



Portland General Electric Company
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V. Denise Saunders
Associate General Counsel

October 18, 2017

Via Electronic Filing

Public Utility Commission of Oregon
Filing Center
201 High St SE, Suite 100
PO Box 1088
Salem, OR 97308-1088

Re: **UM 1889 – Minke Solar LLC, Complainant vs. Portland General Electric Company,
Defendant**

Attention Filing Center:

Enclosed for filing in Docket UM 1889 is Portland General Electric Company's Answer.

Thank you in advance for your assistance.

Sincerely,

A handwritten signature in blue ink that reads "V. Denise Saunders". The signature is written in a cursive style with a large, sweeping flourish at the end.

V. Denise Saunders
Associate General Counsel

VDS:hp

Enclosure

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1889

MINKE SOLAR, LLC,

Complainant,

vs.

PORTLAND GENERAL ELECTRIC
COMPANY,

Defendant.

**ANSWER OF PORTLAND GENERAL
ELECTRIC COMPANY**

I. INTRODUCTION

Pursuant to ORS 756.512 and OAR 860-001-0400, defendant Portland General Electric Company (“PGE”) submits the following answer (“Answer”) to the complaint (“Complaint”) filed by Minke Solar, LLC (“Minke Solar” or “Complainant”). Complainant changed material information concerning its project during the contracting process and refused to follow PGE’s Schedule 201 contracting process. At the time it filed its Complaint, Complainant was not entitled to an executable power purchase agreement (“PPA”) for its proposed project, nor had it established a legally enforceable obligation.

II. SERVICE

Copies of all pleadings, motions and correspondence should be served on PGE's counsel and representatives at the addresses below:

V. Denise Saunders
Associate General Counsel
Portland General Electric Company
121 SW Salmon Street, 1WTC1301
Portland, OR 97204
Email: denise.saunders@pgn.com

Jeffrey S. Lovinger
Law Offices of Jeffrey S. Lovinger
2000 NE 42nd Avenue, Suite 131
Portland, OR 97213-1397
Email: jeff@lovingerlaw.com

III. ANSWER

PGE denies each and every allegation contained in the Complaint except as hereinafter expressly admitted.

Unless otherwise specified, the capitalized term "Paragraph" refers to the numbered paragraphs of the Complaint.

The first three pages of the Complaint contain a narrative introduction and legal argument. PGE does not understand the introduction to contain allegations requiring a response. PGE expects to respond to Complainant's narrative and legal arguments as part of the dispositive motion practice or, if needed, at a hearing in this proceeding. In the event the Commission deems the introduction to contain allegations requiring a response, PGE denies the allegations.

In answer to some of the allegations contained in numbered Paragraphs, PGE has indicated that no response is required because the allegations are legal conclusions or legal arguments. If the Commission deems that responses are required in such instances, then PGE denies the allegations in question.

Some of the numbered Paragraphs in the Complaint allege the exchange of written communications between the parties. In answer to some of these numbered Paragraphs, PGE has admitted the existence of the written communications, filed a copy of the written

communications as exhibits, and indicated that the communications speak for themselves. In these instances, PGE denies all of the allegations in the associated numbered Paragraph except to the extent that PGE expressly admits an allegation. The exhibits are true and correct copies of the information exchanged by the parties.

Some of the numbered Paragraphs in the Complaint characterize the contents of a Commission order or of a FERC order, or a filing made by PGE in a Commission docket. In answer to some of these numbered Paragraphs, PGE has indicated that the Commission order, FERC order, or PGE filing speaks for itself. In such instances, PGE denies all of the allegations in the associated numbered Paragraph except to the extent PGE expressly admits an allegation.

In response to the numbered Paragraphs of the Complaint, PGE admits, denies, or otherwise responds as follows:

IDENTITY OF THE PARTIES

1. PGE admits the allegations contained in Paragraph 1.
2. PGE admits that Complainant has submitted an Initial Information Request to PGE asserting the facts alleged in Paragraph 2. PGE lacks information or knowledge sufficient to verify or form a belief as to the truth of the allegations contained in Paragraph 2 and therefore denies them.

APPLICABLE STATUTES AND RULES

3. The allegations contained in Paragraph 3 constitute legal conclusions to which no response is required.
4. The allegations contained in Paragraph 4 constitute legal conclusions to which no response is required.

