BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1931

PORTLAND GENERAL ELECTRIC COMPANY,	)	
Complainant,	)	**DEFENDANTS' RESPONSE TO PORTLAND GENERAL ELECTRIC COMPANY'S MOTION TO COMPEL DISCOVERY, SUR-REPLY TO DEFENDANTS' MOTION FOR PROTECTIVE ORDER TO STAY DISCOVERY, AND MOTION FOR A SCHEDULING ORDER FOR DEFENDANTS' MOTION FOR SUMMARY DISPOSITION**
v.	)	
ALFALFA SOLAR I LLC, et al.	)	
Defendants.	)	

INTRODUCTION AND BACKGROUND

Pursuant to OAR 860-001-0420, defendants Alfalfa Solar I LLC ("Alfalfa"), Dayton Solar I LLC ("Dayton"), Fort Rock Solar I LLC ("Fort Rock I"), Fort Rock Solar II LLC (Fort Rock II"), Fort Rock Solar IV LLC ("Fort Rock IV"), Harney Solar I LLC ("Harney"), Riley Solar I LLC ("Riley"), Starvation Solar I LLC ("Starvation"), Tygh Valley Solar I LLC ("Tygh Valley"), and Wasco Solar I LLC ("Wasco") (collectively, the "NewSun Parties"), hereby submit to the Oregon Public Utility Commission ("Commission") this response to Portland General Electric Company's ("PGE") filing on July 27, 2018, titled "Motion to Compel Discovery, Sur-Reply to Defendants' Motion for Protective Order to Stay Discovery, and Motion for a Scheduling Order for Defendants' Motion for Summary Disposition." As explained herein, PGE's motions should be denied.

Even if the Commission does not stay discovery altogether, PGE's motion to compel discovery should be denied. As explained in prior filings, PGE's discovery requests are beyond the scope of the narrow contract interpretive question before this Commission. Even if some amount of discovery could conceivably be reasonable, the extrinsic evidence PGE seeks in its Data Request Nos. 1 and 2 is either already in PGE's possession or unduly burdensome to produce and not remotely proportional to the needs of the case. PGE's Data Request No. 2 is especially burdensome, since it would require the NewSun Parties to sort through 21,803 individual documents totaling 126,790 pages just in electronic mail ("e-mail") messages and attachments in the custody of the primary custodian alone to attempt to locate internal correspondence and correspondence with third-parties, including financiers and others, that is responsive to PGE's vague descriptions of the categories of information it seeks. That burden far outweighs the non-existent probative value of the material sought because this type of information exchanged with financiers is irrelevant to the meaning of the standard contract.

Moreover, compelling production of financial information and revenue projections from a qualifying facility in a state utility commission proceeding violates federal law. Compelling the NewSun Parties to produce such information to PGE in this proceeding would be highly prejudicial to the NewSun Parties.

PGE's remaining proposal to forever bind the NewSun Parties to the responses made to PGE's interrogatories into the NewSun Parties' legal contentions (Data Request Nos. 6, 8, 9, and 10) boils down to an inappropriate proposal to deprive the NewSun Parties of the right to reply to any unanticipated arguments PGE might make.

Thus, PGE's motion to compel should be rejected as a tactic designed to unreasonably delay this proceeding and impose unnecessary cost on the NewSun Parties—which costs and delays have already harmfully impacted the NewSun Parties.

PGE's tardy procedural proposals should likewise be denied. PGE agreed to expedited resolution of this dispute and should not be allowed to delay the deadline for its response to the NewSun Parties' Motion for Summary Disposition any longer. Further delay inures to PGE's benefit and significantly harms the NewSun Parties.

In sum, the Commission should deny PGE's motions and lift the stay on the deadline for PGE's response to the NewSun Parties' Motion for Summary Disposition.

