BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1931

PORTLAND GENERAL ELECTRIC COMPANY, Complainant, v. ALFALFA SOLAR I LLC, et al. Defendants.	)	**DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

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MOTION

Pursuant to OAR 860-001-0420 and ORCP 47B, 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 "Defendants" or "NewSun Parties"), hereby respectfully move the Oregon Public Utility Commission (the "OPUC" or "Commission") for an order granting summary judgment in favor of the NewSun Parties on the following grounds:

(1) When construed in context and as a whole, there is only one reasonable interpretation of the NewSun Parties' power purchase agreements ("PPAs") with Portland General Electric Company ("PGE")—that PGE must pay the applicable qualifying facility ("QF") the fixed-price On-Peak[1] and Off-Peak rates in Tables 6a and 6b of Schedule 201 for fifteen years after the relevant NewSun Party begins commercial operation (the "Commercial Operation Date");

-or-

(2) Alternatively, if the Commission determines the NewSun PPAs are ambiguous, there are still no material disputes of fact, and the Commission should issue an order determining that the NewSun PPAs require PGE to pay the applicable QF the fixed-price On-Peak and Off-Peak rates in Tables 6a and 6b of Schedule 201 for fifteen years after the Commercial Operation Date.

[1] Unless otherwise defined herein, capitalized terms are used as defined in the NewSun PPAs.

INTRODUCTION AND SUMMARY

This Commission has now repeatedly confirmed its longstanding policy that the fifteen-year fixed-price period Oregon utilities are required to offer to QFs commences when the QF begins operation. Nevertheless, PGE attempts to frustrate the Commission's clearly articulated policy, contending that the fixed-price period in the power purchase agreements that each of the ten NewSun Parties entered into with PGE commenced on the date the parties executed the PPA—three years before the same agreements require operation and payment at such fixed prices to begin. The unambiguous text and context of the NewSun PPAs, however, establishes that PGE must pay the fixed-price On-Peak and Off-Peak rates in Tables 6a and 6b of Schedule 201 for fifteen years after the Commercial Operation Date.

As explained below, the NewSun Parties' interpretation of the NewSun PPAs is supported by: (1) the text and context of PGE's standard form contracts at issue, the provisions of which all make sense only if PGE pays fixed prices for fifteen years after the Commercial Operation Date; (2) the undisputed evidence that the common industry practice and understanding of the relevant language in PGE's Schedule 201, appended to the NewSun PPAs, is that the fifteen-year period of fixed prices commences after the facility begins operating and delivering power to the buyer, not from the date—years earlier—on which the parties execute the agreement; (3) the objectively reasonable understanding of the policy articulated in the Commission's Order No. 05-584, which Order No. 17-256 and Order No. 18-079 reconfirmed as this Commission's longstanding policy; (4) the fact that the same Commission policy—which is the sole basis for the NewSun PPAs—was implemented and adhered to and understood by Oregon's two other investor-owned utilities in a manner consistent with this same objectively reasonable understanding; and (5) the fact that neither PGE's Commission-approved standard

form contracts at issue nor PGE's associated Schedule 201 state that the fifteen-year fixed-price period ends fifteen years after the date the contract is executed.

As the Commission recently confirmed, "prices paid to a QF *are only meaningful when a QF is operational and delivering power to the utility*," and therefore "to provide a QF the full benefit of the [Commission's] fixed price requirement, *the 15-year term must commence on the date of power delivery*." *Northwest and Intermountain Power Producers Coalition v. Portland General Electric Co.* (*hereafter* "*NIPPC I*"), Docket No. UM 1805, Order No. 17-256, at 4 (July 13, 2017) (emphasis added). For a regulated utility, such as PGE, to unilaterally implement a contrary policy would undermine this Commission's authority and obligation to implement the federal and state laws at issue. Such a result cannot be allowed through implication and alleged ambiguity.

The NewSun Parties stress that this is an exceedingly simple matter that never should have been contested, much less required years of intensive expense and attention by the independent power industry and the NewSun Parties. As the Commission previously explained in Docket No. UM 1805 when it rejected many of the same arguments PGE makes in its testimony in this case, since originally ordered by the Commission over a decade ago in 2005, this issue has been "neither a source of controversy nor litigation by either a QF or a utility," *see Northwest and Intermountain Power Producers Coalition v. Portland General Electric Co.* (*hereafter* "*NIPPC III*"), Docket No. UM 1805, Order No. 18-079, at 3 (Mar 5, 2018), except related solely to PGE and as a result of PGE unilaterally asserting a position directly contradictory to the Commission's longstanding fixed-price policy. PGE's attempts to create ambiguity in the contracts and the Commission's policy are without merit.

Absent unambiguously clear language to the contrary, the NewSun PPAs must be

interpreted consistently with this Commission's longstanding policy that the fifteen-year fixed-price period commences when the QF begins operation and delivering power to PGE. Because the NewSun PPAs contain *no express language* that limits the fixed prices to a period shorter than fifteen years after operation, PGE's arguments fail.

Moreover, if the NewSun PPAs were interpreted per PGE's position such that the fifteen-year fixed-price period begins on the date the contract is executed, the NewSun PPAs would contain inconsistent and contradictory terms regarding whether the applicable NewSun Party or PGE owns the Environmental Attributes of the facility in certain years of the contract. In contrast, if PGE pays the fixed prices for fifteen years after the Commercial Operation Date, there is no inconsistency within the contract as to the ownership of each facility's Environmental Attributes in any year of the contract. In other words, PGE's position would create an unnecessary internal inconsistency within the NewSun PPAs that does not exist under a natural and Commission-policy-consistent interpretation of the fifteen-year fixed-price term.

Simply put, there is nothing in the NewSun PPAs themselves or in the context from which they arise that supports the conclusion that the NewSun Parties should be deprived of the full fifteen years of fixed prices to which the Commission has determined all QFs should be entitled. For these reasons, the NewSun Parties request that the Commission issue an order determining that each NewSun PPA requires PGE to pay the On-Peak and Off-Peak prices contained in the tables titled "Renewable Fixed Price Option for Solar QF" in PGE's Schedule 201 in effect at the time of execution of each of the NewSun PPAs for fifteen years after the Commercial Operation Date.

Alternatively, even if the Commission's policy and the plain language of the agreements do not completely resolve the matter, the extrinsic evidence and, if necessary, maxims of

construction confirm the conclusion that the NewSun PPAs provide fifteen years of fixed prices after the Commercial Operation Date. In stakeholder processes developing the contract forms at issue, PGE withdrew its own edits to its standard contract forms and Schedule 201 that would have unambiguously stated that the fixed-price period ends fifteen years immediately after execution of the agreement after OPUC Staff identified those changes as substantive changes to the status quo. Instead, PGE knowingly agreed to revisions that were expressly intended to clarify that the QF begins receiving market-based index prices and begins owning all of the Environmental Attributes fifteen years after the Commercial Operation Date—which further confirms the unambiguous meaning of Section 4.5 and Schedule 201 in the NewSun PPAs.

The Commission should reject PGE's reliance on its assertions to the NewSun Parties prior to execution of the agreements and PGE's belief that its previously offered versions of its standard contract form somehow control the meaning of the NewSun PPAs. The NewSun Parties unambiguously rejected PGE's interpretation of the fifteen-year fixed-price period prior to executing their PPAs, and the Commission has confirmed the NewSun Parties were correct in understanding the Commission's policy since 2005 to require payment of fixed prices for fifteen years after operation of the QF.

PGE's previously offered contract forms cannot control the interpretation of the contracts at issue here under any reasonable application of contract interpretive rules—especially where PGE affirmatively informed the NewSun Parties that executed versions of the previously offered contract forms did not control the meaning of the standard contracts executed by the NewSun Parties.

In sum, no reasonably objective factfinder could find in favor of PGE, and the Commission should grant summary judgment in favor of the NewSun Parties.

BACKGROUND

I. Regulatory Background

The contracts and the underlying Commission policy at issue here arise from the Commission's implementation of the mandatory purchase provisions of the Public Utility Regulatory Policies Act of 1978 ("PURPA") and related state law.

A. PURPA and Related State Law

Congress enacted PURPA to address the energy crises of the 1970s. Pub. L. No. 95-617, 92 Stat. 3117 (1978). Section 210 of PURPA sought to increase the development of QFs that use renewable energy. *FERC v. Mississippi*, 456 US 742, 750-51 (1982). Congress found traditional electric utilities, as lone buyers of electric energy in a market with many potential producers, "were reluctant to purchase power from . . . nontraditional facilities." *Id*. at 750.

PURPA directed the Federal Energy Regulatory Commission ("FERC") to promulgate regulations "to *encourage* cogeneration and small power production" including regulations that "require electric utilities to offer to . . . purchase electric energy from such facilities." 16 USC § 824a-3(a) (emphasis added); *see also* 18 CFR §§ 292.301 to 292.308 (Subpart C of FERC's regulations); *Small Power Prod. and Cogeneration Facilities; Regulations Implementing Sec. 210 of the Pub. Util. Reg. Pol. Act of 1978*, Order No. 69, 45 Fed Reg 12,214, 12,217-30 (Feb. 25, 1980).

FERC's regulations require utilities to enter into contracts to purchase a QF's energy and capacity at the utility's "full avoided cost." *Am. Paper Inst., Inc. v. Am. Elec. Power Serv. Corp.*, 461 US 402, 406, 413-17 (1983); 18 CFR §§ 292.101(b)(6), 292.304(b). FERC's regulations require that each QF be offered two contractual pricing options. 18 CFR § 292.304(d)(2). First, 18 CFR § 292.304(d)(2)(i) allows the QF to opt to contract "to receive the avoided costs

determined at the time of delivery." 45 Fed Reg at 12,224. Second, 18 CFR § 292.304 (d)(2)(ii) "enables a qualifying facility to establish a *fixed contract price* for its energy and capacity at the outset of its obligation." *Id.* (emphasis added). Such fixed-price rates will be lawful even if the fixed-price rate turns out, due to changed circumstances, to be different from the utility's actual avoided costs at the time of delivery. 18 CFR § 292.304(b)(5).

The right to long-term, fixed prices is critically important to QFs and central to the OPUC's determinations regarding the fifteen-year fixed-price period. FERC intended fixed prices to incentivize investment in new facilities by providing investors in the facility with reasonable "certainty" as to "the expected return on a potential investment before construction of a facility." 45 Fed Reg at 12,224. The purpose of the option for long-term, fixed prices is to support financing necessary to invest in new facilities and technologies. FERC has explained, "[g]iven this 'need for certainty with regard to return on investment,' coupled with Congress' directive that the [FERC] 'encourage' QFs, a legally enforceable obligation *should be long enough to allow QFs reasonable opportunities to attract capital* from potential investors." *Windham Solar LLC*, 157 FERC ¶ 61,134, at PP 6-8 (Nov 22, 2016) (quoting 45 Fed Reg at 12,224 & 16 USC § 824a-3(a)) (emphasis added). Thus, FERC's regulations require prices to be fixed for a period of sufficient length to support financing of new QFs.

PURPA requires each state regulatory authority to implement these FERC regulations—including the requirement for fixed prices of sufficient length to support financing—for each electric utility for which it has ratemaking authority. 16 USC § 824a-3(f); *Mississippi*, 456 US at 751, 759-61.

B. The OPUC's Order No. 05-584

In Docket No. UM 1129, the Commission comprehensively revamped its implementation

of the mandatory purchase provisions of PURPA, including the term of fixed pricing utilities must offer QFs. *See Re Investigation Related to Electric Utility Purchases from Qualifying Facilities*, Docket No. UM 1129, Order No. 05-584 at 19-20 (May 13, 2005). The Commission required utilities to offer to enter into standardized contracts that provide QFs up to 10 MW in capacity with fixed prices for fifteen years. The Commission relied heavily on Oregon Department of Energy's ("ODOE") experience as the financier of State Energy Loan Program ("SELP") projects as evidence of the financing prospects for QFs. *Id.* at 18. The evidence included "past representations by the ODOE that 15 years is a sufficient financing period for some QF projects, and that certain QF project developers have requested 15-year loans in the recent past," as well as a 2003 letter "from the loan program manager for ODOE's SELP to the PUC that indicates 15 years was a usual term for QF contracts." *Id.* "The letter stated: 'As a lender, it is important to have a power purchase contract that equals the loan term, usually fifteen years.'" *Id.* at 18 n 34. In other words, the period of predictable revenue from power sales must match the typical loan term, which ODOE previously indicated was fifteen years.

Consistent with FERC's directive, the Commission's order explained that "it is necessary to ensure that the terms of the standard contract facilitate appropriate financing for a QF project." *Id.* at 19. Indeed, a program designed to encourage development of new renewable energy facilities would be futile, and non-compliant with FERC's regulation, if the fixed-price term adopted was too short to support financing of such new renewable energy facilities. Because the Commission also was concerned that a utility's forecasted avoided costs could diverge from its actual avoided costs at the time the QF delivers energy, its "fundamental objective" in the 2005 order was "to establish a maximum standard contract term that enables eligible QFs to obtain adequate financing, but limits the possible divergence of standard contract rates from actual

avoided costs." *Id.* Accordingly, the Commission found that "the contract term length minimally necessary to ensure that most QF projects can be financed should be the maximum term for standard contracts." *Id.* at 19.

Based on the evidence, the Commission determined that the "maximum term of a standard contract should be raised to 20 years," and that "prices should be fixed for only the first 15 years of the 20-year term." *Id.* at 20. The last five years of the contract would contain market-based pricing that would depend on market conditions at the time of delivery of power in those years. *Id.* Thus, the Commission chose the fifteen-year fixed-price term because the evidence demonstrated that was the minimal length of predictable, fixed-price revenue that would be needed to support financing of renewable energy facilities.

The Commission ordered each utility to file its own standard contract forms. *Id.* at 41. The Commission stated it "expect[ed] each standard contract form to contain terms and conditions that are consistent with the resolution of issues in this order or past orders[,]" and that the Commission's "Staff will review each standard contract form and work with each utility to ensure the compliance of submitted standard contract forms." *Id.* But the Commission decided it would not review or approve individually completed and executed standard contracts. *Id.* at 55-56.

Despite the order's obvious intent, PGE has attempted to create artificial ambiguities in the Order No. 05-584. PGE has argued that the order limited the payment of fixed prices to the fifteen years immediately following execution of the contract and limited the overall contract term to twenty years immediately following execution of the contract by ignoring the common industry understanding of the words used in the order and the Commission's obvious intent when it used that language.

In Docket No. 1805, the Northwest and Intermountain Power Producers Coalitions ("NIPPC"), the Renewable Energy Coalition ("REC"), and the ("Community Renewable Energy Association") brought a complaint seeking to have the Commission re-affirm its fifteen-year fixed-price policy and require PGE to comply with that policy.

The complaint explained that the problem had recently been exacerbated by changes to PGE's standard contract. Specifically, the complaint explained that the QF's right to fifteen years of fixed-price payments after the operation of the facility was unambiguously clear in the generation of PGE's renewable standard contract that was available from December 2014 through mid-July 2016—which includes the version of PGE's standard contract form that was used for the NewSun PPAs. *Complaint*, Docket No. UM 1805, at pp. 10-11, 13 (Dec. 6, 2016) [Supplemental Declaration of Gregory Adams in Support of Defendants' Motion for Summary Judgment (filed January 29, 2019) (*hereafter* "Adams Supp. Declaration"), Ex. L, at 10-11, 13]. But revisions made after Order No. 16-174 incidentally removed the unambiguous clarity from the contract thereafter. *Id.* Accordingly, after PGE refused to agree to cooperate to ensure QFs were unambiguously offered contracts containing fixed prices for fifteen years after operation, the UM 1805 Complainants filed their complaint against PGE to correct the problem.

On July 13, 2017, the Commission issued Order No. 17-256, in which it "clarif[ied] [its] policy in Order No. 05-584 to explicitly require standard contracts, on a going-forward basis, to provide for 15 years of fixed prices that commence when the QF transmits power to the utility." *NIPPC I*, Order No. 17-256 at 4. In response to a petition to amend and clarify Order 17-256, the Commission issued a second order (Order 17-456) on November 13, 2017, which again confirmed its "requirement that the 15-year term of fixed prices commences when the QF transmits power to the utility." *Northwest and Intermountain Power Producers Coalition v.*

Portland General Electric Co. (*hereafter* "*NIPPC II*"), Docket No. UM 1805, Order No. 17-465 at 4 (Nov 13, 2017).

Upon PGE's application for rehearing or reconsideration of Order No. 17-465, in direct contradiction to PGE's explicit attempt to secure the opposite outcome, the Commission explained that its decision in UM 1805 did not "constitute[] the adoption of a 'new policy.' Rather, … [the Commission's] decision was simply to affirm the policy with respect to the commencement date for the 15-year period of fixed prices." *NIPPC III*, Order No. 18-079 at 3. The Commission further stated that its "policy, which had been reflected explicitly in standard contract forms for PacifiCorp and Idaho Power Company, had been up until the filing of PGE's most recent standard contracts, neither a source of controversy nor litigation by either a QF or a utility." *Id.*

As noted above, PGE's "most recent standard contracts" were the forms made available after the forms used for the NewSun PPAs. PGE was ordered to make those more recent contract forms unambiguously clear on this issue going forward in its UM 1805 compliance filing, but the Commission did not in Docket No. UM 1805 interpret any specific form or vintage of PGE's standard contracts or any executed standard form contracts.

II. Undisputed Facts Regarding the NewSun PPAs

A. The Executed NewSun PPAs[2]

Each of the NewSun PPAs is based on PGE's Standard Renewable Off-System Variable Power Purchase Agreement or PGE's Renewable In-System Variable Power Purchase

[2] The NewSun Parties agree with PGE that Alfalfa's PPA, contained in PGE Exhibit 101, is substantively representative of each of the NewSun PPAs, and contains the entire version of the applicable Schedule 201. *See* PGE/100, Macfarlane/4. PGE Exhibit 101 may be referred to for references to the provisions of the NewSun PPAs and the applicable Schedule 201 in this brief, unless otherwise noted.