JURISDICTION

5. The allegations contained in Paragraph 5 constitute legal conclusions to which no response is required.

6. The allegations contained in Paragraph 6 constitute legal conclusions to which no response is required.

7. The allegations contained in Paragraph 7 constitute legal conclusions to which no response is required.

FACTUAL BACKGROUND

8. PGE admits that on the date the Complaint was filed, Complainant was seeking a Schedule 201 PPA from PGE for a proposed 2.2 megawatt (“MW”) nameplate solar generation facility to be located in Clackamas County, Oregon.

9. PGE admits that on April 4, 2017, Complainant provided some of the information and materials required for a Standard PPA with PGE. PGE denies that on April 4, 2017 Complainant provide *all* information and materials required for a Standard PPA with PGE.

10. PGE admits the allegations in Paragraph 10.

11. PGE admits the allegations in Paragraph 11.

12. PGE lacks information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 12 and therefore denies them.

13. PGE lacks information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 13 and therefore denies them.

14. The allegation in Paragraph 14 is vague and misleading. PGE has no evidence that Complainant and PGE “exchanged information and communicated regarding issues related to the sale of Minke Solar’s net output to PGE” in the interim between PGE’s April 6, 2017 email to

Complainant and PGE's April 25, 2017 letter to Complainant. PGE therefore denies the allegations in Paragraph 14.

15. PGE admits the allegations in Paragraph 15.

16. PGE admits the allegations in Paragraph 16.

17. PGE denies the allegations in Paragraph 17.

18. PGE admits that PGE sent Complainant an email on May 1, 2017 that acknowledged receipt of additional information from Complainant. PGE is unaware of a request by Complainant to confirm that the applications were formatted and therefore denies the allegation in the second sentence of Paragraph 18. PGE admits the allegations in the last sentence of Paragraph 18.

19. PGE admits that on May 1, 2017, consistent with the Commission's rules, PGE filed an application to update its Schedule 201 Qualifying Facility Information. PGE lacks sufficient knowledge or information to determine what Complainant expected PGE's filing to contain and therefore denies any allegations concerning Complainant's expectations. The remainder of the allegations contained in Paragraph 19 characterize PGE's application to update its Schedule 201 Qualifying Facility Information which is available as part of the public record in Docket No. UM 1728 and which speaks for itself; PGE therefore denies all remaining allegations in Paragraph 19.

20. PGE denies it had any obligation to inform Complainant that it was planning to seek approval of its May 1 update at the May 16, 2017 Public Meeting. PGE is required by Commission Order No. 14-058 to file a May 1 price update each year and all Qualifying Facilities ("QFs") have access to that order. Order No. 14-058 makes it clear that avoided cost prices may be effective *within* 60 days of the May 1 filing. PGE admits that it provided no

advance notice to Complainant that it would seek approval of the May 1 filing at the May 16, 2017 Public Meeting.

21. PGE denies it had any obligation to inform Complainant that it was planning to request an effective date of May 17, 2017 for its May 1 update. PGE is required by Commission Order No. 14-058 to file a May 1 price update each year and all QFs have access to that order. Order No. 14-058 makes it clear that avoided cost prices may be effective *within* 60 days of the May 1 filing. PGE admits that it provided no advance notice to Complainant that it would request an effective date of May 17, 2017 for its May 1 filing.

22. PGE lacks knowledge and information sufficient to form a belief as to the allegations contained in the first sentence of Paragraph 22 and therefore denies them. PGE denies the allegations in the second sentence of Paragraph 22.

23. PGE lacks knowledge and information sufficient to form a belief as to the allegations contained in Paragraph 23. The Complaint appears to reference a transcript of the May 18, 2017 Special Public Meeting; that recording speaks for itself.

24. PGE admits that it filed an Application to Lower the Standard Price and Standard Contract Eligibility Cap for Solar Qualifying Facilities. PGE denies that the Application was filed on or about May 1, 2017. PGE denies that it was filed in Docket No. UM 1845. The remainder of the allegations contained in Paragraph 24 characterize PGE's application which is available as part of the public record in Docket No. UM 1854 and which speaks for itself; PGE therefore denies all remaining allegations in Paragraph 24.