ARGUMENT

1. PGE's Motion to Compel Discovery Should Be Denied

PGE has failed to demonstrate that it is entitled to the discovery requested in its motion to compel. The Commission has recently explained that "[t]he legal standard for discovery is whether the information sought is relevant to the claim of the party seeking discovery." *In the Matter of PacifiCorp, dba Pacific Power: Investigation into Schedule 37 – Avoided Cost Purchases from Qualifying Facilities of 10,000 kW or Less*, Docket No. UM 1794, Order No. 17-121, at 3 (March 23, 2017). However, in addition to being relevant, the discovery sought "must be commensurate with the needs of the case," and unreasonably burdensome discovery is not allowed. OAR 860-001-0500(1) & (2). Data requests are subject to the discovery rules in the Oregon Rules of Civil Procedure. OAR 860-001-0540(1). Under those rules, a court may deny discovery to protect a party from "oppression, or undue burden or expense." ORCP 36 C(1).

More generally, the rules should "be construed to secure the just, speedy, and inexpensive determination of every action." ORCP 1 B.

PGE has failed to demonstrate it is entitled to any further discovery under these rules where the sole issue in dispute in PGE's complaint is a contractual interpretation question under a particular version of the Commission-approved standard contract that the NewSun Parties executed. The entire basis for this Commission's assertion of jurisdiction is its "expertise and the authority to review the terms and conditions of these standard contracts that were developed through Commission proceedings." Order No. 18-174 at 4-5. As explained in prior filings, detailed factual inquiries into the NewSun Parties' and PGE's subjective understanding of PGE's standard contract are not relevant. Accordingly, there is no justification for any discovery whatsoever in this proceeding—especially the burdensome and irrelevant information PGE seeks in its motion to compel. *See NewSun Parties Motion for Protective Order,* at 10-13 & 17-19 (July 5, 2018); *NewSun Parties' Reply in Support of Motion for Protective Order*, at 3-8 (July 27, 2018).

a. PGE's Data Request No. 1 Requests Irrelevant Information that PGE Already Possesses, and Should Therefore Be Denied

The Commission should deny PGE's request that the NewSun Parties be compelled to produce "all communications between Defendants and PGE regarding the NewSun PPAs, including any attachments." *PGE's Motion to Compel* at 4. This discovery request should be rejected for several reasons.

First, this extrinsic evidence is irrelevant to the meaning of the standard contracts. Put simply, the NewSun Parties contend in their Motion for Summary Disposition that the contracts

at issue are unambiguous and therefore the Commission need not proceed beyond step one of the interpretation methodology set forth in *Yogman v. Parrott*, 325 Or 358, 361, 937 P2d 1019 (1997). Under step one, extrinsic evidence of the parties' prior discussions is irrelevant to interpretation of the fully integrated, Commission-approved standard contracts at issue, which are not subject to negotiation and were not modified in any material respect from the form approved by the Commission. *See NewSun Parties Motion for Protective Order*, at 10-13 (July 5, 2018); *NewSun Parties' Reply in Support of Motion for Protective Order*, at 3-8 (July 27, 2018).

Even if extrinsic evidence were relevant in this case, PGE already possesses the requested information. Requiring the NewSun Parties to reproduce it is unnecessary and unduly burdensome. By definition, these communications were made to PGE's agents or employees. PGE has not explained why it needs the NewSun Parties to provide it with communications that are equally available to PGE from its own records.

To produce this material in discovery to PGE, the NewSun Parties would first have to sort through e-mails sent to, and received from, PGE's agents and employees during timeframe of contract formation and then sort those e-mails for responsiveness as "regarding the NewSun PPAs." The NewSun Parties would also have to review each responsive document carefully to ensure that no privileged information is produced to PGE. The burden on the NewSun Parties far outweighs the probative value of the information PGE seeks in this expedited proceeding, especially when PGE already possesses this information.