Agreement, which the Commission approved for use by PGE in Order No. 15-289 (hereafter collectively referred to as the "2015 Standard Renewable Contract Form"). As noted above, that contract form was among the generation of contract forms that the UM 1805 Complainants alleged to unambiguously provide fixed renewable prices for fifteen years after the Commercial Operation Date. The 2015 Standard Renewable Contract Form contains only seventeen blanks to be filled in with information provided by the QF. *Defendants and Intervenors' Joint Statement of Undisputed Additional Facts* (*hereafter* "*Defendants' Undisputed Facts*") at ¶ 5 (Jan. 25, 2019). Accordingly, all the NewSun PPAs have similar terms and conditions related to the matter in dispute here, with some minor differences that the parties agree are immaterial to the dispute. *See id.*; PGE/100, Macfarlane/4.

The ten NewSun PPAs were executed during the period January through June 2016. Dayton, Starvation, Tygh Valley, and Wasco each entered into a PPA with PGE on January 25, 2016. *See All Parties' Statement of Undisputed Facts* at ¶¶ 3-12 (Jan. 25, 2019). Fort Rock I and Fort Rock II each entered into a PPA with PGE on April 27, 2016. *Id.* Alfalfa and Fort Rock IV each entered into a PPA with PGE on June 26, 2016. Harney and Riley each entered into a PPA with PGE on June 27, 2016. *Id.*

As executed, the NewSun PPAs provide that the associated NewSun Party intends to develop a solar electric power generation facility and, upon successful construction and achievement of commercial operation, will sell one hundred percent of the net electric power generated by the facility ("Net Output") to PGE. *See* NewSun PPAs at Recitals & § 4.1. The NewSun PPAs further provide that *PGE will only begin purchasing Net Output* from the relevant NewSun Party *once the Facility begins delivering power* to PGE. Each of the NewSun PPAs provides that the agreement will terminate on the last day of the sixteenth "Contract Year,"

which is defined in relevant part, as "each twelve (12) month period commencing upon the Commercial Operation Date or its anniversary during the Term …." *Id.* at §§ 1.7 & 2.3.[3] Accordingly, each PPA obligates the associated NewSun Party to sell all Net Output to PGE for sixteen Contract Years following the Commercial Operation Date, which is the date "the Facility is deemed by PGE to be fully operational and reliable." *Id.* at 1.5.

Section 2.2.2 of the NewSun PPAs contemplates that the applicable NewSun Party will achieve commercial operation within three years of execution of the contract. Thus, each PPA expressly recognizes that the associated Facility may not be operational and selling power to PGE for approximately three years after the agreement is executed. Furthermore, the PPA's own internal process, described in Section 2.2.2, for certification of achievement of Commercial Operations Date (and the start of normal power sales) contemplates a process involving information exchanges between PGE and the Seller beginning after the PPA's Effective Date. By their nature, these steps to achieve the Commercial Operation Date cannot occur instantaneously. Thus, there is no way in which a Seller could realize the entire twenty years of Commission-mandated power sales opportunity under the PGE standard contract if the ability to sell power to PGE terminated twenty years after PPA Effective Date.

The NewSun PPAs provide that PGE will purchase electric power from the relevant NewSun Party at the "Contract Price," which is defined as "the applicable price, including on-peak and off-peak prices, as specified in the Schedule." *Id.* at §§ 1.6 & 4.2. The "Schedule" is defined as "PGE Schedule 201 filed with the Commission in effect on the Effective Date of this Agreement and attached hereto as Exhibit D, the terms of which are hereby incorporated by

[3] The PPAs for Dayton, Starvation, Tygh Valley, Wasco, Fort Rock I, Fort Rock II, and Harney do not capitalize the term "contract year" in section 2.3, whereas the PPAs for Alfalfa, Fort Rock IV, Riley capitalize the term "Contract Year" in section 2.3.

reference." *Id.* at § 1.33.

The Schedule 201 in effect during the relevant timeframe contains several rate tables and describes the pricing options. *See* Schedule 201 at 4-18. For a solar QF entering in the renewable standard contract, Tables 6a and 6b contain fixed-price rates under the heading "Renewable Fixed Price Option for Solar QF." These tables contain On-Peak and Off-Peak prices for all years through 2040 for solar QFs such as the NewSun Parties. The Schedule explains in general terms that "this option is available for a maximum term of 15 years." Schedule 201 at 12.

Schedule 201 also describes the renewable pricing scheme incorporated into the Contract Prices in the PPA. The Schedule states:

> Renewable Avoided Costs are based on forward market price estimates through the Renewable Resource Sufficiency Period, the period of time during which the Company's Renewable Avoided Costs are associated with incremental purchases of energy and capacity from the market. For the Renewable Resource Deficiency Period, the Renewable Avoided Costs reflect the fully allocated costs of a wind plant including capital costs.

Schedule 201 at 3. The "Renewable Resource Sufficiency Period" is defined as the "period from the current year through 2019," whereas the Renewable Resource Deficiency Period begins in 2020. Schedule 201 at 23.

The PPAs and Schedule 201 also tie ownership of Environmental Attributes and RPS

Attributes[4] to the price that is paid to the NewSun Party. Section 4.5 of the PPA provides:

> During the Renewable Resource Deficiency Period [i.e., beginning in 2020], 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 [i.e., through 2019], 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.

(Emphasis added).

In turn, under the sub-heading "Renewable Fixed Price Option," Schedule 201 provides:

> Sellers will retain all Environmental Attributes generated by the facility during the Renewable Resource Sufficiency Period [i.e., through 2019]. A Renewable QF choosing the Renewable Fixed Price Option must cede all RPS Attributes generated by the facility to the Company during the Renewable Resource Deficiency Period [i.e. beginning in 2020].
>
> * * *
>
> Sellers with PPAs exceeding 15 years will receive pricing equal to the Mid-C Index Price and *will retain all Environmental Attributes generated by the facility for all years up to five in excess of the initial 15*.

Schedule 201 at 12 (emphasis added). This last emphasized clause expressly links the change in ownership of RPS Attributes/Environmental Attributes to the date when pricing changes from

[4] Sections 1.9 and 1.32 of the PPAs and the Schedule 201 (at page 23) contain consistent definitions of "Environmental Attributes" and "RPS Attributes." In short, "Environmental Attributes" includes *all possible* environmental attributes, including greenhouse gas offsets, while the "RPS Attributes" are only the "Environmental Attributes" needed to comply with Oregon's Renewable Portfolio Standard law, ORS 469A *et seq.*, which does not include certain greenhouse gas offsets. Because a solar-powered QF does not produce any Environmental Attributes other than RPS Attributes, the two terms have the same meaning in the NewSun PPAs and can be considered interchangeably for purposes of the contractual interpretation analysis called for here. Likewise, the term "renewable energy certificates" or "RECs" has the same meaning.

renewable fixed pricing to a market-index price for non-renewable power.

Thus, the central bargain of the NewSun PPAs is that the relevant NewSun Party will sell its energy and RPS Attributes to PGE during its Renewable Resource Deficiency Period in exchange for the renewable fixed-price rates. In contrast, PGE pays a market-based rate when the NewSun Party retains ownership of its RPS Attributes—which occurs during: (1) the Renewable Resource Sufficiency Period where the market rate is fixed based on forecasted prices in the short-term wholesale market, and (2) the remainder of the contract "after completion of the first fifteen (15) years after the Commercial Operation Date," NewSun PPAs at § 4.5, during which Schedule 201 explains that the rate paid is based on prices in the short-term wholesale market at the time of delivery of the QF's power to PGE.

B. The NewSun Parties' Communications with PGE Prior to Execution

As set forth in more detail in the NewSun Parties' Statement of Undisputed Facts, the NewSun Parties and PGE expressed disagreement to each other prior to execution of the NewSun PPAs as to whether the 2015 Standard Renewable Contract Form would require payment by PGE at the fixed renewable prices in Tables 6a and 6b of Schedule 201 for fifteen years after execution of the agreement or fifteen years after the Commercial Operation Date.

In the first set of contracts under discussion with PGE, Mr. Stephens inserted into Section 2.3 as the Termination Date: "the completion of the last day of the twentieth contract year." *Defendants' Undisputed Facts* at ¶ 7.[5] Because "Contract Years" are defined in the contract as beginning on the Commercial Operation Date, Mr. Stephens understood a Termination Date after

[5] The Defendants and Intervenors' Joint Statement of Additional Undisputed Facts contains detailed citations to record evidence for facts cited herein. This brief will cite to other sources in the record where the facts at issue are not included in the statements of undisputed facts.

twenty Contract Years to provide the Seller with the maximum twenty-year overall period of power sales after operation that is logically allowed by Order No. 05-584. *Id.* at ¶¶ 7-9. However, PGE representatives rejected this proposal and insisted they would *only* execute a contact that contained a Termination Date that was twenty years or less after the *Effective Date* of the contract—reducing the overall twenty-year period of power sales called for by the Commission by the three or more years it would take from execution of the agreements to reach Commercial Operation. *Id.* at ¶ 10. In so doing, PGE representatives pointed to Order No. 05-584 and asserted that the Commission did not intend to allow QFs to have a PPA that allowed for twenty years of power sales after operation of the facility began. *Id.* at ¶ 19.

At the same time, on December 3, 2015, PGE filed an unexpected and out-of-cycle rate change, proposing to drastically reduce the avoided cost rates available to the NewSun Parties. *Id.* at ¶¶ 21-25. PGE requested its new rates take effect January 13, 2016, and the Commission subsequently noticed the rate change for decision at the public meeting scheduled for January 25, 2016. *Id*.

After repeatedly expressing disagreement with PGE's position, Mr. Stephens decided to revise the draft contracts NewSun Parties proposed to PGE to provide for a Termination Date that occurred upon "the completion of the last day of the *sixteenth* contract year" (rather than, as originally requested, on the completion of the last day of the twentieth contract year). *Id.* at ¶ 27. In choosing this Termination Date, Mr. Stephens understood that because PGE's contract forms provided that a Seller has three years to achieve commercial operation, plus an additional year to cure if the QF misses the three-year deadline, that a contract that terminated after sixteen Contract Years would not extend more than twenty years past the Effective Date (3 years + 1 year + 16 years = 20 years). *Id.* In proposing that Termination Date, Mr. Stephens also believed

that if he was correct that, per applicable Commission policy, the fixed-price period ran for fifteen years after the Commercial Operation Date, the QF still would be able to sell its Net Output to PGE for the full fifteen years at fixed prices based on PGE's avoid-cost rate, although only for one year at Mid-C prices instead of the permitted five years. *Id.* at ¶ 28.

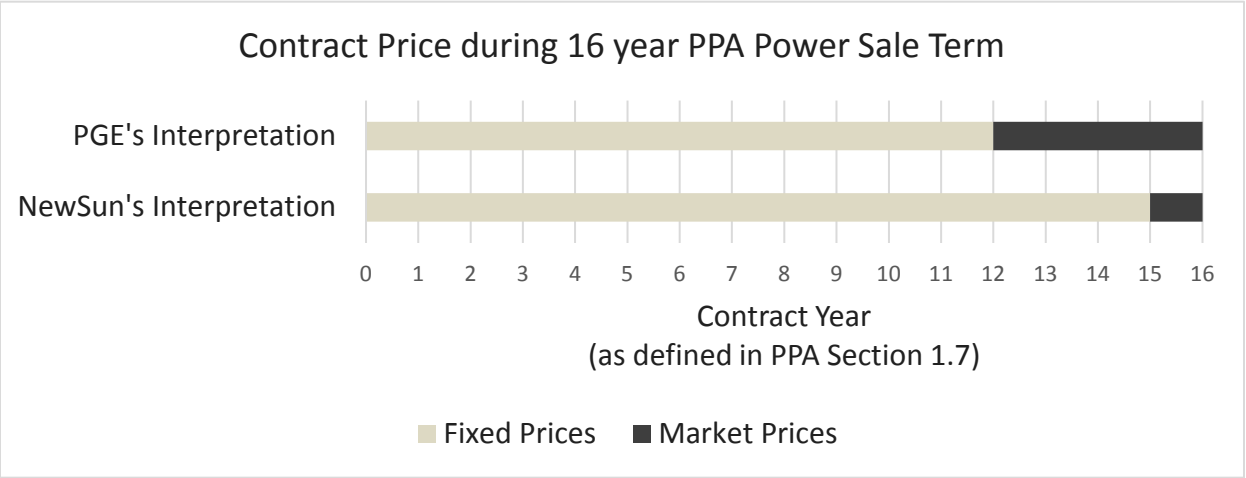
Additionally, in choosing the Termination Date, Mr. Stephens did not understand the fifteen-year fixed-price issue to be controlled by the words used to complete any of the blank spaces in the standard contract. *Id.* at ¶ 29. Instead, he believed that, despite PGE's assertions, the Commission's policy and the standard contract provided for the fixed prices for fifteen years after the Commercial Operation Date. *Id.*

In short, Mr. Stephens believed the NewSun Parties were giving up four years of net output sales at Mid-C market prices in order to avoid being forced to sell its net output at much lower fixed-price rates if PGE's proposed rate change were approved. *Id.* at ¶¶ 30-31. At the same time, a Termination Date that occurred upon the completion of the last day of the sixteenth Contract Year preserved the right to sell at the *fixed* prices for the full fifteen years after the Commercial Operation Date at the then-effective rates. *Id.* As such, after PGE informed Mr. Stephens that PGE would now approve execution of the PPAs with the earlier Termination Date, Mr. Stephens executed the NewSun PPAs with the Termination Date on the sixteenth (16th) Contract Year. *Id.* at ¶¶ 33-47.

As noted above, PGE thereafter has continued its litigious stance and unreasonable argument regarding the fifteen-year fixed-price term even after the Commission clarified its policy in Docket No. UM 1805. PGE's fifteen-year-from-effective-date argument would shorten the period during which a QF actually receives a forecasted, fixed price for power delivered to PGE by the length of time it takes the QF to develop its power generation facility (which is likely

at least three years). As illustrated by the following chart, adopting PGE's interpretation would deprive each NewSun Party of approximately three years or more of fixed pricing:

Chart 1



PGE's argument removes three years from the Commission-required fifteen years of fixed prices, which is twenty percent of the Commission-required fixed-price period.

III. Procedural Background

On January 8, 2018, shortly after the Commission rejected PGE's misinterpretation of the Commission's fifteen-year fixed-price policy in UM 1805, the NewSun Parties filed a declaratory judgment action in the United States District Court for the District of Oregon. PGE filed its Complaint and Request for Dispute Resolution against the NewSun Parties in this docket on January 25, 2018.

After the NewSun Parties moved to stay or dismiss PGE's complaint, this Commission issued its Order No. 18-174, asserting that this Commission shares concurrent jurisdiction with the United States District Court over this dispute. Order No. 18-174 at 3-5. But the Commission asserted "deference [to the Commission] is warranted here" due to "the desire for uniform resolution, and the risk that a judicial decision could adversely impact the performance of our

regulatory duties and responsibilities" and the Commission's belief that its "interpretation has special significance." *Id.* at 4. The Commission's order suggested the Commission will not attempt to resolve any factual disputes and recommended that the federal court abate its proceedings, explaining that, "because we do not claim exclusive jurisdiction, we need not resolve NewSun QFs' claim that our exercise of jurisdiction violates its constitutional right to a jury." *Id.* at 5.

On May 31, 2018, the United States District Court stayed the federal court action to allow the Commission to proceed first under the doctrine of primary jurisdiction. *Alfalfa Solar I LLC v. Portland Gen. Elec. Co.*, No. 3:18-CV-40-SI, 2018 WL 2452947, at *7 (D Or May 31, 2018). The court did so, however, *only* after PGE represented it "would not oppose [the NewSun Parties'] motion for expedited consideration by the PUC, and further agreed not to collaterally attack any [final] decision announced in this dispute by the PUC." *Id.*

The NewSun Parties filed their answer and affirmative defenses on June 6, 2018, and within a month, on July 2, 2018, filed a Motion for Summary Disposition and a Motion for Oral Argument and Expedited Process. The NewSun Parties also filed a Motion for Protective Order to Stay Discovery pending resolution of the Motion for Summary Disposition. PGE opposed these motions.

On August 23, 2018, Administrative Law Judge ("ALJ") Allan Arlow denied the NewSun Parties' Motion for Summary Disposition, denied the NewSun Parties' proposed expedited procedural schedule, and directed the parties to engage in discovery of extrinsic evidence. ALJ Arlow's ruling stated that "the Commission is to address *de novo* what the respective contracts meant," and indicated the Commission would apply normal rules of contract interpretation set forth in *Yogman v. Parrott*, 325 Or 358, 937 P2d 1019 (1997). *ALJ Ruling*, at

6-7 (Aug. 23, 2018). However, in denying summary disposition, the ruling did not identify any provision of the NewSun PPAs that was ambiguous and instead appeared to be premised on the belief that the Commission had already determined the NewSun PPAs were ambiguous in Docket No. UM 1805. *Id.* at 7. The ruling directed that the parties engage in discovery of issues related to the parties' state of mind and intent at the time of execution of the standard contract form. *Id.* at 9.

On August 31, 2018, the NewSun Parties moved for clarification or certification of ALJ Arlow's ruling. This motion requested clarification that the parties may still move for summary judgment after completion of the ALJ-directed discovery and would remain free to again argue the contracts are unambiguous to the Commissioners. *See ALJ Ruling* at 1-2 (Nov. 1, 2018). The motion alternatively requested certification to the Commissioners if such clarification were denied. In response, PGE conceded that the prior ALJ Ruling "does not preclude parties from filing motions for summary judgment and does not preclude the Commission from making its own determination regarding whether the NewSun QFs' PPAs are ambiguous." *Id.* at 2. On November 1, 2018, ALJ Arlow ruled that because the NewSun Parties "are in no way precluded from filing summary judgment motions in the future, the requested relief is unnecessary." *Id.* Yet ALJ Arlow stated that clarification was "denied," and certification to the Commissioners was "moot." *Id.* at 3.

The parties agreed to a jointly proposed procedural schedule with pre-filed testimony, followed by cross motions for summary judgment, and placeholders for further process if summary judgment motions are denied. *ALJ Ruling* at 1-2 (Nov. 19, 2018).