25. The allegations in Paragraph 25 are legal conclusions and do not require a response.

26. PGE denies that it had any obligation to provide advance notice to Complainant that PGE intended to file PGE's application and motion for interim relief in Docket

No. UM 1854. PGE admits that it provided no advance notice of that filing to Complainant.

27. PGE lacks knowledge and information sufficient to form a belief as to the allegations in the first sentence of Paragraph 27 and therefore denies them. PGE denies the allegations in the second sentence of Paragraph 27.

28. PGE admits the allegations in Paragraph 28.

29. PGE admits that the Commission considered PGE's application to update its Schedule 201 Qualifying Facility Information at a May 18, 2017 Special Public Meeting. The remaining allegations in Paragraph 29 are legal conclusions and do not require a response.

30. PGE denies that it had any obligation to inform Complainant of the Commission's actions at the May 18, 2017 Special Public Meeting which were published and made available to Complainant in Commission Order No. 17-177. PGE denies the allegations in Paragraph 30; PGE posted the new avoided costs on its QF website.

31. PGE admits that it received an email from Complainant on May 23, 2017. PGE has attached a copy of the email as Exhibit A to this Answer. The email speaks for itself.

32. PGE admits that it sent Complainant an email on May 31, 2017. PGE has included a copy of the email as Exhibit B to this Answer. The email speaks for itself.

33. PGE has included a copy of the May 31 email as Exhibit B to this Answer. The email speaks for itself.

34. PGE admits that on May 31, 2017, Complainant provided PGE with an executed PPA. PGE admits that in an email accompanying the PPA, Complainant claimed the PPA contained minor edits. PGE denies that all of the edits were, in fact, minor. PGE has not

compared the PPA with Attachment A of the Complaint to determine if Attachment A to the Complaint is a true and correct copy of the signed PPA. PGE therefore denies the allegation in the last sentence of Paragraph 34.

- 35. PGE denies the allegation in Paragraph 35.
- 36. PGE admits the allegations in Paragraph 36.
- 37. PGE admits the allegations in Paragraph 37.
- 38. PGE denies the allegations in Paragraph 38.
- 39. PGE denies the allegations in Paragraph 39.
- 40. PGE denies the allegations in Paragraph 40.
- 41. PGE admits the allegations in Paragraph 41.

LEGAL CLAIMS

COMPLAINANT'S FIRST CLAIM FOR RELIEF

MINKE SOLAR IS ENTITLED TO PGE'S STANDARD CONTRACT AT THE PRE-JUNE 1 RATES AND TERMS BECAUSE MINKE SOLAR LEGALLY OBLIGATED ITSELF TO SELL THE NET OUTPUT PRIOR TO THE FILING OF THIS COMPLAINT, AND BEFORE THE SCHEDULE 201 RATES CHANGED ON JUNE 1, 2017

- 42. PGE repeats and realleges the responses made to Paragraphs 1 through 41.
- 43. The allegations contained in Paragraph 43 are legal conclusions and do not require a response.
- 44. The allegations contained in Paragraph 44 are legal conclusions and do not require a response.
- 45. The allegations contained in Paragraph 45 are legal conclusions and do not require a response.
- 46. The allegations contained in Paragraph 46 are legal conclusions and do not require a response.

47. The allegations contained in Paragraph 47 characterize the Commission's decision in Order No. 16-174. That document speaks for itself. To the extent that the allegations in Paragraph 47 are legal conclusions, they do not require a response.

48. The allegations contained in Paragraph 48 characterize the Commission's decision in Order No. 16-174. That document speaks for itself. To the extent that the allegations in Paragraph 48 are legal conclusions, they do not require a response. PGE denies the allegations in the last sentence of Paragraph 48.

49. The allegations contained in Paragraph 49 characterize the Commission's decision in Order No. 16-174. That document speaks for itself. To the extent that the allegations in Paragraph 49 are legal conclusions, they do not require a response.

50. The allegations contained in Paragraph 50 characterize cited FERC decisions and are legal arguments. The FERC decisions speak for themselves. To the extent that the allegations in Paragraph 50 are legal arguments, they do not require a response.