If the Commission compels the NewSun Parties to produce its communications with

PGE, the production should be limited to the communications made before each respective NewSun PPA was executed, which is all that could be relevant to the NewSun Parties' subjective knowledge at the time of contract formation. PGE's motion to compel requests a blanket production of all communications from 2015 to August 2016. However, as the NewSun Parties explained to PGE, the only material that could pertain to contract formation is material exchanged between representatives of the individual Defendants and PGE regarding the PPA at issue. The relevant time periods therefore are July 30, 2015, when the representative of the NewSun Parties, Mr. Jacob Stephens, first became aware of PGE's standard contract forms, through the date the PPA at issue was fully executed. The dates the PPAs were executed ranged from January 25, 2016 to June 27, 2016. *See PGE's Complaint* at ¶ 16. PGE fails to explain how communications from July and August 2016, after all of the PPAs at issue were executed, possibly could be relevant.

b. PGE's Data Request No. 2 Requests Irrelevant Information that Would be Extremely Burdensome to Produce and Unlawful to Compel Production of in this Proceeding

The Commission should reject PGE's demand for production of a revised "subset" of its Data Request No. 2. Both the original request and the "subset" are extremely broad and seek electronic discovery that is not relevant to the outstanding Motion for Summary Disposition or indeed to any issue that might arise in this proceeding.

The "subset" of its Data Request No. 2 that PGE now seeks is a vast, multipart electronic discovery request as follows:

- Please produce all of Defendants' internal documents and communications regarding or discussing: (i) the 15-year fixed-price period under the NewSun PPAs or PGE's

standard contract forms; or (ii) PGE's position on the 15-year fixed-price period. (B) Please produce all communications between Defendants and any third-parties related to or discussing: (i) the 15-year fixed-price period under the NewSun PPAs or PGE's standard contract forms; or (ii) PGE's position on the 15-year fixed-price period. The responses to this subset of Data Request No. 2 do not need to include specific financial models but must include any communications about financial modeling to the extent those communications reference or rely upon either 15-year fixed-price period interpretation.

- Defendants stipulate, in lieu of producing specific financial models, that their internal analysis of the projects contemplated both parties' positions: 15 years of fixed prices measured from (a) contract execution (PGE's position) and (b) commercial operation (Defendants' position).

As discussed in the NewSun Parties' prior filings, PGE's vast inquiry into the NewSun Parties' subjective understanding of the standard contract prior to execution is irrelevant to the analysis under step one of the *Yogman* test. *See NewSun Parties Motion for Protective Order*, at 10-13 (July 5, 2018); *NewSun Parties' Reply in Support of Motion for Protective Order*, at 3-8 (July 27, 2018). PGE cites no Oregon decision that relies on one party's internal information and documents to determine whether a contract is ambiguous at step one of the *Yogman* test. This alone defeats PGE's request for this material at this stage of the proceeding.

The NewSun Parties also object to producing this information on the ground that the request seeks production of utility-type regulatory information in a state utility commission proceeding in violation of Section 210(e) of the Public Utility Regulatory Policies Act of 1978 ("PURPA"). *See* 16 USC § 824a-3(e)(1). Specifically, the Federal Energy Regulatory Commission's ("FERC") regulations broadly exempt qualifying facilities, such as those under development here, "from State laws or regulations respecting . . . [t]he rates of electric utilities [and] [t]he financial and organizational regulation of electric utilities." 18 CFR § 292.602(c)(1).

Courts have uniformly held that a state commission's regulatory authority under state law may not extend to ongoing regulatory oversight of qualifying facilities. *See Independent Energy Producers Association, Inc. v. California Public Utilities Commission*, 36 F3d 848, 857-58 (9th Cir. 1994); *Oregon Trail Electric Consumers Cooperative, Inc. v. Co-Gen Company*, 168 Or App 466, 482 & n 12, 7 P3d 594 (2000).

PGE's attempt to obtain communications with "financiers" and other third-parties about the projected revenue of the project—under the guise of using it to interpret the meaning of the standard contract—is a creative attempt to obtain information far beyond the scope of what this Commission itself may inquire into or rely upon in this proceeding. Communications with financiers and information regarding projected revenue and costs attached to such communications are classic utility-type regulatory materials that would be investigated in setting a cost-based rate for a regulated utility. There is no basis to compel a qualifying facility to produce such financial information in a state commission proceeding, and compelling the NewSun Parties to do so would violate PURPA's prohibition against utility-type regulation of qualifying facilities.