LEGAL STANDARD

Summary judgment is proper where there are no material issues of fact in dispute and no reasonably objective factfinder could find in favor of the nonmoving party on the issues that are the subject of the motion. *Portland General Elec. Co. v. Oregon Energy Co., LLC et al.*, Docket No. UC 315, Order No. 98-238, at 1-2 (June 12, 1998) (citing ORCP 47; *Jones v. General Motors Corp*., 325 Or 404, 420 (1997)). "If there are no genuine issues of material fact, no hearing need be held." *Id.*

As a general rule, the construction of a contract is a question of law for the court. *Wantel Telecommunications v. Qwest Corp.*, Docket Nos. IC 8 & IC 9, Order No. 05-874, at 5 (July 26, 2005) (citing *Hekker v. Sabre Construction Co.*, 265 Or 552, 510 P2d 347, 349, (1973)). Indeed, this Commission has resolved disputes over the meaning of a contract under summary judgment standards. *See Electric Lightwave, Inc. v. U.S. West Communications, Inc.*, Docket No. UC 377, Order No. 99-770, at 5-9 (Dec 22, 1999).

First, the court must attempt to ascertain the contract's meaning from its text considered as a whole with emphasis on the provision or provisions in question and the context of those provisions within the contract. *See Yogman*, 325 Or at 361; *see also Eagle Industries, Inc. v. Thompson*, 321 Or 398, 405, 900 P2d 475 (1995) ("When considering a written contractual provision, the court's first inquiry is what the words of the contract say, not what the parties say about it."). "In making [this] determination, the court inquires whether the provision at issue is ambiguous." *Eagle Industries*, 321 Or at 405.

If the court determines that the provision at issue is unambiguous, "the court construes the words of [the] contract as a matter of law." *Id.* Determining whether the terms of a contract are ambiguous is a question of law. *Pac. First Bank v. New Morgan Park Corp*., 319 Or 342,

347, 876 P2d 761 (1994). Significantly, where the text is capable of only one reasonable interpretation, extrinsic evidence cannot contravene the agreement's terms. *Manley v. City of Coburg*, 282 Or App 834, 839, 387 P3d 419 (2016).

A contract term is ambiguous if, after considering the contract as a whole, as well as the circumstances under which it was formed, it is susceptible to more than one sensible and reasonable interpretation. *Id*. "The mere fact that parties to a contract urge competing interpretations of that agreement does not compel a conclusion of ambiguity." *Id*. "[A] contract is not ambiguous merely because a party to it, often with 20/20 hindsight colored by self-interest, disputes an interpretation which is logically compelled" by the terms of the contract itself. *Id.* at 839-40 (internal quotation omitted).

Second, *if* (and only if) the court determines that the contract provision at issue is ambiguous, the next step "is to examine extrinsic evidence of the contracting parties' intent." *Yogman*, 325 Or at 363. The trier of fact must "ascertain the intent of the parties and construe the contract consistent with the intent of the parties." *Pac. First Bank*, 319 Or at 347-48.

Third, if extrinsic evidence does not resolve the dispute, then "the court relies on appropriate maxims of construction." *Yogman*, 325 Or at 364. One such maxim is that "construction is to be taken *which is most favorable to the party in whose favor the provision was made*." ORS 42.260. Another well-established maxim is that "[a]ny ambiguity in an agreement is resolved against the party who drafted it." *Heinzel v. Backstrom*, 310 Or 89, 96, 794 P2d 775 (1990) (internal quotation omitted).

Under the *Yogman* test, summary judgment is often appropriate even where the contract is ambiguous. As the Ninth Circuit has explained, "In Oregon, the meaning of a contract . . . is a question of law, unless it is ambiguous *and* there is 'competing extrinsic evidence' from which a

jury could resolve the ambiguity in favor of either party." *Slayman v. FedEx Ground Package Sys.*, 765 F3d 1033, 1042 (9th Cir 2014) (quoting *Dial Temp. Help Serv., Inc. v. DLF Int'l Seeds, Inc*., 255 Or App 609, 612, 298 P3d 1234 (2013)) (emphasis added).

ARGUMENT

The basic rules of contract interpretation apply to this dispute. Applying these rules, the NewSun Parties' interpretation is the only reasonable construction of the NewSun PPAs. The text and context of the NewSun PPAs unambiguously require PGE to pay the applicable NewSun Party the fixed prices set forth in Table 6a and 6b of Schedule 201 for fifteen years after the Commercial Operation Date. Moreover, unlike PGE's interpretation, NewSun Parties' interpretation is consistent with the Commission's longstanding policy that the fifteen-year fixed-price period commences when a QF is operational and delivering power. Indeed, the *context* which applies in *Yogman* step one *is* the Commission's longstanding policy itself; thus the *context* of the contract is, per UM 1805 and the Commission's own statements, a *requirement* imposed on utilities that fixed pricing in their QF standard contracts *begins* upon the operation and runs for a fifteen year term thereafter. By contrast, PGE's fifteen-years-from-effective-date argument contradicts the text and context of the NewSun PPAs, defies logic, and contravenes well-established industry usage of the words and phrases at issue. Accordingly, the NewSun Parties are entitled to summary judgment reconfirming that the fifteen-year fixed-price period in the NewSun PPAs commences on the Commercial Operation Date.

I. Common Law Contract Interpretation Rules Apply

Although PGE may argue otherwise, the Commission must interpret the executed NewSun PPAs under common law contract principles. In so doing, the question the Commission must answer is how a prospective QF would *objectively* understand the standard contract

forms—as completed and executed.

The United States District Court referred this matter to the Commission for expedited resolution under the doctrine of primary jurisdiction, but the court rejected PGE's attempted reliance on traditional ratemaking standards as a basis for reaching a particular interpretation of the contracts. As the court explained, "state utility commissions do not have authority to modify rates or other terms established in contracts between utilities and QFs after those contracts have been executed." *Alfalfa Solar I LLC*, 2018 WL 2452947, at *5. Thus, a state commission may not take action adverse to the QF where the state commission's "underlying motivation" is "to lower the avoided cost rates specified in the contract because those rates were higher than the utility's *current* avoided cost rate." *Id.* (citing *Indep. Energy Producers Ass'n, Inc. v. California Pub. Utilities Comm'n*, 36 F3d 848, 858 (9th Cir 1994)). The Commission may only "interpret terms in executed PPAs using traditional common law interpretive methods[,]" and may not weigh traditional ratemaking factors or intervene in the public interest to adopt an interpretation designed to protect PGE and its ratepayers. *See id.* at *6.

The Commission's orders pertaining to the policy applicable to the dispute, however, provide relevant *context* for construing the disputed contract language. As the United States District Court explained, the Commission's orders "'are relevant only in the context of the understanding of the parties as reflected in an *objective reading* of the agreement and its approval.'" *Id.* at *7 (quoting *Crossroads Cogeneration Corp. v. Orange & Rockland Utilities, Inc.*, 159 F3d 129, 139 (3rd Cir 1998)) (emphasis added).

Additionally, under Oregon law, a special meaning of terminology used in a trade within which the transaction arose is always relevant to the interpretation of a contract. *May v. Chicago Ins. Co.*, 260 Or 285, 294, 490 P2d 150 (1971). Specifically, "evidence is admissible that [the

words in the contract] have a technical, local, or otherwise peculiar signification and were used and understood in the particular instance, in which case *the agreement shall be construed accordingly*." ORS 42.250 (emphasis added).

As demonstrated below, applying general rules of contract interpretation, the only reasonable conclusion is that PGE must pay the fixed prices contained in Tables 6a and 6b of Schedule 201 for fifteen years after the Commercial Operation Date.

II. When Read in Context, the NewSun PPAs Unambiguously Provide Fixed Prices for 15 Years After the Commercial Operation Date

Viewed in context, the NewSun PPAs *unambiguously require* PGE to pay the fixed prices for fifteen years after the Commercial Operation Date. Under step one of the *Yogman* test, the Commission should grant summary judgment to the NewSun Parties.

A. The Regulatory Context of the Agreements Supports Fifteen Years of Fixed Prices Commencing on the Commercial Operation Date

The starting point for analyzing the context of the agreements is the Commission's regulatory policy that gave rise to the contracts. Indeed, "contractual language *must be interpreted in light of existing law*, the provisions of which are regarded as implied terms of the contract, regardless of whether the agreement refers to the governing law." 11 *Williston on Contracts* § 30:19 (4th ed 2018) (footnotes omitted; emphasis added). "Except where a contrary intent is evident, the parties to a contract . . . are presumed or deemed to have contracted with reference to existing law." *Id.* (footnotes omitted). This rule also applies to valid administrative regulations and directives. *See Rehart v. Clark*, 448 F2d 170, 173 (9th Cir 1971). In *Rehart*, for example, the Ninth Circuit held that an "Instruction" issued by Acting Chief of Navy Personnel pursuant to his statutory authority was part of the governing law and thus a "competent and material aid in interpretation of the language of the agreement." *Id.* at 175.

The Oregon Supreme Court has explained, the "law of the land applicable thereto is a part of every valid contract." *Ocean Accident & Guarantee Corp. v. Albina Marine Iron Works*, 122 Or 615, 617, 260 P 229 (1927). In the analogous context of a regulated insurance company, the Oregon Court of Appeals has held an insurance policy necessarily contains the coverage the insurer was required to offer by law even in a case where the insurer failed to offer such coverage as part of the policy. *Blizzard v. State Farm Automobile Ins. Co*, 86 Or App 56, 61, 738 P2d 983, *rev den* 304 Or 149 (1987). In such a circumstance, the failure to offer the legally required "coverage does not merely give rise to some inchoate entitlement to seek reformation but, instead, results in the imposition of [the required] coverage *ab initio* by operation of law." *Savage v. Grange Mut. Ins. Co.*, 158 Or App 86, 94-95, 970 P2d 695 (1999).

1. The Commission's Longstanding Policy Requires Fifteen Years of Fixed Prices Commencing when the QF's Operation and Deliveries Commence

As noted above, under existing law at the time of contracting, the Commission's longstanding policy—developed in 2005—was that utilities must offer fifteen years of fixed prices commencing when the QF becomes operational and is delivering power to the utility. *See Re Investigation Related to Electric Utility Purchases from Qualifying Facilities*, Order No. 05-584, at 19-20. The purpose of offering fixed prices in a power purchase agreement for a qualifying facility is to provide predictability as to the likely revenue stream of the facility necessary to support financing and construction of the facility. And the Commission was required by PURPA and FERC regulations to offer a fixed-price term of sufficient length to support financing of QFs. *See Windham Solar*, 157 FERC ¶ 61,134, at PP 6-8. The Commission determined in Order No. 05-584 that fifteen years of fixed prices is the shortest period reasonably necessary to comply with the objective of the applicable FERC regulations and

support most QFs' financing of an unbuilt facility. It is therefore self-evident that the fifteen-year period of fixed-price payments cannot commence until the QF is actually selling energy to the utility. In the case of an unbuilt facility, this always happens months to years after a QF obtains financing and even longer after execution of the agreement.

When recently asked in UM 1805 to clarify its policy about when fixed pricing begins in QF standard contracts, the Commission reconfirmed its policy that fixed pricing begins at operations. It did so explicitly, over the objection of PGE, and it affirmed this policy was longstanding, unchanged, and not (as PGE contended) a new policy. As the Commission stated, "prices paid to a QF are only meaningful when a QF is operational and delivering power to the utility." *NIPPC I*, Order No. 17-256 at 4. Accordingly, utilities must offer "15 years of fixed prices that commence when the QF transmits power to the utility." *Id.* This reconfirmation of the Commission's policy did not "constitute[] the adoption of a 'new policy.' Rather, . . . [the Commission's] decision was simply to affirm the policy with respect to the commencement date for the 15-year period of fixed prices." *NIPPC III*, Order No. 18-079 at 3.

Thus, since 2005, the Commission's *longstanding policy* has been that the fifteen-year fixed-price period is intended to begin when the QF becomes operational and is delivering power to the utility, *not* at the time the PPA is executed. Thus, the *context* for *any* standard QF contract implemented by any Commission-regulated Oregon utility at *any* time since 2005, including the NewSun PPAs, is the Commission's directive to provide fifteen years of fixed pricing and twenty years of power sale term, which both commence keyed off of the start of operations of the facility.

For a regulated utility, such as PGE, to unilaterally implement some other policy would undermine this Commission's authority and *obligation* to implement the federal and state laws at

issue. Such a result cannot be allowed through implication and alleged ambiguity. Absent unambiguously clear language in the executed NewSun PPAs explicitly to the contrary, the default interpretation *must* be that PGE's executed standard contract forms are consistent with this Commission's longstanding policy that the fifteen-year fixed-price period commences when the QF begins operation and is delivering power to PGE.

2. The Commission's Renewable Rate Orders Provide Further Context for Understanding Why the 2015 Standard Renewable Contract Form Requires PGE to Pay the Fixed Prices for Fifteen Years After the Commercial Operation Date

The Commission's policy orders developing the renewable-based pricing contained in the NewSun PPAs provide even further contextual support for the objectively reasonable conclusion that the fifteen-year fixed-price period commences when the QF is operational.

In a 2011 Order, the Commission ruled that PGE and PacifiCorp must offer a renewable-based price to QFs who agree to convey their renewable energy credits (or "RECs") to the utility. *See In the Matter of Pub. Util. Comm'n of Or., Investigation Into Resource Sufficiency Pursuant to Order No. 06-538*, Docket No. UM 1396, Order No. 11-505, at 1 (Dec 13, 2011). The Commission ordered the utilities, including PGE, to file revised standard contract forms and rates that implemented this new policy. *Id.* at 12.

After further contested case proceedings, the Commission first approved PGE's standard contract form for renewable QFs in December 2014 after the conclusion of Phase I of Docket No. UM 1610. This form contract offered to QFs during pendency of Phase II of Docket No. UM 1610 tied the price PGE would pay for energy delivered by a QF directly to the ownership of RECs.

This issue was resolved first through a Commission-approved stipulation between PacifiCorp, OPUC Staff, and QF parties, which provided:

> Renewable Energy Credit (REC) ownership in the last five years of a 20-year contract. The Stipulating Parties agree that renewable PPAs signed during Phase II [of UM 1610] will include language *assigning ownership of all Environmental Attributes to the QF during the last five years of a 20-year contract when prices paid to the QF are at market*.

See In re Pub. Util. Comm'n of Or. Staff Investigation Into Qualifying Facility Contracting and Pricing, Docket No. UM 1610, Order No. 14-295, at Appendix A at 8-9 (Aug 19, 2014) (emphasis added). The Commission approved this arrangement for use in PPAs executed pending resolution of outstanding issues in Phase II of Docket No. UM 1610. *Id.* Pursuant to this Commission-approved policy, a QF that executed a PPA before the outcome of Phase II of Docket No. UM 1610 retains ownership of the Environmental Attributes (including RPS Attributes or Renewable Energy Credits) when the utility begins paying the lower market-index price for "brown" power—which occurs fifteen years after operation.

Although PGE was not a party to that stipulation, the stipulating parties implemented the same policy through agreed-to revisions to PGE's standard PPA. These revisions included Section 4.5 of PGE's standard contract, which appears in the NewSun PPAs and which unambiguously provides that the QF begins owning the Environmental Attributes "after completion of the first fifteen (15) years after the Commercial Operation Date." *See PGE's Compliance Filing*, Docket No. 1610 (Nov 25, 2014) (containing agreed-to renewable standard PPAs with a version of Section 4.5 identical to that in the NewSun PPAs) [Declaration of Gregory Adams in Support of Defendants' Motion for Summary Disposition (July 2, 2018) (*hereafter* "Adams Declaration"), Ex. B, at 42.]. The revisions also included language in Schedule 201 that expressly stated that the QF will stop conveying the RPS Attributes to PGE at the time when PGE starts paying market-index prices for the last five years of a twenty-year agreement. *Id.*, Ex. B at 20 (Sheet No. 201-12). The Commission approved changes to PGE's

standard PPAs that were consistent with the PacifiCorp stipulation. *In re Pub. Util. Comm'n of Or. Staff Investigation Into Qualifying Facility Contracting and Pricing*, Docket No. UM 1610, Order No. 14-435 (Dec 16, 2014).

The Commission subsequently approved further changes to standard contracts, including expressly allowing a QF up to three years after contract execution to complete development and achieve commercial operation. *In re Pub. Util. Comm'n of Or. Staff Investigation Into Qualifying Facility Contracting and Pricing*, Docket No. UM 1610, Order No. 15-130, at 2 (April 16, 2016). The Commission then approved PGE's 2015 Standard Renewable Contract Form at issue here, which allows a QF to select a scheduled Commercial Operation Date up to three years after the execution date, while retaining the language in Section 4.5 and Schedule 201 regarding ownership of RPS Attributes/Environmental Attributes and prices paid. *See In re Pub. Util. Comm'n of Or. Staff Investigation Into Qualifying Facility Contracting and Pricing*, Docket No. UM 1610, Order No. 15-289 (Sept 22, 2015); *see also* Adams Declaration, Ex. J (containing form contract as submitted to the Commission).

In short, therefore, the central bargain of the Commission-approved renewable-pricing PPAs offered by both PacifiCorp and PGE during Phase II of Docket No. UM 1610 was that the price paid to the QF was tied to whether the QF was selling brown power without RPS Attributes or was selling green power with RPS Attributes to the utility. The QF receives the fixed avoided costs of a renewable facility (a wind proxy plant) when it sells energy and RPS Attributes to the utility. And the QF receives a market-based brown power rate when it retains ownership of its RPS Attributes.

Subsequently, *at the conclusion* of Phase II of Docket No. UM 1610, the Commission required a change to future standard contracts. The Commission determined that the utilities

would own the RECs during the last five years of the renewable standard contract where the QF was paid the market-based prices. *See Re Investigation into Qualifying Facility Contracting and Pricing*, Docket No. UM 1610, Order No. 16-174, at 4-5 (May 13, 2016). After Order No. 16-174, PGE filed a revised standard renewable contract that removed the language from Section 4.5 that had previously clarified that the fifteen-year period of renewable fixed prices and PGE's ownership of the RPS Attributes ends fifteen years after the Commercial Operation Date. *See* CREA-NIPPC-REC/200, Sanger/12-13; *accord PGE Compliance Filing*, Docket No. UM 1610 (July 12, 2016) [Adams Supp. Declaration, Ex. M, at 3, 15, 37-38]. PGE's compliance filing states that PGE made changes to the "Ownership of RECs" in Schedule 201 at page 12 and in the standard renewable contracts in Section 4.5 or 4.6 (depending on the version of form) to comply with Order No. 16-174. *Id.*

From that point forward, incidentally, PGE's renewable standard contract form no longer expressly provided clarity on the precise start and end dates of the fifteen-year fixed-price period—a point that was expressly noted in the UM 1805 complaint and recognized in the Commission's Order No. 18-079. However, the NewSun PPAs were all executed under a generation of PGE's renewable contract form available before that change in policy and change in standard contract provisions.