51. The allegations contained in Paragraph 51 are legal conclusions or legal arguments and do not require a response.

52. The allegations contained in Paragraph 52 are legal conclusions or legal arguments and do not require a response.

53. The allegations contained in Paragraph 53 are legal conclusions or legal arguments and do not require a response.

54. The allegations contained in Paragraph 54 are legal conclusions or legal arguments and do not require a response.

COMPLAINANT'S SECOND CLAIM FOR RELIEF

MINKE SOLAR IS ENTITLED TO PGE'S STANDARD CONTRACT AT THE PRE-JUNE 1 RATES AND TERMS BECAUSE MINKE SOLAR LEGALLY OBLIGATED ITSELF TO SELL THE NET OUTPUT PRIOR TO THE FILING OF THIS COMPLAINT, BEFORE THE SCHEDULE 201 RATES CHANGED ON JUNE 1, 2017, AND PGE VIOLATED THE OPUC'S AND FERC'S POLICIES AND RULES, AND SCHEDULE 201

55. PGE repeats and realleges the responses made to Paragraphs 1 through 54.

56. The allegations contained in Paragraph 56 characterize the Commission's decision in Order No. 05-584. That document speaks for itself. To the extent that the allegations in Paragraph 56 are legal conclusions, they do not require a response.

57. The allegations contained in Paragraph 57 are legal conclusions or legal arguments and do not require any response.

58. The allegations contained in Paragraph 58 characterize the Commission's decision in Order No. 16-174. That document speaks for itself.

59. The allegations contained in Paragraph 59 characterize PGE's Schedule 201. That document speaks for itself. To the extent that the allegations in Paragraph 59 are legal conclusions, they do not require a response.

60. The allegations contained in Paragraph 60 characterize PGE's Schedule 201. That document speaks for itself.

61. The allegations in Paragraph 61 characterize the Commission's decision in Order No. 16-174. That document speaks for itself. To the extent that the allegations in Paragraph 61 are legal conclusions, they do not require a response. To the extent a response is deemed required, PGE denies that it has delayed or obstructed progress towards a final draft or executable contract.

62. The allegations contained in Paragraph 62 constitute legal conclusions or legal arguments to which no response is required.

63. The allegations contained in Paragraph 63 constitute legal conclusions or legal arguments to which no response is required.

64. The allegations contained in Paragraph 64 constitute legal conclusions or legal arguments to which no response is required.

65. The allegations contained in Paragraph 65 constitute legal conclusions or legal arguments to which no response is required.

66. PGE admits the allegations in Paragraph 66.

67. The allegations contained in Paragraph 67 constitute legal conclusions or legal arguments to which no response is required.

68. PGE denies the allegations in Paragraph 68.

69. The allegations contained in Paragraph 69 constitute legal conclusions to which no response is required. To the extent a response is deemed required, PGE denies that it has delayed or obstructed progress towards executing a PPA.

70. The allegations contained in Paragraph 70 are legal conclusions or legal arguments and do not require a response.

71. The allegations contained in Paragraph 71 constitute legal conclusions or legal arguments to which no response is required.

COMPLAINANT’S THIRD CLAIM FOR RELIEF

MINKE SOLAR IS ENTITLED TO PGE’S STANDARD CONTRACT AT THE PRE-JUNE 1 RATES AND TERMS BECAUSE MINKE SOLAR LEGALLY OBLIGATED ITSELF TO SELL THE NET OUTPUT PRIOR TO THE FILING OF THIS COMPLAINT, BEFORE THE SCHEDULE 201 RATES CHANGED ON JUNE 1, 2017, AND THE COMMISSION CANNOT CHANGE POLICIES AND RULES, AND SCHEDULE 201 TO PREVENT MINKE SOLAR FROM OBTAINING A LEGALLY ENFORCEABLE OBLIGATION

72. PGE repeats and realleges the responses made to Paragraphs 1 through 71.

73. The allegations in Paragraph 73 constitute legal conclusions or legal arguments to which no response is required.

74. The allegations in Paragraph 74 constitute legal conclusions or legal arguments to which no response is required.

75. The allegations in Paragraph 75 constitute legal conclusions or legal arguments to which no response is required.

76. The allegations in Paragraph 76 constitute legal conclusions or legal arguments to which no response is required.

PRAYER FOR RELIEF

77. PGE denies all allegations contained in Paragraph 1 of Complainant’s Prayer for Relief and requests that the Commission deny the relief requested in Paragraph 1 of Complainant’s Prayer for Relief.