Furthermore, the NewSun Parties object to producing this material on the ground that it is highly commercially sensitive, and production of it to PGE would prejudice the NewSun Parties. This Commission has previously denied discovery where the objecting party raised legitimate concerns that the information requested could be used by the requesting party to obtain the producing party's "bottom line" for use in "subsequent negotiations." *In the Matter of MidAmerican Energy Holdings Co.: Application for Authorization to Acquire Pacific Power &*

Light, dba PacifiCorp, Docket No. 1209, Order No. 05-1249, at 1-2 (Dec. 12, 2005). The Commission should do the same here.

PGE is not only the plaintiff seeking to limit its contractual obligations to the NewSun Parties in this proceeding, but also a competitor of the NewSun Parties in the generation market that would prefer to rate base new renewable generation rather than see the NewSun Parties successfully develop and operate generation under the NewSun PPAs. This is true both directly in this case and indirectly in other contexts because PGE also competes against independent power producers in solicitations for generation resources. If PGE obtains the NewSun Parties' "bottom line," or indeed any financial projections and communications, through discovery, PGE may be able to use that information to pressure the NewSun Parties into a settlement or to calibrate PGE's litigation strategy to destroy the economic viability of the NewSun Parties' development efforts. PGE may also use that information and other commercially sensitive information inadvertently swept up in the production in unforeseen and unknowable ways to prejudice the NewSun Parties and other entities with whom they have corresponded in matters and proceedings far beyond the scope of this dispute. Thus, producing financial communications and projections or any related information to PGE would severely prejudice the NewSun Parties in a way that cannot be cured by the Commission's general protective order for commercially sensitive information. The NewSun Parties strongly object to producing any financial information, internal correspondence, or correspondence with third parties to PGE on this additional basis.

Next, even if the requested information were relevant and potentially subject to

discovery, the burden of producing it far outweighs its probative value in this proceeding. Discovery must be commensurate with the needs of the case and may not be unduly burdensome to the producing party. Producing the material in PGE's subset of Data Request No. 2 would require the NewSun Parties to collect electronically stored information (including e-mails and other internal documents) from multiple custodians, and to sort and review all such information generated over a year-and-half-long period, all in an effort to determine whether any material relates to the 15-year fixed-price period in PGE's standard contract. Collection, review, and production of this electronic information could easily take months to complete—all for information not needed for *Yogman's* step one.

To illustrate the burden for the Commission and the Administrative Law Judge, the NewSun Parties have supplied the Declaration of Jacob Stephens, who is the primary custodian of the electronically stored information at issue in PGE's subset of Data Request No. 2, and would need to help identify and coordinate collection of materials from any other custodians who may fall within the scope of PGE's request. The two e-mail accounts Mr. Stephens used during this timeframe contain 21,803 individual documents, including both e-mails and attachments to e-mails totaling 126,790 pages. *See* Declaration of Jacob Stephens in Support of Response to PGE's Motion to Compel at ¶ 5. Each document would need to be reviewed to determine if it is responsive to PGE's vague request for material related to the 15-year fixed-price period or interpretation of PGE's standard contract and, if so, whether any privilege applies to the document, which would need to be asserted *prior* to production to PGE. *See id.* at ¶ 6. Performing such a review would require substantial time for both Mr. Stephens and his legal

counsel, and would result in substantial expense to the NewSun Parties. And that is just the documents in electronic mail of the primary custodian at issue. Needless to say, the NewSun parties could not possibly complete review and production of these materials within the timeframes proposed by PGE or indeed on any sort of expedited basis.