This regulatory history provides additional context that, for the generation of renewable standard contracts at issue, the ownership of RPS Attributes/Environmental Attributes is tied to the payment of fixed, renewable pricing based on the avoided cost of the utility's next renewable resource as contained in the rate tables in Schedule 201.

B. The Common Industry Understanding of the Words Used in PGE's Schedule 201 Further Supports the Conclusion that the Fifteen-Year Fixed-Price Term of the Power *Purchase* Agreement Begins When *Purchases* Begin

In addition to regulatory context, the words of the NewSun PPAs and Schedule 201 must be understood in the context of, and interpreted consistently with, the common industry understanding of fixed-price terms in power purchase agreements. *See* ORS 42.250. The Oregon Supreme Court has long held that "[c]ourts infer that members of a vocation employ its trade terms in their technical sense whenever they use them." *Dorsey v. Oregon Motor Stages*, 183 Or 494, 513, 194 P2d 967 (1948). "Where all parties are members of the same trade . . . the only requirement is that the special use alleged should be in fact a usage, or settled habit of expression, and not merely the expression of a few persons or casual occasions." *Id.* at 512 (quoting *Wigmore on Evidence* § 2464 (2d ed)). Because an industry participant is presumed to understand the objective meaning of customary industry terms in its agreements with other industry participants, "it is appropriate to consider any applicable trade usage at the first level of analysis under *Yogman.*" *Peace River Seed Coop. Ltd. v. Proseeds Mktg.*, 355 Or 44, 67, 322 P3d 531 (2014).

Courts may rely on industry understanding to ascertain the objective meaning of a contract at summary judgment—particularly where, as here, the common industry usage of the words at issue is undisputed in the summary judgment record. *See Lone Rock Timberland Co v. Nicholls*, No. 6:11-cv-6274-TC, 2012 WL 2836880, at *7 (D Or July 10, 2012) (stating that the "phrases 'transporting logs' or 'transporting timber/forest products' has a distinct meaning within the context of the timber industry"). "There is no requirement that an agreement be ambiguous before evidence of a usage of trade can be shown, nor is it required that the usage of trade be consistent with the meaning the agreement would have apart from the usage."

Restatement (Second) of Contracts at § 222, Comment (b). The usage need not be "universal;" it only "must be reasonable." *Id.* Moreover, "commercial acceptance by regular observance makes out a prima facie case that a usage of trade is reasonable." *Id*.

Oregon subscribes to the objective theory of contracts. Under that theory, the Commission must determine "the meaning that would be attached to the integration by *a reasonably intelligent person acquainted with all operative usages and knowing all the circumstances* prior to and contemporaneous with the making of the integration, other than oral statements by the parties of what they intended it to mean." *Harty v. Bye*, 258 Or 398, 404, 483 P2d 458 (1971) (quoting *Restatement of Contracts*, § 230) (emphasis added).

Here, there is a well-established industry usage that supports the NewSun Parties' position. Specifically, the term of years of a power purchase agreement is understood in the industry to commence when the facility is operational or expected to be operational, and it is understood to define the length of the associated power purchase and sale commitments between the parties. Simply put, when an independent power producer is informed it will receive fixed prices "for a maximum term of 15 years"—as the NewSun Parties were informed by page 12 of PGE's Schedule 201—the understanding in the industry is that the fifteen-year period begins only *upon* the power plant being constructed and beginning delivery and sale of energy.

The record contains testimony from three different industry participants with many decades of cumulative experience on this standard industry usage and understanding. Specifically, in the independent power industry, it is common to use the words "term" or "contract length" and similar phrases to describe the period during which the facility is operating and expected to be delivering and selling power under the PPA, even though the PPA itself and certain obligations and understandings therein would be legally effective before operation of the

facility. *Defendants' Undisputed Facts* at ¶ 50. In the case of PGE's Schedule 201, the phrases used include a "maximum term of 15 years," "PPAs exceeding 15 years," and "term of up to 20 years." *Id.* at ¶ 49 (citing Schedule 201 attached to Alfalfa's PPA at PGE/101, Macfarlane/25, 30, 36). An experienced industry participant would ordinarily understand these phrases to describe the fifteen-year and twenty-year periods during which the facility is operating and expected to be delivering and selling power to the purchasing utility, *not* the period that commences when the contract is first executed. *Id.* at ¶ 51-54.

At the same time, it is normal in the context of a power purchase agreement that the contract is in effect upon execution, and therefore the term has commenced technically upon execution. *Id.* at ¶ 50. That is because there is an initial period of a power purchase agreement before power sales begin during which the agreement is in effect and the project developer, in reliance thereon, is designing the project, finalizing necessary permits, obtaining interconnection and transmission rights, and financing and constructing the facility. *See* NewSun Parties/200, Harnsberger/3. Likewise, the buyer is relying on or expecting to receive and have to pay for power at some point in the future. *See id*. Thus, there is nothing out of the ordinary with PGE's definition of the word "Term" in Section 1.38 of the standard contract itself, which merely confirms the unremarkable proposition that the contract becomes effective when executed. Such definition would not alert an ordinary industry participant to any non-standard treatment of the fifteen-year term of fixed-price payments. A normal industry participant would still understand the words used in PGE's Schedule 201 to describe the period of payment of fixed prices to be a fifteen-year period measured from the operation date. *See Defendants' Undisputed Facts* at ¶ 52 (citing, e.g., NewSun Parties/200, Harnsberger/6). A contrary interpretation—that the fifteen-year term of fixed prices is measured from the date of execution—would indeed be "very

surprising" to industry participants. *Id.* at ¶ 54.

This basic industry understanding is confirmed by, among other things, the undisputed contents and understanding of PacifiCorp's and Idaho Power's Oregon PURPA tariffs. As is detailed in the testimony of John Lowe, both Idaho Power and PacifiCorp refer to the "term" of the fixed-price period and the overall contract term and similar, or identical, phrases to the language in the version of PGE's Schedule 201 at issue here to describe the period of years after the facility is operational or expected to be operational. *See id.* at ¶ 53. The Commission's orders in UM 1805 confirm that it is undisputed that Idaho Power and PacifiCorp have always implemented Order No. 05-584 to offer a fifteen-year fixed-price period and a maximum twenty-year contract term, both of which commence when the QF is operational or expected to be operational, not years earlier when the contract is executed.

Idaho Power and PacifiCorp's treatment of the 15-year fixed-price term in their standard contracts since 2005 is slightly different. PacifiCorp measures the period from the "Initial Delivery Date," while Idaho Power measures the period from the "Commercial Operation Date." *See* CREA-NIPPC-REC/100, Lowe/8-13 (containing detailed testimony on this point). However, the salient point is those utilities use the same terminology as PGE's Schedule 201 to describe a fifteen-year fixed-price term that commences either at beginning of operations or expected operations—which is, in either case, up to three years or more after execution of the standard contract and certainly *not* on the date of execution of the contract.

PGE's own recent request for proposals ("RFP") further evidence this common industry usage. In PGE's renewable RFP, issued in 2012, PGE repeatedly refers to the "term" for a power purchase agreement bid as the period commencing with energy deliveries, which could begin no earlier than January 2013 but with a preferred date at the end of 2015. *Portland General Elec.*

Request for Proposals: Renewable Energy Resources, Docket No. UM 1613, at 11, 16, 30 (Sept 10, 2012) [Adams Declaration, Ex. G, at 18, 23, 37]. Indeed, the sample bid sheet contained in PGE's RFP states:

> *Term:* Bidder to provide. The minimum bid term is 10 years, with a start date no earlier than January 1, 2013.
>
> *Example: Commence January 1, 2013, for up to 20 years.*

Id. at 30 [Adams Declaration, Ex. G, at 37]. More recently, PGE issued an RFP targeting final execution of a power purchase agreement by December 31, 2018, in which it described the "term" of the power purchase agreement as a minimum of "20 years" with an "Online/Contract Start Date" no later than December 31, 2021. *Portland General Elec. Request for Proposals: Final - Renewable Energy Resources*, at 8, 13 (May 22, 2018), [Adams Declaration, Ex. H, at 8, 13]. The RFP states: "the minimum term duration is twenty years," meaning 20 years after commencement of energy sales under the agreement, not 20 years from execution of the contract. *Id.* at 13; *see also id.* at 18. Accordingly, PGE's own use of the word "term" in its RFPs is consistent with how a normal industry participant would understand it to be used in Schedule 201.

In sum, the prevailing industry usage and understanding, including relevant examples for all three utilities in Oregon, provides additional context that industry participants would expect the words used in PGE's Schedule 201 to describe the fifteen-year period after operation of the QF. Additionally, the *context* of the contract's terminology, as it relates to the matter in dispute, includes not only an industry that understands "term" and "term length" for PPAs that would commence when energy sales commence, but the fact PGE itself regularly uses this very same terminology in the normal course of power contracting for new generation in the same way.

C. Under Step One of *Yogman v. Parrot*, the NewSun PPAs Require Payment at the Fixed Prices for Fifteen Years After the Commercial Operation Date

1. Construing the NewSun PPAs as Whole and Within the Regulatory and Industry Context from Which They Arose, the NewSun PPAs Unambiguously Require PGE to Pay Fixed Prices for Fifteen Years After the Commercial Operation Date

In addition to the relevant regulatory context and prevailing industry usage, the plain terms of the NewSun PPAs and their context within the agreement unambiguously establish that PGE must pay the fixed prices for fifteen years after the Commercial Operation Date. As set forth in the Recitals, each PPA obligates the applicable NewSun Party to "construct, own, operate and maintain a photovoltaic solar facility" as described in the applicable Exhibit A to the PPA. *See* NewSun PPAs at Recitals. Once the relevant NewSun Party completes development of its Facility and achieves commercial operation, it is obligated to sell "the entire Net Output" of the Facility to PGE. *See id*.

An unbuilt solar facility obviously cannot generate or sell any output. The fixed prices provided for by the PPAs therefore become relevant *only after* the Facility is developed and achieves commercial operation. This additional context further supports the conclusion that PGE must pay the fixed prices for fifteen years after the Commercial Operation Date, not on the date the PPA was executed. PGE is not obligated to purchase energy or pay any rates whatsoever to any NewSun Party until the NewSun Party's Facility begins delivering energy to PGE.

As noted above, the PPAs reference Schedule 201, attached as Exhibit D, to determine the applicable "Contract Price." Tables 6a and 6b contain the On-Peak and Off-Peak prices for all years through 2040 for solar QFs entering into the 2015 Standard Renewable Contract Form. Schedule 201 establishes that the Renewable Fixed Price Option is "available for a maximum term of 15 years." Schedule 201 at 12.

Schedule 201 also describes the underlying basis for the renewable pricing scheme incorporated into the Contract Prices in the PPA. *See* Schedule 201 at 3. The prices set forth in Tables 6a and 6b for each year through 2019 are significantly lower than the prices in subsequent years because they reflect only the costs of the "forward market price estimates through the Renewable Resource Sufficiency Period." *Id.* at 3. In 2020, the rates increase significantly because beginning in 2020 the QF is paid "the fully allocated costs of a wind plant including capital costs." *Id.* Thus, consistent with the regulatory context discussed above, Schedule 201 itself reflects that the central bargain of the Renewable Fixed Price Option is that each NewSun Party agrees to sell renewable energy in exchange for renewable-based pricing based on the costs of the avoided wind farm.

In turn, Section 4.5 of the PPAs and Schedule 201 collectively establish that, for fifteen years *after* the Commercial Operation Date, PGE must pay the rates set forth under the heading Renewable Fixed Price Option for Solar QF in Tables 6a and 6b in exchange for energy delivered during those fifteen years, as well as delivery of the NewSun Party's RPS Attributes during the Renewable Resource Deficiency Period that occurs within those fifteen years. Then, beginning fifteen years after the Commercial Operation Date, the NewSun Party retains ownership of all Environmental Attributes (including RPS Attributes) and is paid only a market-index (i.e., brown power) price for the energy it delivers.

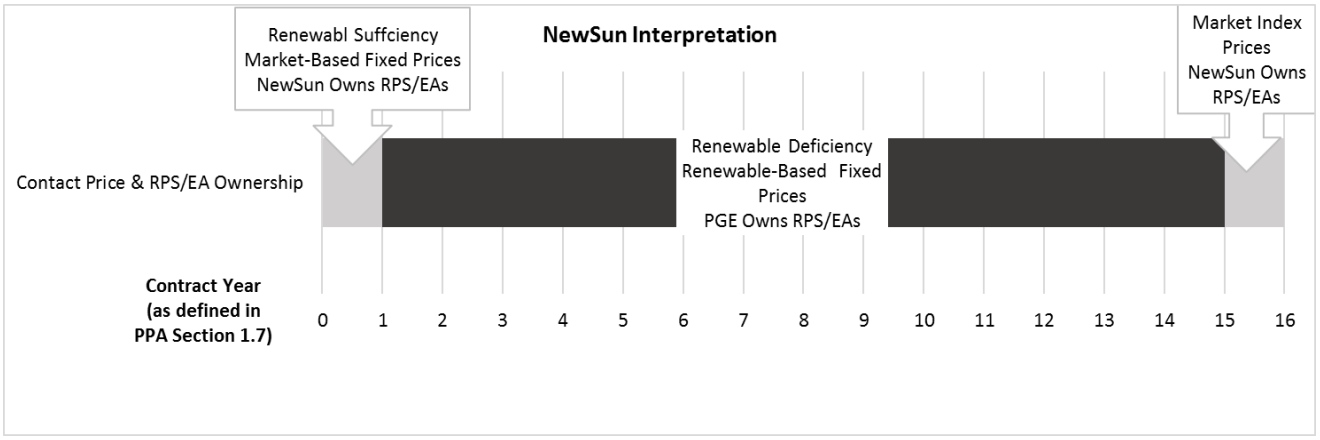
Most directly, Section 4.5 of the PPA provides: "During the Renewable Resource Sufficiency Period [i.e., through 2019], and any period within the Term of this Agreement after completion of the first fifteen (15) years after the Commercial Operation Date, Seller shall retain all Environmental Attributes in accordance with the Schedule." In turn, under the sub-heading "Renewable Fixed Price Option," Schedule 201 provides: "Sellers with PPAs exceeding 15 years

will receive pricing equal to the Mid-C Index Price and will retain all Environmental Attributes generated by the facility for all years up to five in excess of the initial 15." Schedule 201 at 12. This sentence in Schedule 201 expressly links the change in ownership of RPS Attributes/Environmental Attributes to the date when pricing changes from renewable fixed pricing to a market-index price for non-renewable power.

Under Oregon law, a contract must be construed *as a whole* to give meaning to all of its provisions. The only way to accomplish this with respect to the NewSun PPAs is to conclude that the fixed renewable price tables apply for "fifteen (15) years after the Commercial Operation Date." NewSun PPAs at § 4.5. This is consistent with the central bargain to sell renewable energy and "RPS Attributes" in exchange for renewable-based pricing under the renewable PPA. It is the *only* way to reconcile all of the language in the standard contract and Schedule 201.

The following chart illustrates the intent of these provisions—namely, that PGE must pay a brown power rate during the period where the NewSun Party retains ownership of its RPS Attributes and a green power rate when the NewSun Party conveys its RPS Attributes to PGE.[6]

Chart 2



[6] For purpose of illustrating all three scenarios of pricing under the NewSun PPAs, this chart assumes the QF achieved the Commercial Operation Date on January 1, 2019.

2. PGE's Contention that the Fixed Price Period in the NewSun PPAs Begins on the Execution Date Would Create an Irreconcilable Conflict with Section 4.5 of the PPAs

PGE takes words in Schedule 201 out of context to support its argument and creates an irreconcilable conflict with the terms of the PPA by doing so. Specifically, PGE relies on language stating that the Renewable Fixed Price Option "is available for a maximum term of 15 years" and that "[s]ellers with PPAs exceeding 15 years will receive pricing equal to the Mid-C Index Price and will retain all Environmental Attributes generated by the facility for all years up to five in excess of the initial 15." Schedule 201 at 12. These are the passages PGE relies upon to argue that market prices apply beginning fifteen years after execution of the PPA.

But PGE ignores the provisions addressing ownership of Environmental Attributes and the expressed intent to pay renewable pricing for renewable power. Specifically, Section 4.5 of the PPAs provides:

> [A]fter completion of the first fifteen (15) years after the Commercial Operation Date, Seller shall retain all Environmental Attributes in accordance with the Schedule.

And Schedule 201 states:

> Sellers with PPAs exceeding 15 years will receive pricing equal to the Mid-C Index Price and will retain all Environmental Attributes generated by the facility for all years up to five in excess of the initial 15.

Schedule 201 at 12.

