Intermountain Power Producers Coalition, Community Renewable Energy Association and Renewable Energy Coalition v. PGE, Docket No. UM 1805 (Counsel representing NIPPC, Community Renewable Energy Association ("CREA") and REC in complaint against PGE regarding its PURPA PPA); Re Application to Lower the Standard Price and Standard Contract Eligibility Cap for Solar Qualifying Facilities, Docket No. UM 1854 (Counsel representing NIPPC and REC in PGE's request to reduce standard contract eligibility); Re Staff Investigation Into Qualifying Facility Contracting and Pricing, Docket No. UM 1610 (Counsel representing REC in generic PURPA investigation); Re PGE Application for Transportation Electrification Programs, Docket No. UM 1811 (Counsel representing Electric Vehicle Charging Association); and Re PGE Advice No. 17-05 (ADV 523), Schedule 134 Gresham Privilege Tax Payment Adjustment, UE 324 (Counsel representing City of Gresham).

8 Re OPUC Staff Investigation of Competitive Bidding Guidelines Related to Senate Bill 1547, Docket No. UM 1776 (generic investigation to competitive bidding guidelines for utility resource acquisitions)(counsel representing NIPPC, REC and CREA); Re Rulemaking Regarding Allowances for Diverse Ownership of Renewable Energy Resources, Docket No. AR 600 (competitive bidding rulemaking)(Counsel representing NIPPC, REC and CREA), and Re Recommendation for Portfolio Options pursuant to ORS 757.603(2) and OAR 860-038-0220, Docket No. UM 1020 (use of voluntary renewable funds for generators and QFs)(Counsel representing REC).

Complainants will be forced to go directly to FERC for relief against PGE's continuing illegal actions. FERC generally allows state utility commissions to process disputes between QFs and utilities, and aggrieved parties can seek either a declaratory ruling from or an enforcement action by FERC before taking their dispute to court. FERC, however, involves itself in state regulatory proceedings to prevent harm to a QF, provide clarification of the law, or when a state is failing to properly implement PURPA.[9] Justice delayed for the Complainants may result significant financial consequences, which could warrant FERC stepping in if PGE successfully convinces the Commission to ignore its rules and regulations for the timely processing of complaints.

C. PGE's Claims About Workload Are Over Exaggerated and Irrelevant

PGE argues that it will take PGE an extraordinary 185 business days to review all of its newly-filed complaints while simultaneously acknowledging that its projection does not account for any efficiencies of scale and is therefore overblown.[10] PGE suggests it "*may* be possible PGE staff to assemble the facts regarding one complaint while PGE's attorneys are drafting an answer to another complaint (for which PGE's staff has already assembled the facts)" and, thus, "it *may* be possible for PGE to develop answers to all 31 complaints in less than the 185 business days . . . ."[11]

These assertions are preposterous. PGE has a full internal staff and team of

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9 E.g., Pioneer Wind Park I, LLC, 145 FERC ¶ 61,215 P. 35 (2013)(exercising its discretion to address QF petition during the pendency of a state dispute to because "[d]eferring resolution in such circumstances would also result in more uncertainty and could lead to unnecessary and potentially significant financial consequences for Pioneer Wind and similarly situated QFs.").

10 PGE's Motion at 3.

11 Id. at 3-4 (emphasis added).

lawyers, and has recently retained at least two outside law firms as well.[12] PGE also has a nearly unlimited legal budget, courtesy of its ratepayers, and has litigated a wide variety of complex issues before the Commission, at FERC, and in our court systems. Thus, PGE has demonstrated enough legal prowess and expertise to figure out how to manage its own internal workflow in a way that actually accounts for economies of scale and ensures that PGE meets its deadlines.

Moreover, PGE should not be permitted to use a self-inflicted problem to its advantage. PGE's PURPA staff, which PGE claims would be forced to "work on nothing but" reviewing complaints and developing answers,[13] was certainly able to make several discretionary filings recently (including requests for retroactive relief that would subject QF developers to dire consequences as well as its own complaint against the Covanta Marion QF[14]) to undermine its ongoing PURPA negotiations. If PGE spent its time processing PPAs and preparing its answers rather than trying to put Complainants out of business, then it should have easily been able to file its answers. Thus, PGE's claims that its staff is too busy to deal with the results of those filings are disingenuous and self-serving.

Complainants notes that its own legal counsel does not appear to have the same difficulties completing its work as PGE. At bottom, if a two-attorney firm can process all

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12 These firms include McDowell Rackner and Gibson (which has six lawyers) and Law Offices of Jeffery Lovinger.