78. PGE denies all allegations contained in Paragraph 2 of Complainant’s Prayer for Relief and requests that the Commission deny the relief requested in Paragraph 2 of Complainant’s Prayer for Relief.

79. PGE denies all allegations contained in Paragraph 3 of Complainant’s Prayer for Relief and requests that the Commission deny the relief requested in Paragraph 3 of Complainant’s Prayer for Relief.

80. PGE denies all allegations contained in Paragraph 4 of Complainant's Prayer for Relief and requests that the Commission deny the relief requested in Paragraph 4 of Complainant's Prayer for Relief.

81. PGE denies all allegations contained in Paragraph 5 of Complainant's Prayer for Relief and requests that the Commission deny the relief requested in Paragraph 5 of Complainant's Prayer for Relief.

IV. AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

82. The Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

83. Any failure by PGE to meet a deadline established by Schedule 201 or by any PGE communication with Complainant was caused by the unprecedented volume of QF contract requests being processed by PGE, was not the result of an intentional effort by PGE to prevent Complainant from obtaining a draft PPA or a request for additional information within the deadlines established by Schedule 201 or any PGE communications, and was, in any event, immaterial.

V. CONCLUSION

PGE respectfully requests that the Commission deny Complainant's requested relief and dismiss the Complaint.

Dated this 18th day of October 2017.

Respectfully submitted,

V. Denise Saunders, OSB #903769
Associate General Counsel
Portland General Electric Company
121 SW Salmon Street, 1WTC1301
Portland, Oregon 97204
(541) 752-9060 (phone)
(503) 464-2200 (fax)
denise.saunders@pgn.com



EXHIBIT A

UM 1889

Minke Solar LLC vs. Portland General Electric Company

Portland General Electric Company's Answer

From: Andrew Berrier
To: [Chris Norqual](#); [Angeline Chong](#)
Cc: [John McQueeney](#); [Garrett Hollingsworth](#); [Danny Obeler](#); [David Bunge](#); [Jason Groenewold](#); [Ben Catt](#); [James Ortega](#); [Mike Wrenn](#); [Stephanie Murr](#)
Subject: RE: Skyward / Valhalla PPA notes
Date: Tuesday, May 23, 2017 12:50:41 PM
Attachments: [image001.png](#)

Please take care when opening links, attachments or responding to this email as it originated outside of PGE.

Hello Angeline,

To follow up on Chris's email, Pine Gate would be interested in following the same path as CCR on the Bighorn, Harrier, and Minke PPAs. We would be happy to discuss in conjunction with Chris/CCR to keep this process all under one track and running as smooth as possible.

Best regards,
Andrew

Andrew Berrier
Finance Counsel

Pine Gate Renewables, LLC
Direct: (919) 815-3837
1111 Hawthorne Lane, Suite 201
Charlotte, NC 28205
aberrier@pgrenewables.com



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Pine Gate Renewables, LLC. is committed to encouraging sustainable business practices. Please consider the environment before printing this email.

From: Chris Norqual [mailto:norqual@ccrenew.com]
Sent: Tuesday, May 23, 2017 3:35 PM
To: Angeline Chong <Angeline.Chong@pgn.com>
Cc: John McQueeney <john.mcqueeney@ccrenew.com>; Garrett Hollingsworth <hollingsworth@ccrenew.com>; Danny Obeler <obeler@ccrenew.com>; Andrew Berrier <aberrier@pgrenewables.com>; David Bunge <bunge@ccrenew.com>
Subject: Skyward / Valhalla PPA notes
Importance: High

Hi Angeline,

Thank you very much for your call and time this morning. For your review, here are the few notes and requests we discussed. Again, our priority is to receive Execution Copies of the PPAs as soon as possible this week since we intend to sell the power from our six applied-for projects to PGE under the currently available Schedule 201. This includes Skyward and Valhalla, as well as Pika, Leatherback, Whipsnake, and Bottlenose, which you noted will have drafts available today.