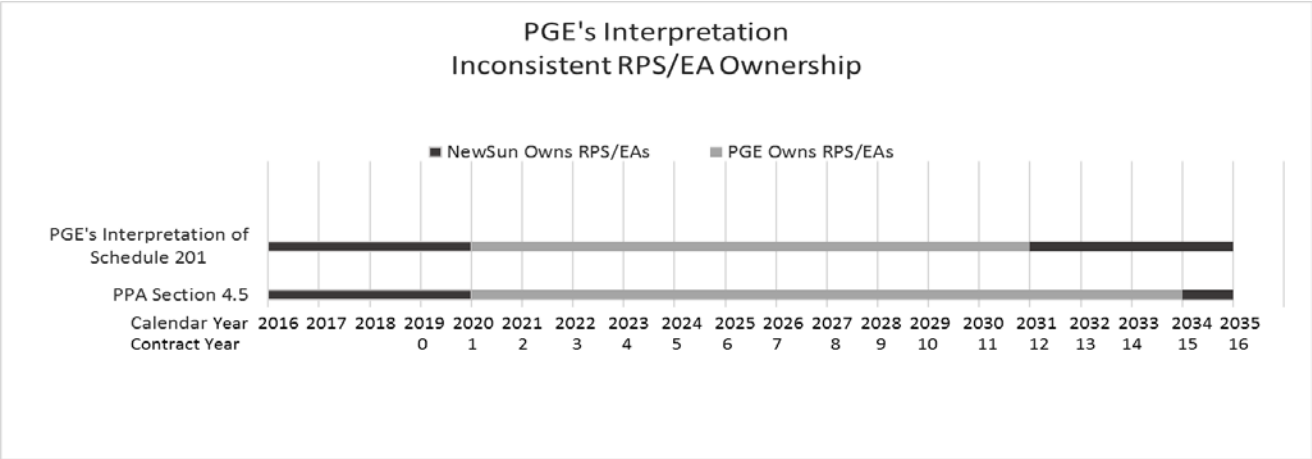
Adopting PGE's interpretation of Schedule 201 would result in an irreconcilable conflict with Section 4.5 of the PPAs. Under PGE's interpretation, Schedule 201 would mean that the NewSun Party begins receiving market-index prices and retains all Environmental Attributes beginning fifteen years after the date of execution. This directly contradicts the express language of Section 4.5, which provides that the NewSun Party would not retain Environmental Attributes

until fifteen years after the Commercial Operation Date, which is a defined phrase in the agreement. To adopt PGE's argument, the Commission therefore would have to reform Section 4.5 as follows:

> [A]fter completion of the first fifteen (15) years after the ~~Commercial Operation Date~~ Effective Date, Seller shall retain all Environmental Attributes in accordance with the Schedule.

The following chart demonstrates the conflict that would be created by PGE's out-of-context interpretation of phrases in Schedule 201:

Chart 3



Under Oregon law, the Commission must reject an interpretation that creates a conflict between the various provisions of the PPAs and the Schedule. *See Hoffman Constr. Co. v. Fred S. James & Co.*, 313 Or 464, 472, 836 P2d 703 (1992) (rejecting plaintiffs' interpretation of a contract where that interpretation would create a conflict between two parts of the contract). Indeed, "[i]t is a fundamental rule in the construction of contracts that it is the duty of a court to construe a contract as a whole employing any reasonable method of interpretation so that no part of it is ignored and effect can be given to every word and phrase." *New Zealand Ins. Co. v. Griffith Rubber Mills*, 270 Or 71, 75, 526 P2d 567 (1974). Accordingly, a court "must reconcile

inconsistent provisions if it is at all possible." *Id.*[7]

By contrast, the NewSun Parties' interpretation of the PPAs reconciles all of the PPAs provisions. If, as the NewSun Parties contend, the phrase "PPAs exceeding 15 years" in Schedule 201 means power *purchase* agreements that provide for in excess of fifteen years of power *purchases* (*i.e.*, PPAs that expire more than fifteen years after the Commercial Operation Date, which is how a normal industry participant would understand these words), then Schedule 201 and Section 4.5 are entirely consistent and require no modification. During the Renewable Resource Deficiency Period, which begins in 2020, and until the completion of fifteen years after the Commercial Operation Date, each NewSun Party will transfer RPS Attributes/Environmental Attributes to PGE, as Section 4.5 of the PPA unambiguously requires, and will be paid at the "Renewable Fixed Price Option for Solar QF" set forth in Tables 6a and 6b. During the one remaining year until conclusion of the sixteenth Contract Year when the agreement terminates, each NewSun Party will be paid at the Mid-C Index Price—which represents the price for brown energy stripped of all Environmental Attributes—and will retain all Environmental Attributes.

When PGE first publicly raised its fifteen-years-from-effective-date argument in Docket No. UM 1725, this very argument was presented by QF advocates in a clarification motion. In its response, Commission Staff *rejected* PGE's argument, stating that Section 4.5 "of this standard contract form is inconsistent with PGE's assertion that the fifteen-year fixed-price term starts on the effective date of the contract, rather than the COD of the QF." *Staff Response to Motion for*

[7] Another basic principle of contract interpretation is that more *specific* language, such as that used and defined in uppercase contractual terms in the PPA's Section 4.5, controls over more general language, such as that in Schedule 201. *See* ORS 42.240 ("[W]hen a general and particular provision are inconsistent, the latter is paramount to the former. So a particular intent shall control a general one that is inconsistent with it."); *Deerfield Commodities, Ltd. v. Nerco, Inc.*, 72 Or App 305, 319, 696 P2d 1096 (1985) (holding "general language [in an addendum] cannot be construed to override or conflict with [a] more specific provision of the agreement").

Clarification, Docket No. UM 1725, at 4-5 (May 6, 2016) (citations omitted) [Adams Declaration, Ex. C, at 4-5].

Commission Staff's agreement with the NewSun Parties' understanding of the specific language of PGE's 2015 Standard Renewable Contract Form—made within the timeframe during which the NewSun PPAs were executed in 2016—is further compelling evidence in favor of the objective reasonableness of the NewSun Parties' interpretation.

In short, NewSun Parties' reading of the PPAs is the natural reading that results from application of normal industry usages of the words at issue, comports with the Commission's underlying policy giving rise to the contracts, and does not create internal conflicts or confusion about the meaning of contract. Such confusion and contradictions only (but necessarily) arise if the contract is assumed to mean what PGE argues.

3. PGE's Contention that Its Interpretation of the NewSun PPAs Is Supported by the Definition of "Term" Is Contrived and Unpersuasive

PGE contends that the definition of "Term" in Section 1.38 of the PPAs supports its position because it establishes that the "Term" of the PPAs begins on the "Effective Date." PGE then attempts to insert this definition of "Term" into Schedule 201's description of the "Renewable Fixed Price Option," which states: "[t]his option is available for a *maximum term* of 15 years." Schedule 201 at 12 (emphasis added). Specifically, PGE contends that the use of the word "term" in Schedule 201 must be understood to limit the Renewable Fixed Price Option to fifteen years following execution of a PPA.

PGE's argument fails because it takes the words of Schedule 201 out of context from their location in the agreement and completely ignores the overall context of a power purchase agreement, the underlying intent of the Commission's policy from which the contracts arose, and

the context of basic industry understanding of the words PGE uses in Schedule 201. As noted above in detail, all PPAs, as is common in many agreements executed in advance of services and sales contracted for future delivery, are expected to technically be effective at the time of execution to allow the parties to rely on the performance thereunder. In the case of an unbuilt facility, this allows the developer to take the lengthy and costly steps to bring the project into operation without the fear that the rates and terms will change before it brings the facility into operation. There is nothing surprising or significant, therefore, that PGE defined the "Term" in the PPA itself to commence on date the contract is executed. However, as the Commission recently stated, "[p]rices paid to a QF are only meaningful when a QF is operational and delivering power to the utility[,]" and "to provide a QF the full benefit of the fixed price requirement, the 15-year term must commence on the date of power delivery." *NIPPC I*, Order No. 17-256 at 4. The undisputed evidence demonstrates that PGE's argument contradicts the well-established industry usage of the phrases it used in Schedule 201, and it would be a surprise to any independent power producer that such a result could occur.

PGE's argument also suffers from basic contractual drafting problems. If PGE wished to achieve the unexpected result for which it now advocates, PGE would have had to draft the contract such that it unambiguously explained that result to prospective QF counterparties. But PGE failed to do so. Specifically, neither the NewSun PPAs nor Schedule 201 state, or even suggest, that the definition of "Term" in the PPA applies to the use of that word used in Schedule 201's discussion of the period of payments for delivered power. Schedule 201 includes its own list of defined terms (at pages 22-23) and does not state that the definitions in the PPA are intended to apply to each and every word used in the Schedule. "When a contract is organized into separate parts, a provision or definition found in one part or section of the contract is not

necessarily intended to apply to other parts." 17A Am Jur 2d *Contracts* § 362 (2d ed 2004). Accordingly, there is no basis to apply the definition of "Term" in the PPA to the use of that word in Schedule 201 to limit the "maximum term" of the Renewable Fixed Price Option to fifteen years following contract execution.

PGE demonstrated the ability to unambiguously use the same definitions in Schedule 201 as it used in the standard contract for numerous phrases other than the "maximum term of 15 years." Specifically, Schedule 201 provides a definition identical to that in the standard contract for the phrases Environmental Attributes, Mid-C Index Price, and RPS Attributes. *Compare* Schedule 201 at 22-23, *with* NewSun PPAs at Definitions. Each of those terms is used multiple times in Schedule 201 with capitalized letters and never with lowercase letters. *See* Schedule 201 at 12, 23 ("Environmental Attributes"); *id.* at 5, 12, 22 ("Mid-C Index Price"); *id.* at 12, 23 ("RPS Attributes"). Furthermore, Schedule 201 demonstrates PGE's ability to expressly incorporate definitions from the standard contract where it states: "Prudent Electrical Practices *as that term is defined in the interconnecting utility's approved Standard PPA*." Schedule 201 at 22 (emphasis added). Numerous other words in Schedule 201 are used in capitalized form to notify the Commission and QFs of PGE's intent to use the definitions from Schedule 201 or the standard contract, including: Commercial Operation Date, *id.* at 4; Maximum Net Output, *id.* at 4; On-Peak, *id.* at 3, 4, 6, 8, 10, 13, 15, 17, 23; Off-Peak, *id.* at 4, 7, 9, 11, 14, 16, 18; Net Output, *id.* at 4, 23; Point of Delivery, *id.* at 4.

In fact, in the pricing section that introduces the Standard Fixed Price Option and the Renewable Fixed Price Option, the Schedule uses a number of the above-referenced defined terms with capitalized letters and explicitly refers the reader to the standard contract for the definitions. *Id.* at 4. Under the heading "PRICING FOR THE STANDARD PPA," Schedule

201 uses the following defined phrases appearing in capitalized form: Off-Peak, On-Peak, Maximum Net Output, and Net Output. *Id.* At the conclusion of the paragraph, Schedule 201 states, "See PPA for defined terms." *Id.* It further uses many other defined and capitalized phrases in the section under the heading "Renewable Fixed Price Option"—the same section of the Schedule that states in lower case that the renewable fixed prices are "available for a maximum term of 15 years." *Id.* at 12. There, the Schedule uses the capitalized form for the following phrases that are defined in Schedule 201 and/or the contract itself: "Environmental Attributes," "Mid-C Index Price ," "Renewable Resource Deficiency Period," "Renewable Resource Sufficiency Period," "RPS Attributes." In contrast, Schedule 201 does not state that the word "term" has the same meaning as defined in the standard contract, and the word does not appear in the capitalized form in any of the critical sections of Schedule 201 that PGE relies on in this case.

The major problem with PGE's argument is that Schedule 201 simply uses generalized language to describe the "term." As the Commission has stated, "information provided in tariffs will be supplemented with filed standard contract forms that contain full information about the terms, rates and conditions governing the sale and transfer of electrical energy between a utility and a QF project with a design capacity at or under 10 MW." *Re Investigation Related to Electric Utility Purchases from Qualifying Facilities*, Order No. 05-584 at 59. As to pricing, the tariffs only include "*general information* about pricing options." *Id.* (emphasis added).

Given that Schedule 201 uses generalized language and does *not* express any intent to use the standard contract's definition of the capitalized use of the word "Term," the general industry understanding of the phrases in Schedule 201 must prevail. This result is further required because PGE's interpretation would create unnecessary contradictions in the contract, would

contradict the intent of the Commission's policy giving rise to the contract, and would be "very surprising" to an industry participant reading the PPA and Schedule 201, even if that party had no familiarity with the underlying Commission policy.

As noted above, Idaho Power and PacifiCorp have consistently used the very same terminology in their PURPA tariffs to describe the period after the facility is operational or expected to be operational. A QF and the Commission—as the regulatory body charged with ensuring the utility's tariffs comply with applicable policies and laws—should be entitled to rely on substantively identical language in the three Oregon utilities' tariffs implementing the same Commission policy to have the same general meaning. Even if unambiguous language to the contrary in a particular version of PGE's standard contract hypothetically could override this industry understanding, no such language exists in PGE's 2015 Standard Renewable Contract Forms, on which the NewSun PPAs are based.

In sum, PGE's reliance on the definition of "Term" in the PPA is without merit.

D. ALJ Arlow's Ruling that the Contracts Are Ambiguous Is Incorrect

For the reasons set forth above, there is only one reasonable interpretation of the NewSun PPAs, and ALJ Arlow therefore erred to rule that the PPAs are ambiguous.

The Commission is not bound by ALJ Arlow's ruling on this point. A ruling that the contracts are ambiguous is a substantive ruling on the merits that can materially influence the outcome and is thus reserved for determination by the Commissioners. *See* OAR 860-001-0090(1) (delegating procedurally matters to ALJs). The NewSun Parties preserved their objection to the reasoning of ALJ Arlow's ruling by requesting that he certify the question if the ruling was intended to be a binding ruling that the contracts are ambiguous. *See ALJ Ruling* at 1-3 (Nov. 1, 2018). However, ALJ Arlow declined to certify the issue for the Commissioners'

consideration after explaining no party was precluded from moving for summary judgment after discovery was conducted and testimony filed. *See id.* at 3.

In any event, the underlying reasoning of ALJ Arlow's ruling on the substantive question of ambiguity should not be adopted by the Commission. Notably, neither party argued the NewSun PPAs were ambiguous at the time of the ruling,[8] and the question was therefore not properly framed for disposition at that time. Yet, after setting forth the *Yogman* test for interpreting contracts, ALJ Arlow stated the PPAs are ambiguous. *ALJ Ruling* at 7 (Aug. 23, 2018). The ruling does not even recite any provisions of the NewSun PPAs or attempt to construe them in their context, let alone explain why they are ambiguous. Instead, ALJ Arlow's ruling relies on three incorrect findings.

First, the ALJ's ruling incorrectly states that CREA, NIPPC, and REC alleged that PGE's standard contracts at issue were ambiguous in their complaint in Docket No. UM 1805. *Id*. As noted earlier, the UM 1805 complaint specifically alleged that the contract forms underlying the PPAs at issue here were *unambiguous*, and that PGE's forms became ambiguous only after Order No. 16-174 required removal of the language linking the renewable fixed prices to ownership of RPS Attributes. *See* Adams Supp. Declaration, Ex. L, at 10-11, 13. The Commission's last order in UM 1805 also acknowledged this distinction by noting the problem with PGE's contracts came to the Commission's attention only after "the filing of PGE's most recent standard contracts," which was the generation of standard contracts available after the forms used for the NewSun PPAs. *NIPPC III*, Order No. 18-079 at 3. In any case, the NewSun

[8] As the ruling notes, PGE argued it was entitled to conduct discovery on extrinsic evidence to ascertain the *context* of the agreements. *ALJ Ruling* at 5 (Aug. 23, 2018). PGE only argued that extrinsic evidence available through discovery would help determine if the agreements are ambiguous in step one of the *Yogman* test. *See, e.g., PGE's Response To Motion for Protective Order Staying Discovery*, Docket No. UM 1931, at 2, 8-12 (July 13, 2018).

Parties are not bound by the arguments of another party in another case.

Second, the ALJ's ruling incorrectly states that the "Commission's orders in [UM 1805] similarly turn on the premise of ambiguity in the PGE standard contract with respect to the commencement of the 15-year period of fixed prices." *ALJ Ruling* at 7 (Aug. 23, 2018). The Commission's orders do not conclude that any contract is ambiguous. Nor do they turn on the premise that any contracts were ambiguous. To the contrary, the Commission's orders in Docket No. UM 1805 unequivocally explained, "we neither examined nor addressed the specific terms and conditions of any past QF contract, either in standard form or executed agreement." *NIPPC III*, Order No. 18-079 at 1. The UM 1805 orders provide no basis to conclude that the NewSun PPAs are ambiguous.

Finally, the ALJ's ruling incorrectly states that the "federal court acknowledged that the parties' mindsets were central to our disposition of the case[.]" *ALJ Ruling* at 7 (Aug. 23, 2018). This reasoning is also clearly erroneous because the federal district court's decision does not state that the parties state of mind is central to resolving the dispute. The district court's ruling was limited to an analysis of the preliminary jurisdictional objections of ripeness and primary jurisdiction; it did not interpret the NewSun PPAs under step one of the *Yogman* test. *See Alfalfa Solar I*, 2018 WL 2452947 at **3-7. Indeed, if the court had determined that the case turned primarily on parties' state of mind, the court would have been obligated to retain the case to have such factual issues resolved by a jury trial. Instead, the district court relied on PGE's arguments, and this Commission's statements in its Order No. 18-174, that the integral point of analysis in the case would be the meaning of the Commission's orders and how those orders impacted an "*objective reading* of the agreement and its approval." *Alfalfa Solar I LLC*, 2018 WL 2452947, at *7 (emphasis added). The court also expressly adopted PGE's and this Commission's

argument that the case "implicates the need for uniformity in interpreting a provision that is common to many existing PPAs." *Id.* The parties' state of mind is irrelevant to an analysis that seeks uniformity based on the intended meaning of the Commission's previous orders.

In sum, ALJ Arlow's Ruling erred to the extent it concluded that the NewSun PPAs are ambiguous, and that conclusion should not be adopted by the Commission. Instead, the Commission should conclude that the NewSun PPAs have only one reasonable interpretation under step one of the *Yogman* test—that PGE must pay the On-Peak and Off-Peak Renewable Fixed Prices in Tables 6a and 6b for fifteen years after the Commercial Operation Date. Therefore, there is no need to proceed to steps two and three of *Yogman*, to weigh extrinsic evidence of intent or to consider maxims of construction, and the Commission should grant summary judgment.

III. If the Commission Finds the NewSun PPAs Ambiguous, the Summary Judgment Record Requires a Conclusion that the PPAs Provide Fixed Prices for Fifteen Years After the Commercial Operation Date

Even if an ambiguity exists after considering the text and context of the agreements, the Commission should grant summary judgment for the NewSun Parties.

First, as noted above, Oregon law requires that any potential ambiguities in the NewSun PPAs must be interpreted consistent with the Commission's recently reaffirmed fifteen-year fixed-price policy. The "law of the land applicable thereto is a part of every valid contract." *Ocean Accident & Guarantee Corp.*, 122 Or at 617, and this rule includes administrative directives such as the Commission's underlying policy that PGE must offer fixed prices to all QFs for fifteen years after operation of the facility. *See Rehart*, 448 F2d at 173-75. Where a regulated entity fails to include the legally required terms of a contract it is required to offer, any ambiguities in the agreement result in the required terms being included "by operation of law."