The burden on the NewSun Parties should not be underestimated. Mr. Stephens is currently engaged not only in developing the NewSun Parties' facilities at issue in this proceeding within the rapidly approaching contractual deadlines for achieving commercial operation in January through June of 2019, but also in his other professional obligations. *See id.* at ¶ 7-8. Requiring Mr. Stephens to expend substantial effort to coordinate the production of his own e-mails, along with those of other individuals who fall within the scope of PGE's expansive discovery request, would be a distraction and impediment to his ongoing efforts to successfully complete development on schedule and conduct his other professional obligations beyond development of these facilities. The discovery burden further compounds the harm from the delays associated with the mere existence of this dispute. Ascertaining the level of summary information in this response and the attached declaration alone has already taken many hours and distracted from Mr. Stephens' other professional obligations. *Id.* Placing this burden on the NewSun Parties is even more unreasonable considering that PGE cites no Oregon precedent whatsoever to establish that the requested material regarding one party's subjective understanding of a contract is relevant to the interpretation of the standard contract at step one of

the *Yogman* test.[1]

Finally, as with Data Request No. 1, if the Commission compels the NewSun Parties to produce any material responsive to Data Request No. 2, the production should be limited to the communications made before each respective NewSun PPA was executed, which is all that could be relevant to contract formation. That date range is from July 31, 2015, until the date of execution of the last PPA on June 27, 2016, not all the way through August 2016 as PGE proposes. However, even if an order compelling discovery were limit to documents in this date range, the NewSun Parties would still be subjected to an extreme burden because Mr. Stephens' e-mails alone in this date range contain 17,561 individual documents totaling 104,157 pages. *See* Declaration of Jacob Stephens in Support of Response to PGE's Motion to Compel at ¶ 5. Accordingly, PGE's request under Data Request No. 2 should be denied in its entirety.

c. PGE Proposes an Improper Use of Interrogatories in its Data Request Nos. 6, 8, 9, & 10

PGE's remaining requests for the NewSun Parties' legal contentions beyond those already asserted in the Motion for Summary Disposition is also meritless.

PGE lodged its interrogatory-style data requests into the NewSun Parties' legal contentions after PGE was informed the NewSun Parties planned to soon file their dispositive motion containing such legal contentions. Indeed, the NewSun Parties filed their Motion for Summary Disposition *before* the due date to the interrogatory data requests into such legal

[1] The premise of PGE's motion to compel is that the NewSun Parties could only be compelled to produce material responsive to step one of the *Yogman* test. On this point alone the NewSun Parties agree with PGE.

contentions—thus supplying PGE with the NewSun Parties' legal contentions before the due date for the data requests. Accordingly, in the response to these data requests, the NewSun Parties appropriately referred PGE to the contentions set forth in their Motion for Summary Disposition. To the extent PGE seeks further information regarding the contentions set forth in the NewSun Parties' motion, the only possible information would be information from the files of the NewSun Parties' attorneys related to the legal issues identified in PGE's requests. Such information plainly is privileged and not subject to discovery. *See* ORCP 36B(3)(a) (barring discovery of attorney work product absent a showing of undue hardship). Discovery is not an opportunity for PGE to "piggy-back on or poach the work-product of" the NewSun Parties' attorneys. *Gerber v. Down E. Cmty. Hosp.*, 266 FRD 29, 34 (D Maine 2010) (citing *Hickman v. Taylor*, 329 US 495, 497, 510-12 (1947)).

But PGE goes even further and asserts that the NewSun Parties should be "estopped from raising any additional arguments that would have been responsive to PGE Data Request Nos. 6, 8, 9 and 10 but were not raised in Defendants' motion for summary disposition and the declarations filed in support of the motion for summary disposition." *PGE's Motion to Compel* at 5. In effect, PGE hopes to deny the NewSun Parties the right to reply to any arguments PGE makes in its response briefs or in the cross-motion that PGE now proposes to file.

The NewSun Parties cannot be expected to foresee every argument PGE might make in this proceeding and supply a responsive legal argument or related evidentiary documents to PGE through discovery in advance of PGE actually making the argument. To the extent that the NewSun Parties' attorneys have anticipated arguments PGE might make, there is no basis to

require them to identify any potential counterarguments in response to PGE's discovery requests or lose the opportunity to raise those counterarguments later. PGE cites no authority or precedent for this novel use of data requests, and the Commission should reject it.