1. Valhalla is missing this note in the top margin on all pages: Schedule 201 Standard Renewable In-System Variable Power Purchase Agreement Form Effective August 12, 2016. We are OK with this, as long as PGE is
2. Skyward, Exhibit B – for consistency, please remove/exclude expected dates
3. All Projects, Exhibit C – Please remove point #7
4. All Projects -- Section 4.5 -- We suggest returning to the prior language from the previously signed SP Solar 2, LLC PPA:
 - a. During the Renewable Resource Deficiency Period, Seller shall provide and PGE shall acquire the RPS Attributes for the Contract Years as specified in the Schedule and Seller shall retain ownership of all other Environmental Attributes (if any). During the Renewable Resource Sufficiency Period, and any period within the Term of this Agreement after completion of the first fifteen (15) years after the Commercial Operation Date, Seller shall retain all Environmental Attributes in accordance with the Schedule. The Contract Price includes full payment for the Net Output and any RPS Attributes transferred to PGE under this Agreement. With respect to Environmental Attributes not transferred to PGE under this Agreement ("Seller-Retained Environmental Attributes") Seller may report under §1605(b) of the Energy Policy Act of 1992 or under any applicable program as belonging to Seller any of the Seller-Retained Environmental Attributes, and PGE shall not report under such program that such Seller-Retained Environmental Attributes belong to it. With respect to RPS Attributes transferred to PGE under this Agreement ("Transferred RECs"), PGE may report under §1605(b) of the Energy Policy Act of 1992 or under any applicable program as belonging to it any of the Transferred RECs, and Seller shall not report under such program that such Transferred RECs belong to it.
5. All Projects -- Section 9.2 -- We suggest returning to the prior language from the previously signed SP Solar 2, LLC PPA:
 - a. In the event of a default hereunder, except as otherwise provided in this Agreement, the non-defaulting party may immediately terminate this Agreement at its sole discretion by delivering written notice to the other Party. In addition, the non-defaulting party may pursue any and all legal or equitable remedies provided by law or pursuant to this Agreement including damages related to the need to procure replacement power. A termination hereunder shall be effective upon the date of delivery of notice, as provided in Section 20. The rights provided in this Section 9 are cumulative such that the exercise of one or more rights shall not constitute a waiver of any other rights. Provided; however, PGE may not terminate this Agreement for Seller's failure to meet the Guarantee of Mechanical Availability established in Section 3.1.10.

- b. 9.1.6 and 9.3 – were not included in the previous PPA. We suggest removing both to be consistent

By way of introduction, I have copied Andrew Berrier from Pine Gate, since I believe he is also interested in pursuing execution copies for his three projects, with similar comments. I'll let him respond directly to you.

Please don't hesitate to call if you have any questions or needs.

Chris Norqual

Cypress Creek Renewables

3250 Ocean Park Blvd, Suite 355 | Santa Monica, California 90405

(o) 213-347-9377 (c) 310-746-7067 | norqual@ccrenew.com



EXHIBIT B

UM 1889

Minke Solar LLC vs. Portland General Electric Company

Portland General Electric Company's Answer

From: Angeline Chong
To: ["Andrew Berrier"](#)
Cc: [Ryin Khandoker](#); [Brett Greene](#); [John Morton](#)
Subject: RE: Bighorn Solar - Executed PPA to PGE
Date: Wednesday, May 31, 2017 4:25:12 PM
Attachments: [image001.png](#)

Andrew -

PGE has received a large volume of applications for Qualify Facility PPAs. PGE is processing and reviewing all of the applications in accordance with the process outlined in its Schedule 201. PGE has provided you with notice of its Schedule 201 process and the associated deadlines at each step of the process. Under Schedule 201, an applicant for a Standard PPA is not entitled to the avoided cost rates in effect when a request for contract is first made. Rather, Standard PPA pricing is based on the Standard or Renewable Avoided Costs in effect at the time the agreement is executed. Under the regular timelines of the Schedule 201 process, PGE does not anticipate entering into fully executed Standard PPAs with Pinegate Renewable on the proposed Bighorn, Harrier or Minke projects before June 1, 2017. PGE expects that the prices that will apply to Standard PPAs for those proposed projects will be the prices that become effective on June 1, 2017 (or such other prices as are in effect under Schedule 201 at the time Standard PPAs for the projects are executed).