Savage, 158 Or App at 94-95. As the Commission recently reaffirmed, the intent of the Commission's underlying policy since 2005 has been to provide QFs with the full benefit of the fixed-price period for fifteen years after operation of the facility, and any ambiguities found in step one of *Yogman* must result in the NewSun PPAs providing fifteen years of fixed prices after the Commercial Operation Date.

Thus, it is not necessary to proceed to steps two and three of *Yogman* because any minor ambiguity that hypothetically exists in the NewSun PPAs simply results in the inclusion of the Commission's underlying policy in the agreements by operation of law. However, notwithstanding the foregoing, *even if* the Commission applies steps two and three of the *Yogman* test, summary judgment is *still* required.

Summary judgment is appropriate under steps two and three of *Yogman* under certain circumstances, including: (1) where the extrinsic evidence of the parties' intent will not resolve the contract's meaning, or (2) where the party with the burden of presenting evidence to establish a disputed issue of fact as to the parties' intended meaning fails to meet its burden at summary judgment. *Dial Temp. Help Serv.*, 255 Or App at 612. In this case, summary judgment is independently appropriate under either, or both, of those circumstances.

A. Extrinsic Evidence Under Step Two of *Yogman* Confirms that the 2015 Standard Renewable Contract Form Provides Fixed Renewable Prices for Fifteen Years After Commercial Operation

Under step two of *Yogman*, the factfinder analyzes extrinsic evidence to find a common understanding of the disputed provision. Under this step, the court must look beyond the four corners of the contract to discern, as a matter of fact, whether there was a mutual and common intention. *See Yogman*, 325 Or at 363; *see also* ORS 41.740 (extrinsic evidence is admissible to "explain an ambiguity" in a contract). However, Oregon follows the objective theory of

contracts, "under which objective manifestations of intent control rather than the parties' uncommunicated subjective understanding." *Butler Block, LLC v. Tri-Cnty. Metro. Transp. Dist. of Or*., 242 Or App 395, 410, 255 P3d 665 (2011).

1. PGE's Agreement to Edits to the Renewable Contract Form in 2014 Evidenced an Objective Manifestation of Mutual Intent that PGE Must Pay Renewable Fixed Prices for Fifteen Years After Commercial Operation

The summary judgment record contains undisputed evidence that PGE knowingly agreed to revise its initially proposed renewable contract forms in a manner that established that the fifteen-year period of fixed-price payments ends fifteen years after the Commercial Operation Date. Most notably, PGE was told explicitly by OPUC Staff that PGE's attempt to insert language in Schedule 201 and the standard contract that would begin the fifteen-year fixed-price period at the Effective Date would result in an impermissible, *substantive change* of Commission policy on this issue, and PGE thereafter agreed to remove such proposed language from its compliance filings. This extrinsic evidence of PGE's understanding of the provisions at issue corresponds with the NewSun Parties' assertions to PGE on the same point prior to execution of the NewSun PPAs.

As detailed at length in the testimony of Irion Sanger and summarized in the NewSun Parties' statement of undisputed facts, PGE capitulated on the very question in dispute here in order to convince OPUC Staff and interested stakeholders not to object to PGE's compliance filings after Docket No. UM 1396 and Phase I of Docket No. UM 1610. This extrinsic evidence confirms the intended meaning of the express language of Section 4.5 of the 2015 Standard Renewable Contract Form and Schedule 201—all of which is consistent with the NewSun Parties' position and the Commission's own recent UM 1805 orders reaffirming the longstanding intent of the Commission's fixed-price policy.

First, immediately following Order No. 11-505, in Docket No. UM 1396, PGE proposed language to the contract forms that would have stated that fixed prices would be paid only for "fifteen years immediately following the effective date." *Defendants' Undisputed Facts* at ¶¶ 55, 57, 58, 61. PGE also proposed language to Schedule 201 and a newly proposed Schedule 211 that would have stated fixed prices would be paid only "[f]or the period prior to the 15th anniversary of the Effective Date." *Id.* This unambiguously clear language did not exist in any prior version of PGE's standard contract or Schedule 201.

However, PGE's proposal was opposed by stakeholders. The OPUC Staff representative, Adam Bless, rejected PGE's proposed language for Schedule 201 and stated this was a "substantive" change to PGE's Schedule 201. *Id.* at ¶ 61. Mr. Bless did not label PGE's proposed language change as a mere "HOUSEKEEPING" change, which Mr. Bless described as changes that are "substantively consistent with the currently approved schedules or make changes that are so minor that they are not substantive changes from the currently approved schedule." CREA-NIPPC-REC/204, Sanger/1. In other words, because the change was substantive, OPUC Staff did not understand PGE's Schedule 201 at that time to limit the fixed-price period to fifteen years immediately after execution, which is not surprising because PGE's tariff contained the same phraseology as PacifiCorp's and Idaho Power's PURPA tariffs. Therefore, OPUC Staff in 2014 *explicitly* told PGE and stakeholders that PGE's requested fifteen-years-from-Effective-Date language would be a *change* of Commission policy on the issue.

PGE did not respond to OPUC Staff and stakeholders by reciting the "legislative history" of its contract forms going back to 2005, as it now does in this case. There is no evidence submitted by PGE in the summary judgment record that it ever communicated disagreement with

Mr. Bless's position that PGE's proposed edit—to state that the fixed-price period ends fifteen years immediately after the Effective Date—was a substantive change from the then-effective Schedule 201.

Instead of communicating its position, PGE *withdrew* its proposed language in both Schedule 201 and the proposed standard contract forms after the conclusion of Phase I of Docket No. UM 1610. In its place, PGE proposed standard contract forms that did *not* state the fifteen-year fixed-price period ends fifteen years *immediately after execution*. *Defendants' Undisputed Facts* at ¶¶ 67-68.

Moreover, during the ensuing workshops with stakeholders, PGE agreed to revisions to the renewable contract forms and Schedule 201 where the intent expressed to PGE was to tie the ownership of the QF's RPS Attributes to the price paid to the QF. *Id.* at ¶ 57. Specifically, PGE agreed to edits proposed by ODOE representative, Kacia Brockman, where Ms. Brockman expressed that the intent of the revision was that the RPS Attributes are not ceded by the QF to PGE after PGE stops paying fixed renewable rates. *Id.* at ¶¶ 72-75. PGE also agreed to additional revisions proposed by CREA that included the express statement in Section 4.5/4.6 of the renewable contract form that the QF stops ceding the RPS Attributes to PGE fifteen years after the Commercial Operation Date, which is discussed above in detail. *Id.* at ¶ 77-81. Because PGE agreed to ODOE's and CREA's edits on this point, no party objected to approval of PGE's revisions to its Schedule 201 and renewable standard contract form filed in December 2014. *Id.* at ¶ 82.

Mr. Macfarlane's assertions in his reply testimony fail to meet PGE's evidentiary burden at summary judgment. In *Dial Temp. Help Serv.*, the Court of Appeals explained, to survive summary judgment, a party must "offer admissible evidence sufficient to show that there was a

triable issue of fact on the intended meaning of the disputed provision." *Dial Temp. Help Serv*, 255 Or App at 612. "[I]t is the existence of *competing extrinsic evidence*—and the triable factual issue that the evidence creates—that, as a general rule, makes the resolution of the meaning of an ambiguous contract on summary judgment inappropriate[.]" *Id.* (emphasis added). Furthermore, PGE must present competing evidence of its "objective manifestations of intent" and not just Mr. Macfarlane's beliefs. *Butler Block*, 242 Or App at 410.

Here, Mr. Macfarlane does not dispute the critical facts regarding creation of the underlying renewable contract form. He does not deny that PGE consciously agreed to the edit to Section 4.5/4.6 that the ownership of RPS Attributes changed fifteen years after the Commercial Operation Date to be consistent with the PacifiCorp stipulation on the same exact point. PGE/400, Macfarlane/7. Mr. Macfarlane now alleges that PGE did not believe this change had any connection to the date when PGE would stop paying the QF for the fixed renewable prices. *Id*. But that assertion contradicts the plain language of Schedule 201 that unambiguously links the date of change in ownership of RPS Attributes/Environmental Attributes to the date in change in rates from renewable fixed prices to market-based index prices. Schedule 201 at 12.

Furthermore, Mr. Macfarlane does not deny that ODOE communicated the intent to have the QF start owning the RPS Attributes at the same time that PGE starts paying the market prices for the last five years of the contract, which is what the version of Schedule 201 appended to the NewSun PPAs expressly states. And he cannot deny that Section 4.5 of the applicable contract form states that the QF begins owning the RPS Attributes/Environmental Attributes "fifteen (15) years after the Commercial Operation Date," or that PGE agreed to that edit. PGE/101, Macfarlane/10-11. The only objectively reasonable conclusion from PGE's undisputed conduct

is that PGE conceded its position that the fixed price period ended fifteen years immediately following execution of the contract and agreed to edits it knew were intended to have the fifteen-year period end fifteen years after the Commercial Operation Date.

Instead of meaningfully engaging with the language of the renewable contract form and the extrinsic evidence that confirms that form was intended to mean what it states, Macfarlane attempts to shift the focus to PGE's previously available standard contract forms. He inappropriately provides extensive legal *analysis* in his *testimony* of the terms of PGE's prior forms and his understanding of Order No. 05-584, despite not being a lawyer. However, he never alleges that he ever informed participants to the OPUC's workshop process in 2014, or the Commission itself, of his legal analysis or how it might have impacted the edits to Section 4.5/4.6 and Schedule 201 after PGE agreed to those edits. Among other reasons, Macfarlane's legal conclusions have no impact on the outcome because there is no evidence suggesting that he communicated his current beliefs to anyone after PGE agreed to the edits to Section 4.5/4.6 and Schedule 201.

Mr. Macfarlane's reliance on the history of development of the previously available contract forms is further undermined by the fact that PGE never informed the NewSun Parties' that previously offered PGE contract forms would impact the meaning of the entirely *different* renewable contract forms eventually executed by the NewSun Parties. Mr. Macfarlane never communicated with Mr. Stephens at all. NewSun Parties/100, Stephens/34. Instead, PGE's PURPA contract negotiator, Bruce True, *told* Mr. Stephens that *previously effective contracts were irrelevant* when Mr. Stephens identified two instances where that form had been completed in a way that unambiguously supported Mr. Stephens' understanding of the OPUC's policy. *Id.* Moreover, after the NewSun Parties pointed out that PGE had actually completed and executed

these previous forms in a manner consistent the NewSun Parties' position, PGE's attorney, Denise Saunders, directly stated to several NewSun Parties in a letter that PGE is not "required to conform to practices under prior contracts no longer in effect." PGE/214, True/1. PGE's reliance on older versions of its standard contracts to interpret the 2015 Standard Renewable Contract Form was not only secret; it was affirmatively disavowed to the NewSun Parties in this case.

In sum, the relevant extrinsic evidence merely confirms the meaning of the NewSun PPAs that results from consideration of the text and context of the agreements. The extrinsic evidence demonstrates that PGE itself acted consistent with the NewSun Parties' understanding of the agreements when necessary to do so to get the standard contract forms approved by the Commission. Therefore, PGE has not pointed to any relevant factual disputes that need further evaluation by a trier of fact.

2. There Is No Common Understanding by Both Parties that the NewSun PPAs Limit Payment of Fixed Prices to the Fifteen Years Immediately Following Execution

There is no evidence suggesting that a trial may establish that the NewSun Parties agreed with PGE's interpretation of the 2015 Standard Renewable Contract Form or the NewSun PPAs. Instead, the summary judgment evidence conclusively establishes that the NewSun Parties' representative, Mr. Stephens, repeatedly and unambiguously expressed his disagreement with PGE's interpretation of the fifteen-year term issue. PGE's Mr. True agrees that Mr. Stephens never conceded his position on the fixed-price period. *See All Parties' Statement of Undisputed Facts* at ¶ 17; PGE/200, True/5:18-21. PGE was well aware of the NewSun Parties' position, and agreed to execute the agreements with the NewSun Parties with full knowledge of such disagreement and the basis for the NewSun Parties' position.

The NewSun Parties even explained their legal conclusions to PGE. Mr. Stephens informed Mr. True that Order No. 05-584 required PGE's standard contract to provide fifteen years of fixed prices after Commercial Operation. *Defendants' Undisputed Facts* at ¶¶ 12-14. Mr. Stephens even understood and communicated to Mr. True the underlying basis in Order No. 05-584 for the fifteen-year period and why it must begin after operation—to allow for financing. *Id.*

The summary judgment evidence also demonstrates that Mr. Stephens informed PGE representatives of his belief that PGE's position contradicted standard industry usage of the phrases at issue in Order No. 05-584 and Schedule 201. Mr. Stephens stated that he believed PGE's position contradicted standard industry usage of the word "term" in his objection to PGE's out-of-cycle rate change in early January 2016, before any of the NewSun PPAs were executed. *Id.* at ¶¶ 38-40. Additionally, at a lunch meeting in late January 2016, Mr. Stephens stated that he believed PGE's position defied industry norms to Brett Sims, who was PGE's Director of Structuring and Origination. *Id.* at ¶ 41; Adams Supp. Declaration at Ex. K (containing Mr. Sims' qualifications and position at PGE).

The NewSun Parties also explained, through a letter from counsel, the legal argument set forth above that Section 4.5 and Schedule 201 unambiguously provide that the QF does not start receiving market-based prices until it begins to own all Environmental Attributes, which Section 4.5 states will occur "fifteen (15) years after the Commercial Operation Date." *Defendants' Undisputed Facts* at ¶ 18. PGE never even responded to this argument, and indeed PGE still has not articulated a plausible response to this argument, including in its recently filed testimony in which Mr. Macfarlane extensively discusses and analyzes the history of QF contract forms. *Id.* at ¶ 20.

Furthermore, Mr. Stephens reasonably believed that PGE's purported position on the fixed-price term was intended to deter him and compromise the viability of the projects, as opposed to being a genuine analysis of the objective meaning of Commission policy, the contract form, and Schedule 201. Mr. Stephens understood Mr. True to state that a PGE Senior Executive had reprimanded Mr. True for previously being too easy to deal with for QFs in the contracting process, and other PGE representatives expressed that PGE disfavors QF contracts. *Id.* at ¶ 37. Mr. Stephens' distrust of PGE's intent was corroborated by PGE's decision to propose to reduce the avoided cost rates out-of-cycle without even informing Mr. Stephens, despite being in regular contact with Mr. Stephens regarding his contract requests the weeks before and even on the day of the filing. *Id.* at ¶¶ 21-25. If PGE wished to engage with QFs in good faith, it would not make surprise avoided cost filings without even informing those QFs with whom it has direct contact immediately before the filing, particularly significant rate reductions like that proposed on December 3, 2015.

Given the circumstances, Mr. Stephens acted entirely rationally to forego his right to a full twenty years of power sales to ensure he could obtain executed standard contracts that would not compromise his position on the fifteen years of fixed prices. While Mr. Stephens lost the right to four years of Mid-C pricing that should have been available, he never conceded the right to payment for fifteen years at fixed prices, which he correctly understood to be controlled by the printed language on the form without any modifications and the Commission's regulatory mandate giving rise to the form itself.

In sum, the summary judgment record demonstrates that the NewSun Parties informed PGE of the position they now take in this litigation, and PGE was well aware of that position. There is no way a reasonable trier of fact could reach any other conclusion.

B. Under Step Three of *Yogman*, Applicable Maxims of Construction Require that the NewSun PPAs Provide Fixed Prices for Fifteen Years After the Commercial Operation Date

If it is necessary to reach step three of *Yogman,* applicable maxims of construction support the NewSun Parties' interpretation of the PPAs. Thus, summary judgment is required under step three of *Yogman*.

1. Ambiguous Provisions Regarding the Fixed-Price Benefit Are Construed in Favor of the QFs for Whom the Fixed-Price Benefit Was Created

Oregon law requires application of the maxim that, in the case of an ambiguity, "construction is to be taken which is most favorable to the party in whose favor the provision was made." ORS 42.260; *see also Copeland Sand & Gravel, Inc. v. Estate of Dillard*, 267 Or App 791, 799, 341 P3d 187 (2014).

In this case, the provision of fifteen years of fixed prices was made to benefit QFs. In Docket No. UM 1805, the Commission confirmed that "to provide a QF the *full benefit* of the [Commission's] fixed price requirement, the 15-year term must commence on the date of power delivery." *NIPPC I*, Order No. 17-256 at 4 (emphasis added); *see also Freehold Cogeneration Assocs., L.P. v. Bd. of Regulatory Comm'rs*, 44 F3d 1178, 1191 (3d Cir 1995) (holding Section 210 of PURPA and FERC's regulations set forth "the benefit to which [QFs] are entitled"). Long-term contracts with fixed prices are unquestionably a benefit conferred upon QFs by FERC's regulations and the OPUC's implementation of those regulations.

PGE believes that Order No. 05-584 allowed it to limit the fifteen-year fixed-price period to the fifteen years immediately following execution of the agreement, rather than providing QFs with the full benefit of the fifteen-year fixed-price requirement after operations or expected operations, as Idaho Power and PacifiCorp have done. However, even if Order No. 05-584

provided PGE with this discretion, any ambiguities in PGE's standard contract must be construed against such a limitation on the benefit of the fifteen-year term under Oregon law. In an analogous circumstance, the federal district court has held that a bank has discretion to impose "limitations to advancement and indemnification" in its contractual relationship with its directors, but "[i]f done ambiguously" the contractual documents "may be construed against" the bank "and in favor of the director or officer seeking advancement or indemnification." *Heine v Bank of Oswego*, 144 F Supp 3d 1198, 1207-08, 1214-15 (D Or 2015) (citing ORS 42.260). The same reasoning applies to PGE's attempts to limit the fixed-price benefit to a shorter period offered by Oregon's other utilities subject to Order No. 05-584.

Accordingly, any ambiguity should be construed in favor of the NewSun Parties under ORS 42.260.