13 PGE's Motion at 3.

14 Re PGE Application to Lower the Standard Price and Standard Contract Eligibility Cap for Solar QFs, Docket No. UM 1854, PGE's Motion for Interim Relief at 1 (June 30, 2017); Re PGE Updates to Schedule 201 QF (10MW or Less) Avoided Cost, Docket No. UM 1728, PGE's Motion for Temporary Relief From Schedule 201 Prices at 1 (Aug. 18, 2017); PGE v. Covanta Marion, Inc., Docket No. UM 1887, Complaint (Aug. 11, 2017).

these complaints in a timely manner along with their regular workload (including responding to PGE's myriad of regulatory filings), then PGE should be able to do so with vastly superior resources.

D. PGE Did Not Accurately Reflect Complainants' Position Regarding a Stay

PGE's Motion notes that it requested additional time to answer its complaints and that in 17 cases, PGE and the QF complainant were not able to reach agreement regarding an extension of time to file an answer. PGE did not, however, provide a single detail regarding those failures. For example, Complainants proposed to provide PGE a 15-day extension, if PGE agreed to not discriminate against Complainants and to instead continue processing its PPA requests. PGE refused.

Nothing in Schedule 201 allows PGE to stop its contract negotiations. Schedule 201 specifically requires PGE to provide draft, final and/or executable PPAs after certain periods of time, which are not stayed because a complaint has been filed due to PGE's failure to provide PPA drafts in a timely manner. It would be nonsensical for a QF, which is unable to get PGE to provide PPAs on time, to suddenly be unable to obtain any drafts PPAs at all because they filed a complaint regarding PGE's delays. PGE claims that it is complying with the Schedule 201 timelines, and if that is the case, then PGE should have no problem adhering to that process by responding to past due communications and requests for PPAs.

PGE's Motion failed to include any information about its discussions with Complainants, and therefore failed to adequately inform the ALJ of Complainants' efforts and willingness to work with PGE. Thus, ALJ Grant suspended PGE's due date for responding to Complainants based on inaccurate information, and PGE should be

directed to provide its answer on Wednesday August 30, 2017.

E. Delaying the Schedule Prejudices Complainants

PGE may have managed to secure a procedural advantage for itself by commandeering the Commission's complaint process to suit its own needs. PGE's motion claims that Complainants will not be harmed by a delay because they claim to have established a legally enforceable obligation. This ignores the obvious fact that PGE is claiming that Claimants have not established a legally enforceable obligation. In this situation, time delays work in PGE's favor. PGE appears to believe that Claimants can only establish a legally enforceable obligation if PGE unilaterally decides to provide an executable PPA. To that end, PGE is using delay tactics to prevent Claimants from ever establishing a legally enforceable obligation. PGE should not be able to use the Commission's complaint process to procedurally disadvantage QFs seeking to establish a legally enforceable obligation.

Aside from being placed in a procedural disadvantage, Complainants have costs accumulating during each day of delay. For example, the Complainants will be required to make payments to land owners, pay for permitting and consulting fees, and incur costs to continue to entitle land to ensure the projects can be developed because Oregon land use laws restrict the total acreage of solar development in areas zoned for Exclusive Farm Use. Strata has significant investments of time and money and the cloud of uncertainty from PGE's refusal to tender executable contracts is costly. In the coming months, Strata has payments due for site control in excess of $1.5 million for the portfolio and expects to incur costs for zoning entitlements in excess of $400,000. This is why Complainants will be forced to file with FERC, if the Commission will not process according to its normal

complaint rules.

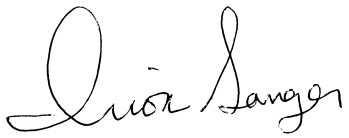
Finally, Complainants are aware that complaints before the Commission can be difficult and time consuming. PGE often raises arguments and motions and refuses to provide information, with the result that the adjudicatory process is slowed down. It is an inauspicious start to this complaint that PGE has sought to delay the process even before it starts. Therefore, Complainants urges the ALJ to consolidate the above-referenced complaints and require PGE to promptly file an answer to move these complaints toward a timely resolution.

IV. CONCLUSION

For the reasons outlined above, PGE has failed to establish any justification for delaying the prosecution of the Complainants complaint. PGE did not adequately represent Complainants' offer to allow PGE a 15-day delay if PGE would merely continue to process its PPA requests. PGE should not be permitted to use that omission to its advantage to secure additional delays that disadvantage Complainants. PGE's attempts to lump all of its recently-filed complaints together ignores the unique harm inflicted upon each complainant. Because each day of delay subjects Complainants to substantial harm, PGE should be required to proceed under at least the Commission's normal process.

Dated this 28th day of August 2017.

Respectfully submitted,



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