2. The Commission Should Lift the Stay on PGE's Response Deadline to the Motion for Summary Disposition and Direct PGE to Promptly Respond to that Motion

PGE's motion to compel includes additional argument as to PGE's newly preferred procedural schedule in this proceeding, which would require the NewSun Parties to somehow produce the voluminous discovery PGE demands within weeks and further delays the deadline for PGE's response to the outstanding Motion for Summary Disposition. This portion of PGE's multi-topic motion is nothing more than an untimely response to the NewSun Parties' Motion for Oral Argument and for Expedited Process on the Motion for Summary Disposition, which was filed on the same day as the Motion for Summary Disposition on July 2, 2018. PGE's deadline to respond to the Motion for Summary Disposition was stayed during the procedural conference on July 3, 2018, so that PGE could respond to the procedural proposal by the NewSun Parties, which PGE has now taken almost a month to do. The entire premise of the ongoing delay is PGE's demand for irrelevant and unnecessary discovery that it first initiated six months after filing its complaint in this case. As explained above, PGE's discovery demands are meritless, beyond the scope of this proceeding, and unnecessary for PGE to respond to the Motion for Summary Disposition.

PGE appears to argue that it is unable to file its own motion for summary judgment without first engaging in discovery. Even if that is so, it does not warrant delay in processing the NewSun Parties' Motion for Summary Disposition to determine if the proceeding can be

resolved without any further discovery. PGE has no right to file a cross motion for summary judgment, especially where such motion cannot be filed without first engaging in burdensome discovery. The applicable rules unambiguously allow the NewSun Parties to file a dispositive motion for summary disposition "at any time." ORCP 47B. The intent of allowing a party to file such a motion at any time, even before any discovery occurs, is to allow the case to be resolved as expeditiously as possible, and without needing to respond to the type of burdensome discovery PGE demands in this case if such discovery is unnecessary.

Finally, at the end of PGE's filing it asserts that "key PGE staff and counsel will be unavailable during significant periods between July 27, 2018 and the end of August 2018 because of pre-existing travel and vacation plans." *PGE's Motion to Compel* at 6-7. However, PGE cannot now rely on pre-existing vacation plans to delay resolution of this matter after PGE affirmatively committed to expedited processing of this matter in the United States District Court in order to convince that court to stay its proceedings in favor of this Commission proceeding first. If PGE required a reasonable extension of time to respond to the Motion for Summary Disposition, it should have asked the NewSun Parties for such extension. It made no such request. Instead, it has delayed resolution for over a month already with a meritless discovery dispute.

Accordingly, the Commission should lift the stay on PGE's response deadline to the Motion for Summary Disposition and adopt the simple and straightforward procedural schedule proposed in the NewSun Parties' Motion for Oral Argument and Expedite Processing.

CONCLUSION

In Summary:

- PGE has failed to demonstrate that it is entitled to its discovery requests, either through precedent, rule, or arguments;
- PGE has failed to demonstrate the need or utility served by any of its requests;
- PGE's requests are inappropriate, excessive, unnecessary, and burdensome;
- PGE has requested materials prohibited by federal law, materials which are proprietary and sensitive, materials which are protected by legal privilege, materials outside the relevant time range of the dispute, materials irrelevant to the dispute, and materials unnecessary for the Commission to rule on the Motion for Summary Disposition; and
- In doing so, PGE has caused further unneeded delay, burden, and cost in resolution of this matter.

The Commission should therefore deny PGE's motion to compel and lift the stay on PGE's deadline to respond to the NewSun Parties' Motion for Summary Disposition.

DATED this 3rd day of August 2018.