2. Any Ambiguous Provisions in PGE's Standard Contract or Schedule 201 Regarding the Fixed-Price Term Must be Construed Against PGE As the Drafter of Its Unique Treatment of the Fifteen-Year Fixed-Price Term

It is a well-established maxim that ambiguous contracts are construed against their drafter. *See Heinzel*, 310 Or at 96. As Mr. Macfarlane testifies, PGE was the drafter of Schedule 201 and the underlying contract forms. PGE/100, Macfarlane/30-31. While the forms were edited to a limited extent in a stakeholder process, PGE ultimately possessed the ability to draft the wording and structure of the agreements, as well as Schedule 201. Indeed, PGE's standard contracts are unique from Idaho Power's and PacifiCorp's contracts, and this uniqueness is certainly not the result of any preference by parties other than PGE. Neither Idaho Power's or PacifiCorp's standard contracts contain any ambiguities as to QF's right to fifteen years of fixed prices after operations or expected operations. If PGE sought to draft a standard contract that reached a different result, PGE was uniquely positioned to make everyone aware of that unique

treatment through the use of unambiguous language in the agreements. But it failed to do so.

Application of this maxim would be appropriate in this case. The Restatement explains, "[w]here one party chooses the terms of a contract, he is likely to provide more carefully for the protection of his own interests than for those of the other party." *Restatement (Second) of Contracts* § 206, comment a. "Indeed, he may leave meaning deliberately obscure, intending to decide at a later date what meaning to assert." *Id.* Moreover, "[t]he rule is often invoked in cases of standardized contracts and in cases where the drafting party has the stronger bargaining position." *Id.* All of those reasons apply here. PGE drafted a standardized agreement that is different from standardized agreements offered by other utilities subject to the same regulatory policy, and it now asserts a legal position it affirmatively abandoned in stakeholder workshops to avoid objections of the regulator at the time PGE drafted the form. To the extent there is ambiguity on the fifteen-year fixed-price issue, the contracts should be construed against PGE.

CONCLUSION

For the reasons explained herein, the Commission should issue an order determining that the NewSun PPAs require PGE to pay the applicable QF the fixed-price On-Peak and Off-Peak rates in Tables 6a and 6b of Schedule 201 for fifteen years after the Commercial Operation Date.

DATED this 29th day of January 2019.

By: /s/*Gregory M. Adams*

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Attorneys for Defendants

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1931

PORTLAND GENERAL ELECTRIC COMPANY, Complainant, v. ALFALFA SOLAR I LLC, et al. Defendants.	)	**SUPPLEMENTAL DECLARATION OF GREGORY M. ADAMS IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

I, Gregory M. Adams, declare under the penalty of perjury as follows:

1. I am a partner at the law firm Richardson Adams, PLLC in Boise, Idaho, and am one of the attorneys of record for 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" or "Defendants") in the above-captioned proceeding before the Oregon Public Utility Commission ("OPUC" or "Commission"). 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' Motion for Summary Disposition.

2. Attached hereto as **Exhibit K**[1] is a true and correct copy of an excerpt of the direct testimony of Brett Sims on behalf of Portland General Electric Company ("PGE"), filed on April 1, 2016, in OPUC Docket No. UE 308, containing Mr. Sims' statement of his employment position at PGE at that time, available on the Commission's eDockets website.

3. Attached hereto as **Exhibit L** is a true and correct copy of the complaint filed in OPUC Docket No. UM 1805, available on the Commission's eDockets website.

4. Attached hereto as **Exhibit M** is a true and correct copy of an excerpt of PGE's compliance filing made on July 12, 2016, in response to issuance of Commission Order No. 16-174, available on the Commission's eDockets website.

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 29th day of January 2019.

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[1] The lettering sequence of exhibits in this declaration continues from the last-referenced exhibit, Exhibit J, to the Declaration of Gregory M. Adams In Support of Summary Disposition (July 2, 2018).

UE XXX / PGE / 100
Tinker – Sims

BEFORE THE PUBLIC UTILITY COMMISSION

OF THE STATE OF OREGON

UE XXX

Policy

PORTLAND GENERAL ELECTRIC COMPANY

Direct Testimony of

Jay Tinker
Brett Sims

April 1, 2016

Table of Contents

I. Introduction

Q. Please state your names and positions with PGE.

A. My name is Jay Tinker. I am the Director of Rates and Regulatory Affairs at PGE.

My name is Brett Sims. I am the Director of Origination, Structuring, and Resource Strategy at PGE.

Our qualifications appear at the end of this testimony.

Q. What is the purpose of your testimony?

A. The purpose of our testimony is to introduce: 1) the initial Annual Update Tariff (AUT) forecast of PGE's 2017 Net Variable Power Costs (NVPC); and 2) PGE's proposal to implement a long-term gas hedging program.

Q. What is your AUT net variable power cost estimate?

A. Our initial 2017 NVPC forecast, excluding PGE's forecast of federal production tax credits, is $499.8 million, based on contracts and forward curves as of February 25, 2016. This initial 2017 NVPC forecast represents a reduction of $32.3 million relative to our final 2016 NVPC forecast.

Q. What schedule in this docket do you propose for NVPC updates?

A. We propose the following schedule for the power cost updates:

- July - Update power, fuel, emissions control chemicals, transportation, transmission contracts, and related costs; gas and electric forward curves; planned thermal and hydro maintenance outages; and cost of wind day-ahead forecast error to align with the April 1 filing;

Pages Omitted From Excerpt

VII. Qualifications

Q. Mr. Tinker, please state your educational background and experience.

A. I received a Bachelor of Science degree in Finance and Economics from Portland State University in 1993 and a Master of Science degree in Economics from Portland State University in 1995. In 1999, I obtained the Chartered Financial Analyst (CFA) designation. I have worked in the Rates and Regulatory Affairs department at PGE since 1996.

Q. Mr. Sims, please state your educational background and experience.

A. I received a Bachelor of Arts degree in Business and Economics from Linfield College in 1990 and a Master of Business Administration degree from George Fox University in 2001. I have been the Director of Origination, Structuring, and Resource Strategy at PGE since 2005. Previously, I was a manager and senior analyst with the Origination and Structuring group at PGE. I have also held other managerial positions at a variety of banking and energy companies prior to working at PGE.

Q. Does this complete your testimony?

A. Yes.

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

NORTHWEST AND INTERMOUNTAIN POWER PRODUCERS COALITION; COMMUNITY RENEWABLE ENERGY ASSOCIATION; and RENEWABLE ENERGY COALITION, Complainants,	)	DOCKET NO. ____
v.	)	COMPLAINT
PORTLAND GENERAL ELECTRIC COMPANY, Defendant.	)	

I. INTRODUCTION

This is a complaint ("Complaint") filed by Northwest and Intermountain Power Producers Coalition ("NIPPC"), Community Renewable Energy Association ("CREA"), and Renewable Energy Coalition ("Coalition") (collectively, "Complainants") with the Public Utility Commission of Oregon (the "Commission") pursuant to Oregon Revised Statutes ("ORS") 756.500 and Oregon Administrative Rules ("OAR") 860-001-0170. As explained below, Portland General Electric Company ("PGE") is implementing its standard contracts offered to qualifying facilities ("QF") in a manner that is inconsistent with well-established Commission's policy and precedent implementing the Public Utility Regulatory Policies Act ("PURPA").

The Commission's policy is that 15 years of fixed pricing commences when the QF achieves operation. Re Investigation Relating to Electric Utility Purchases from Qualifying Facilities, Docket No. UM 1129, Order No. 05-584 (May 13, 2005). The Commission adopted the policy because it has determined that the minimum period of fixed revenue necessary for QF

financing is 15 years. Id. at 19. This policy is sound and should be followed by all off-takers of QF energy. One rationale supporting this policy is that standard contracts for new QFs are generally executed prior to financing and construction, which can be up to three or more years earlier than power deliveries. However, a QF cannot sell electric energy for revenue prior to construction and operation. Assuming payment at the time of contract execution is also inconsistent with new contract implementation for existing QFs that, like new QFs, also need to sign their contracts well in advance of their contract expiration to obtain financing. Therefore, starting the 15 years fixed payment prior to operation appears designed to discourage new and existing QF development.

Both Idaho Power Company's ("Idaho Power") and PacifiCorp's Commission-approved standard contracts have unambiguous terms that allow a QF to elect to sell under prices that are fixed for a full 15 years from the date the QF starts delivering their net output—*not* on the date that the parties execute the contract. To the extent of the Complainants' knowledge, Idaho Power and PacifiCorp have correctly implemented the Commission's policy and provide for all QFs to be paid for a full 15 years of fixed prices after commercial operation, if they select that option.

PGE's Commission-approved standard contracts allow QFs to select a full 15 years of fixed prices, but through different language than Idaho Power and PacifiCorp. PGE's standard contracts have contained blank spaces that can be filled in with terms that specify that the QF's net output will be sold under fixed prices for 15 years after the QF's operation. In addition, PGE has agreed to make minor modifications to make even clearer specification in its standard contracts that the 15-year fixed price period commences when the QF begins commercial

operation. However, PGE's current policy is to only pay fixed prices for 15 years from the date that the standard contract is executed.

PGE's publicly stated position that contract payments start with contract signing rather than power delivery is not consistent with the Commission's policy and how Idaho Power and PacifiCorp implement 15 year fixed pricing because new QFs need years to be developed and constructed and cannot sell power on the date of contract execution. Thus, PGE is unreasonably reducing the available term of predictable and financeable revenue available to QFs seeking standard contracts. PGE's policy shortens the period a QF is paid known prices by the amount of time after execution required to achieve commercial operation—typically up to three years. This means that many QFs will not be able to obtain 15 years of fixed pricing, the minimum amount that the Commission has determined that most QFs need to obtain financing.

Complainants respectfully request the Commission reaffirm its policy and direct PGE to conform its business practices to be consistent with the terms of its standard contract and Commission orders and policy to pay 15 years of fixed prices after the QF begins delivering its net output to the utility. The Commission can resolve this Complaint without altering or revising any existing contracts or PGE's current standard contract, and only needs to confirm that Commission policy and PGE's standard contract require PGE to pay 15 years of fixed prices after the QF begins delivering its net output.

II. SERVICE

Copies of all pleadings and correspondence should be served on Complainants' counsel and managing members at the addresses below:

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In support of this Complaint, Complainants allege as follows:

III. IDENTITY OF THE PARTIES

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

2. NIPPC is a non-profit organization, qualified under Internal Revenue Code Section 501(c)(6), with the organizational purpose of representing the interests of independent power producers, marketers, and service providers in the Pacific Northwest. NIPPC is headquartered at 4106 78th Avenue Southeast, Mercer Island, Washington 98040.

3. CREA is an intergovernmental association organized under ORS Chapter 190 with the organizational purpose of promoting the development of locally-owned, renewable

energy projects in Oregon. CREA's physical mailing address is c/o Mid-Columbia Council of Governments, 1113 Kelly Avenue, The Dalles, Oregon 97058.

4. The Coalition is an unincorporated association representing non-utility owned renewable energy generators throughout the Pacific Northwest. The Coalition is headquartered at 88644 Hwy 101, Gearhart, Oregon 97138.

IV. APPLICABLE STATUTES AND RULES

5. The Oregon statutes expected to be involved in this case include: ORS 756.500 to 756.610; and 758.505 to 758.555. The Oregon rules expected to be involved in this case include those within Divisions 1 and 29 of Chapter 860 of the OARs.

6. Additionally, federal law is implicated under the mandatory purchase provisions of PURPA, 16 USC § 824, et seq., 16 USC § 2601, et seq., and administrative rules promulgated by the Federal Energy Regulatory Commission ("FERC") under PURPA, 18 CFR §§ 292.101-292.602.

V. JURISDICTION

7. This case involves contracts PGE offers to QFs under PURPA's mandatory purchase provisions and FERC's implementing regulations thereto, which PURPA directs states to implement. See 16 USC § 824a-3; FERC v. Mississippi, 456 U.S. 742, 751, 102 S. Ct. 2126 (1982).

8. In Oregon, the Commission implements PURPA's mandatory purchase provisions by setting the rates, terms and conditions for long-term PURPA contracts that Oregon's public utilities must offer to QFs. See 16 USC § 824a-3(a), (f); ORS 758.505-758.555; Snow Mountain Pine Co. v. Maudlin, 734 P.2d 1366, 84 Or. App. 590, rev. den., 739 P.2d 571, 303 Or. 591, (1987). Public utilities are defined in ORS 758.505(7), and include PGE. Oregon law provides

that the "terms and conditions for the purchase of energy or energy and capacity from a qualifying facility shall . . . [b]e established by rule by the commission if the purchase is by a public utility." ORS 758.535(2)(a).

9. This Complaint involves PGE's standard contracts offered and executed as a result of Commission orders in existence at the time of this Complaint (Prayer for Relief Pars. 1 & 2), as well as an alternative request for a declaration as to the Commission's policy for standard contracts or other legally enforceable obligations incurred with PGE after the resolution of this complaint (Prayer for Relief Par. 3).

10. To the extent the Complaint requires interpretation of contractual obligations incurred prior to the filing of this complaint (Prayer for Relief Pars. 1 & 2), the Commission possesses primary or concurrent jurisdiction over interpretation of such contracts. Boise Cascade Corp. v. Bd. of Forestry, 935 P.2d 411, 416-20, 325 Or. 185 (1997); Reinwald v. Dep't of Emp't, 939 P2d 86, 88- 89, 148 Or. App. 75 (1997).

11. To the extent this Complaint requires an alternative request for a declaration as to the Commission's policy for standard contracts executed with PGE after the resolution of this complaint (Prayer for Relief Par. 3), the Commission has jurisdiction under its authority to set contract terms and rates for PURPA contracts with public utilities. ORS 758.505-758.555.

VI. INTEREST OF COMPLAINANTS

12. Complainants collectively advocate for the interests of independent power producers, including owners and prospective developers of QFs. Pursuant to ORS 756.500, "[a]ny person may file a complaint before the Public Utility Commission" and "[t]he complaint shall be against any person whose business or activities are regulated by some one or more of the statutes, jurisdiction for the enforcement or regulation of which is conferred upon the

commission." ORS 756.500(2) makes clear that "[i]t is not necessary that a complainant have a pecuniary interest in the matter in controversy or in the matter complained of . . . ."

13. NIPPC's organizational purpose is to represent the interests of independent power producers, marketers, and service providers in the Pacific Northwest to advance fair and competitive power markets. NIPPC's members include independent power producers, electricity service suppliers, transmission companies, and commercial and industrial customers.

14. CREA's organizational purpose is to educate and advocate for policies that support development of locally-owned, renewable energy projects in Oregon. CREA's members include several Oregon counties, irrigation districts, councils of government, project developers, for-profit businesses, and non-profit organizations.

15. The Coalition's organizational purpose is to ensure that small renewable generation projects continue to make an important contribution to the future of energy in the region. The Coalition's thirty four members operate over fifty QF projects throughout the Northwest. Several types of entities are members of the Coalition, including irrigation districts, water and waste management districts, corporations, small utilities, and individuals.

VII. FACTUAL BACKGROUND

16. In 2004, the Commission opened Docket No. UM 1129 to investigate public utility purchases from QFs, including contract length and price structures.

17. Under Commission Order No. 05-584, Docket No. UM 1129, dated May 13, 2005, the Commission established a 20-year standard contract term for QFs. Order No. 05-584 at 19. The Commission also required fixed pricing for the first 15 years, providing QFs with the option to commit to sell net output at market-based pricing for the final five years of the contract.

18. In Order No. 05-584, the Commission concluded that 15 years is the minimum term "to ensure the terms of the standard contract facilitate appropriate financing for a QF project." Id. at 19.

19. The Commission also ordered that each public utility "should draft its own standard contract rates, terms and conditions." Id. at 41. The Commission declined to require each utility's standard contract to be "identically worded across all standard contract forms, so long as the meaning of each term is consistent with the present or past decisions" of the Commission. Id.

20. The purpose of the Commission approving standard contracts for each utility was to "eliminate negotiations" by pre-establishing "terms and conditions that an eligible QF can elect without any negotiation with the purchasing utility." Id. at 12, 16.

21. In compliance with Order No. 05-584, both Idaho Power's and PacifiCorp's Commission-approved standard contracts have declared that the QF may elect to sell under prices that are fixed for a full 15 years from the date the QF achieves operation, and provide that the 15 years do not start on the date that the parties execute the contract. Both Idaho Power's and PacifiCorp's standard contracts have remained materially unchanged since 2005 on this point.

22. PGE's Commission-approved standard contracts and Schedule 201 available since 2005 have contained blank spaces that can be filled in with terms that specify that the QF's net output will be sold under fixed prices for 15 years after the QF's operation.

23. Historically, PGE has agreed, when requested, to make minor modifications to the language in the standard PPA, further clarifying that the 15-year fixed price period commences when the project begins commercial operation.

24. On April 29, 2010, PGE entered into a standard contract with PaTu Wind Farm LLC. Re PGE – Qualifying Facility Contracts, Docket No. RE 143, Informational Filing- PaTu Wind Farm, LLC (Sept. 19, 2014). Section 2.2.2 states, "By 5/31/11 Seller shall have completed all requirements under Section 1.6 and shall have established the Commercial Operation Date." Section 2.3 provides, "This Agreement shall terminate on 5/31/2031. . . ." The Commercial Operation Date of May 31, 2011 and Termination Date of May 31, 2031 provide a contract term of a full 20 years after the Commercial Operation Date and over 20 years after the date the contract was executed.

25. On February 19, 2014, PGE entered into a standard contract with OneEnergy Oregon Solar, LLC. Re PGE – Qualifying Facility Contracts, Docket No. RE 143, Informational Filing- OneEnergy Oregon Solar, LLC (Sept. 19, 2014). Section 2.2.2 states, "By August 19, 2015 Seller shall have completed all requirements under Section 1.5 and shall have established the Commercial Operation Date." Section 5.1 provides a "Fixed Price (for the first 15 years following the Commercial Operation Date)" shall be paid by PGE.

26. PGE's express contractual clarifications, in paragraphs 24 and 25 above, demonstrate PGE's belief that payment of 15 years of fixed prices commencing upon commercial operation is permissible under Schedule 201.

27. As recently as 2014, PGE has agreed to allow such clear specification in its standard contracts. PGE's course of performance permitting QFs to add further language clarifying that the 15-year fixed price period commences with the QF's commercial operation resolved any potential ambiguity in the contract language.

28. At no time prior to 2016 did PGE publicly state that it would only pay QFs 15 years of fixed prices commencing on the effective date of the PPA.