By: /s/ Gregory M. Adams

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BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1931

PORTLAND GENERAL ELECTRIC COMPANY, Complainant, v. ALFALFA SOLAR I LLC, et al. Defendants.	)	**DECLARATION OF JACOB STEPHENS IN SUPPORT OF DEFENDANTS' RESPONSE TO PORTLAND GENERAL ELECTRIC COMPANY'S MOTION TO COMPEL DISCOVERY**

I, Jacob Stephens, declare under the penalty of perjury as follows:

1. This declaration is based on my personal knowledge and, if called to testify to the following facts, I could and would competently do so. I submit this declaration in support of Defendants' Response to Portland General Electric Company's ("PGE") Motion to Compel Discovery filed on July 27, 2018 in Oregon Public Utility Commission Docket No. UM 1931.

2. In my capacity as the authorized representative of Defendants Alfalfa Solar I LLC ("Alfalfa"), Dayton Solar I LLC ("Dayton"), Fort Rock Solar I LLC ("Fort Rock I"), Fort Rock Solar II LLC (Fort Rock II"), Fort Rock Solar IV LLC ("Fort Rock IV"), Harney Solar I LLC ("Harney"), Riley Solar I LLC ("Riley"), Starvation Solar I LLC ("Starvation"), Tygh Valley Solar I LLC ("Tygh Valley"), and Wasco Solar I LLC ("Wasco") (collectively, the "NewSun Parties"), I executed power purchase agreements with PGE on behalf of each of the NewSun Parties, and prior to that time I sent and received electronic mail ("e-mail") messages to PGE and to other parties related to the NewSun Parties.

3. I first became aware of PGE's standard contract form on or after July 30, 2015. The last of the ten power purchase agreements between a NewSun Party and PGE were executed on June 27, 2016.

4. I sent and received e-mail related to the NewSun Parties from two different e-mail accounts during the period from 2015 through August 2016.

5. I have reviewed the e-mail accounts and directed review of the number of e-mail messages sent and received in the timeframe at issue. Each e-mail can contain multiple pages and also one or more attachments that, depending on the documents attached, can thus contain dozens or hundreds of additional individual pages. For the period July 30, 2015 through August 31, 2016, the two email accounts that I used for correspondence related to the NewSun Parties contain 21,803 individual documents, which consist of e-mails and attachments to those e-mails and total 126,790 pages. For the period July 30, 2015 through June 27, 2016, the two email accounts that I used for correspondence related to the NewSun Parties contain 17,561 individual documents, which consist of e-mails and attachments to those e-mails and total 104,157 pages.

6. The e-mail messages in the two accounts referred to in the preceding paragraphs are not organized into any of the following categories of information that PGE has requested in its motion to compel discovery filed on July 27, 2018: (1) messages sent to or received from employees or agents of PGE regarding the NewSun Parties' power purchase agreements; (2) messages sent to other persons regarding or discussing (i) the 15-year fixed-price period under the NewSun PPAS or PGE's standard contract forms, or (ii) PGE's position on the 15-year fixed-price period.

7. Collecting and coordinating recovery of e-mail and documents within the categories listed in the preceding paragraph must be conducted in large part by myself as the only person with knowledge of the material that is likely to be responsive and the persons who might possess such material besides myself.

8. I am currently engaged in overseeing development efforts of the NewSun Parties' facilities at issue in the ten power purchase agreements within the contractual deadlines for operation that are rapidly approaching dates in January through June of 2019, in addition to other development activities, commercial endeavors, and responsibilities and obligations commensurate with my role as the founder of a start-up venture. Each hour I spend on such collection of electronic documents delays other efforts to develop the NewSun Parties' facilities at issue in the ten power purchase agreements and materially impairs my ability to conduct other business and responsibilities, including development and management of the facilities at issue in this proceeding. Ascertaining the level of summary information provided in this declaration alone has already taken many hours of work and distraction from my other professional obligations; this is only a small fraction the work that likely would be required to respond to the PGE's discovery requests.

I hereby declare that the above statements are true to the best of my knowledge and belief, and that I understand they are made for use as evidence in the Oregon Public Utility Commission and are subject to penalty of perjury.

DATED this 3rd day of August 2018.

Jacob Stephens