29. In 2012, the Commission opened Docket No. UM 1610 to investigate QF contracting, including appropriate contract term and duration for fixed-price portion of the contract.

30. On February 24, 2014, the Commission concluded Phase I of UM 1610 by issuing Order No. 14-058, which maintained its QF contract term policy of offering QFs contracts of 20 years with up to 15 years of fixed pricing from the time of operation. Re Investigation Into Qualifying Facility Contracting and Pricing, Docket No. UM 1610, Order No. 14-058 (Feb. 24, 2014). The Commission noted several parties testimony that "a QF developer may only have access to financing **after** a PPA has been signed [and that] prior to that time, the QF developer may rely only on the developer's own resources." Id. at 7 (emphasis added).

31. In compliance with Order No. 14-058, PGE drafted a standard contract for renewable avoided costs that specified payment at fixed prices for 15 years after the commercial operation date. On December 16, 2014, the Commission issued Order No. 14-435 approving this standard contract as part of PGE's Supplemental Filing to Update Schedule 201. Re Investigation Into Qualifying Facility Contracting and Pricing, Docket No. UM 1610, Order No. 14-435 (Dec. 16, 2014). Section 4.5 of PGE's renewable standard contract approved in the December 16, 2014 order stated, "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." Re Investigation Into Qualifying Facility Contracting and Pricing, Docket No. UM 1610, PGE's Supplemental Filing

to Update Schedule 201 at 124 (Nov. 25, 2014). Section 1.7 of that renewable standard contract defined "contract year" as "each twelve (12) month period commencing upon the Commercial Operation Date or its anniversary during the Term, except the final Contract Year will be the period from the last anniversary of the Commercial Operation Date during the Term until the end of the Term." Id. at 116. Thus, the fixed renewable rate pricing was offered for up to 15 years from the Commercial Operation Date in exchange for the QF's conveyance of RPS Attributes for those 15 years.

32. PGE's renewable standard contract referenced in paragraph 31 unambiguously demonstrated that the QF will receive the fixed renewable prices for 15 years after achieving operation – not just for 15 years after execution of the contract.

33. On March 29, 2016 the Commission concluded UM 1734 by issuing Order No. 16-130, denying PacifiCorp's request to reduce the standard QF fixed-price contract term from 15 to three years. Re PacifiCorp, dba Pacific Power, Application to Reduce the Qualifying Facility Contract Term and Lower the Qualifying Facility Standard Contract Eligibility Cap, Docket No. UM 1734, Order No. 16-130 (Mar. 29, 2016). The Commission determined "our use of 20-year contracts, with prices fixed at avoided costs for 15 years followed by index pricing for the remaining five years, continues to have merit." Id. at 5.

34. On March 29, 2016, the Commission concluded UM 1725 by issuing Order No. 16-129, denying Idaho Power's request to reduce the standard QF contract term from 20 to two years. Re Idaho Power Co., Application to Lower Standard Contract Eligibility Cap and to Reduce the Standard Contract Term, Docket No. UM 1725, Order No. 16-129 (Mar. 29, 2016). The Commission determined that a 20 year standard contract was not required by Oregon's

PURPA statute, but nevertheless upheld the policy to establish "a settled and uniform institutional climate for QFs . . . ." Id. at 7 (citing Order No. 14-058 at 23).

35. On April 14, 2016, the Coalition and CREA filed a Motion for Clarification with the Commission noting ambiguity in Order No. 16-129, which states "our current policy . . . provides for 20-year contracts, with prices fixed at avoided cost rates in place at the time of signing remaining in effect for a 15-year period, and indexed pricing for the remaining five years . . . ." Re Idaho Power Co., Application to Lower Standard Contract Eligibility Cap and to Reduce the Standard Contract Term, Docket No. UM 1725, CREA's and Coalition's Motion for Clarification (Arp. 12, 2016) (citing Order No. 16-129 at 8). The Coalition and CREA sought clarification that the quoted language did not change the pre-existing policy that the 15-year term of fixed prices commences when the QF achieves operation.

36. On April 29, 2016, PGE filed with the Commission a response to the Coalition and CREA's Motion for Clarification referenced in paragraph 35, wherein PGE argued that the Commission's policy does not require PGE to sign a 15-year fixed price contract running from the operation date. Re Idaho Power Co., Application to Lower Standard Contract Eligibility Cap and to Reduce the Standard Contract Term, Docket No. UM 1725, PGE's Response in Opposition to Motion for Clarification (Arp. 29, 2016). PGE stated, "Clearly, the Commission's policy, as applied to PGE, does not require utilities to pay fixed rates for more than 15 years measured from the date of execution." Id. at 5. PGE further argued, "Idaho Power's contract is 'more generous than that required.'" Id. at n.9.

37. On May 16, 2016, the Commission issued Order No. 16-175, clarifying that the Commission's "use of 'in place at the time of signing' in Order No. 16-129 meant only that the fixed avoided cost rate to be paid during the first 15-year period following commercial operation,

is the rate that existed at the time of signing." Re Idaho Power Co., Application to Lower Standard Contract Eligibility Cap and to Reduce the Standard Contract Term, Docket No. UM 1725, Order No. 16-175 at 2 (May 16, 2016). Further, the Commission explained, "Order No. 16-129 made no changes to Idaho Power's Schedule 85, which unambiguously provides that the 15-year period commences at the time of the QF's 'Operation Date.'" Id.

38. Order No. 16-175 also noted that PGE's standard contract language differed from that of Idaho Power and PacifiCorp. But the Commission did "not address the provisions of PGE's standard contract at [that] time." Id. at 3.

39. PGE's current policy in negotiating with QFs is consistent with the position it presented in response to the Coalition and CREA's Motion for Clarification of Order No. 16-129.

40. PGE's current policy means that no QF entering into a new or renewal contract can ever obtain 15 years of fixed prices.

41. Since early 2016, PGE has refused to sign standard contracts that allow QFs to fill in the standard contract in a manner that makes it clear that PGE will pay fixed prices for a full 15 years after the operation of the QF.

42. PGE's July 12, 2016 compliance filing included changes to the renewable standard contracts and updated Schedule 201 as required by Order No. 16-174. Re Investigation Into Qualifying Facility Contracting and Pricing, Docket No. UM 1610, PGE's Schedule 201 Qualifying Facility Information Compliance Filing at 1 (July 12, 2016). Those changes incidentally removed language which could only be interpreted as being consistent with the requirement that the 15-year fixed price period commenced on the Commercial Operation Date. See id. at 3 (summarizing changes made to Section 4).

43. On November 18, 2016, NIPPC, CREA and the Coalition sent a joint letter to PGE requesting it unambiguously affirm that current Oregon policy and PGE's standard contract require PGE to pay fixed prices for a full 15 years after the operation of the QF, or NIPPC, CREA and the Coalition would file a complaint with the Commission.

44. On December 5, 2016, PGE informed NIPPC, CREA and the Coalition that PGE was not willing to compromise in any substantive manner.

45. There is no factual or policy basis set forth in any Commission order to allow PGE to offer shorter contract terms than Idaho Power and PacifiCorp.

VIII. LEGAL CLAIMS

First Claim For Relief

Violation of Commission Orders and Policies Implementing PURPA and Related State Law

46. Complainants incorporate by reference paragraphs 1 through 45.

47. The Commission's policy set forth in its extant orders is to require Oregon's public utilities to offer fixed prices for 15 full years after operation begins – not only for 15 years after execution of the standard contract, which almost always occurs months to years in advance of operation.

48. That policy is succinctly reflected in Idaho Power's and PacifiCorp's standard contracts, which unambiguously allow the QF to elect to enter into a contract to sell its net output at fixed prices for a full 15 years after beginning operations.

49. PGE's standard contract forms do not have a specified term, and instead, the term of the contract is filled out by the contracting parties. The maximum term of fixed prices cannot be known from the form of the contract reviewed and approved by the Commission.

50. PGE position is that the blank spaces in the contract require the 15 year fixed pricing to start at the time of execution of the contract. PGE's current position is not consistent with the Commission's policy and has obvious detrimental impacts on the ability of QFs to negotiate a contract with PGE that is consistent with Commission policy.

51. PGE allows its standard contract to be filled out in a manner that would allow the same level of clarity as is available in the Idaho Power and PacifiCorp standard contracts with regard to the payment at fixed prices for 15 years from the time the QF achieves operation.

52. PGE's business practice prevents QFs from obtaining 15 years of fixed prices after the commencement of operation and violates the plain terms and intent of the Commission's orders and policy implementing PURPA and associated state law.

Second Claim For Relief

Arbitrary Application of Schedule 201 and the standard PPA

53. Complainants incorporate by reference paragraphs 1 through 52.

54. QFs that have executed standard contracts are eligible for up to 15 years of fixed prices, depending on their contract length.

55. PGE has clarified that it is willing to pay some QFs 15 years of fixed prices commencing on the Commercial Operation Date, while informing other similarly situated QFs that they are only eligible for 15 years of fixed prices commencing on the date of signing, which means that they will receive less than 15 years of fixed prices.

56. PGE's refusal to follow Commission policy that all QFs can obtain 15 years of fixed prices commencing on the Commercial Operation Date is arbitrary, and unjustly harms those QFs who PGE asserts are entitled to 15 years of fixed prices from the Effective Date.

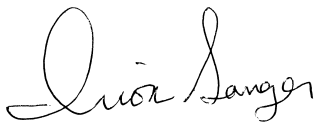
IX. PRAYER FOR RELIEF

WHEREFORE, Complainants respectfully requests that the Commission issue an order:

1. Ordering PGE to cease and desist from any business practices inconsistent with Commission policy and orders that require long-term contracts with fixed rates, by openly disputing that it must offer 15 years of fixed prices from the QF's operation date, as PacifiCorp and Idaho Power contracts already do in an unambiguous fashion; and
2. Declaring that PGE's standard contract, as interpreted in the regulatory context from which it arose, requires payment by PGE at fixed prices for 15 years after the QF's operation date rather than merely 15 years after the time of contract execution, unless express language is inserted by the QF that demonstrates a contrary intent;
3. Alternatively, if the relief requested in paragraphs 2 and 3 of this Prayer for Relief is denied, ordering PGE to file revised standard contracts clearly stating that the 15 years of fixed prices run from the commercial operation date; and
4. Granting any other such relief, including equitable relief, as the Commission deems necessary.

Dated this 6th day of December, 2016.

Respectfully submitted,



Irion A. Sanger
Sidney Villanueva

Of Attorneys for Northwest and Intermountain Power Producers Coalition

Of Attorneys for Community Renewable Energy Association

Of Attorneys for Renewable Energy Coalition

CERTIFICATE OF SERVICE

I hereby certify that on the December 6, 2016, on behalf of NIPPC, CREA, and the Coalition, I filed the foregoing Complaint with the Oregon Public Utility Commission by electronic communication consistent with OAR 860-001-0170.

Sidney Villanueva
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Portland General Electric Company
121 SW Salmon Street • Portland, Oregon 97204
PortlandGeneral.com

July 12, 2016

Public Utility Commission of Oregon
Attn: Filing Center
201 High Street, S.E.
P.O. Box 1088
Salem, OR 97308-1088

RE: **UM 1610 Schedule 201 Qualifying Facility Information Compliance Filing**

Portland General Electric (PGE) submits this filing pursuant to Oregon Revised Statutes 758.505 through 758.555; Oregon Administrative Rules 860-029-0001 through 860-029-0100; and Order No. 16-174, with a requested effective date of **August 12, 2016**:

This Compliance filing revises Schedule 201, Qualifying Facility Power Purchase Information for Qualifying Facilities (QF) 10 MW or Less consistent with Order No. 16-174.

The summary that follows provides a guide for the changes related to each issue addressed in the order. This filing modifies Schedule 201 and all of the eight associated power purchase agreements:

Schedule 201, Sheet Nos. 201-1 through Sheet Nos. 201-24.

Power Purchase Agreements:

- Standard In-System Non-Variable Power Purchase Agreement
- Standard Off-System Non-Variable Power Purchase Agreement
- Standard In-System Variable Power Purchase Agreement
- Standard Off-System Variable Power Purchase Agreement
- Standard Renewable In-System Non-Variable Power Purchase Agreement
- Standard Renewable Off-System Non-Variable Power Purchase Agreement
- Standard Renewable In-System Variable Power Purchase Agreement
- Standard Renewable Off-System Variable Power Purchase Agreement

Work papers detailing the changes to avoided cost calculations are attached. Included with the work papers are: the standard avoided cost update discussion, the renewable avoided cost update discussion, a redline of Schedule 201, and redlines of all power purchase agreements. The discussions only relate to issues 3 and 4 because they are the only issues that change the published avoided cost prices in Schedule 201. No other price changes are included in this filing.

This filing does not address the market price floor for negotiated contracts. Filed separately today is a joint application for reconsideration[1] of the market price floor for negotiated contracts established in Order No. 16-174 and joint motion to stay compliance with that part of the order until the issue is resolved.

Should you have any questions or comments regarding this filing, please contact Rob Macfarlane at (503) 464-8954.

Please direct all formal correspondence and requests to the following email address pge.opuc.filings@pgn.com

Sincerely,

Karla Wenzel
Manager, Pricing and Tariffs

Enclosures
cc: Service List – UM 1610

[1] PacifiCorp's and Portland General Electric Company's Joint Application for Reconsideration and Joint Motion to Stay Compliance in UM 1610

Portland General Electric
Summary of Changes in Compliance with Order No. 16-174

Issue Number	PGE Changes?	Schedule 201 or 202	Standard PPAs
Issue 1: **Ownership of RECs**	Yes.	Schedule 201 Sheet 201-12. Edits made to comport with Order 16-174.	Renewable PPAs: • Standard Renewable In System Non-Variable, Section 4.6 • Standard Renewable In System Variable, Section 4.5 • Standard Renewable Off System Non-Variable, Section 4.6 • Standard Renewable Off System Variable, Section 4.5 Edits made to comport with Order 16-174.
Issue 2: **Inclusion of avoided transmission costs in avoided costs**	No. PGE already includes avoided transmission costs for proxy resources in its calculation of avoided cost prices.	N/A	N/A
Issue 3: **Capacity Contribution Calculation for Standard Renewable Avoided Costs**	Yes.	Schedule 201 Sheets 201-15 and 201-17: price changes starting in 2021 (deficiency period). Pricing calculation for capacity contribution changed to comport with Order 16-174.	N/A
Issue 4: **Capacity Contribution Calculation for Standard Avoided Costs**	Yes.	Schedule 201 Sheets 201-8 and 201-10: price changes starting in 2021 (deficiency period). Pricing calculation for capacity contribution changed to comport with Order 16-174.	N/A
Issue 5: **Forum for resolving litigated issues and assumptions**	No.	N/A	N/A
Issue 6: **Market prices during sufficiency period**	No.	N/A	N/A
Issue 7: **Method for calculating non-standard avoided cost prices**	Yes.	N/A	N/A
Issue 8: **Establishment of LEO**	Yes.	N/A	Proposed changes to 1st paragraph, definitions and Section 2.1 in all standard PPAs to eliminate confusion between when the contract is "entered into" and the "Effective Date." Changes have no substantive effect and are consistent with Commission Order 16-174. Affects all standard and standard renewable PPAs.
Issue 9: **Transmission Costs for Load Pockets**	No.	N/A	N/A

N/A = Not Applicable

SCHEDULE 201
QUALIFYING FACILITY 10 MW or LESS
AVOIDED COST POWER PURCHASE INFORMATION

PURPOSE

To provide information about Standard Avoided Costs and Renewable Avoided Costs, Standard Power Purchase Agreements (PPA) and Negotiated PPAs, power purchase prices and price options for power delivered by a Qualifying Facility (QF) to the Company with nameplate capacity of 10,000 kW (10MW) or less.

AVAILABLE

To owners of QFs making sales of electricity to the Company in the State of Oregon (Seller).

APPLICABLE

For power purchased from small power production or cogeneration facilities that are QFs as defined in 18 Code of Federal Regulations (CFR) Section 292, that meet the eligibility requirements described herein and where the energy is delivered to the Company's system and made available for Company purchase pursuant to a Standard PPA.

ESTABLISHING CREDITWORTHINESS

The Seller must establish creditworthiness prior to service under this schedule. For a Standard PPA, a Seller may establish creditworthiness with a written acknowledgment that it is current on all existing debt obligations and that it was not a debtor in a bankruptcy proceeding within the preceding 24 months. If the Seller is not able to establish creditworthiness, the Seller must provide security deemed sufficient by the Company as set forth in the Standard PPA.

POWER PURCHASE INFORMATION

A Seller may call the Power Production Coordinator at (503) 464-8000 to obtain more information about being a Seller or how to apply for service under this schedule.

PPA

In accordance with terms set forth in this schedule and the Commission's Rules as applicable, the Company will purchase any Energy in excess of station service (power necessary to produce generation) and amounts attributable to conversion losses, which are made available from the Seller.

A Seller must execute a PPA with the Company prior to delivery of power to the Company. The agreement will have a term of up to 20 years as selected by the QF.

A QF with a nameplate capacity rating of 10 MW or less as defined herein may elect the option of a Standard PPA.

SCHEDULE 201 (Continued)

PPA (Continued)

Any Seller may elect to negotiate a PPA with the Company. Such negotiation will comply with the requirements of the Federal Energy Regulatory Commission (FERC), and the Commission including the guidelines in Order No. 07-360, and Schedule 202. Negotiations for power purchase pricing will be based on either the filed Standard Avoided Costs or Renewable Avoided Costs in effect at that time.

STANDARD PPA (Nameplate capacity of 10 MW or less)

A Seller choosing a Standard PPA will complete all informational and price option selection requirements in the applicable Standard PPA and submit the executed Agreement to the Company prior to service under this schedule. The Standard PPA is available at www.portlandgeneral.com. The available Standard PPAs are:

- Standard In-System Non-Variable Power Purchase Agreement
- Standard Off-System Non-Variable Power Purchase Agreement
- Standard In-System Variable Power Purchase Agreement
- Standard Off-System Variable Power Purchase Agreement
- Standard Renewable In-System Non-Variable Power Purchase Agreement
- Standard Renewable Off-System Non-Variable Power Purchase Agreement
- Standard Renewable In-System Variable Power Purchase Agreement
- Standard Renewable Off-System Variable Power Purchase Agreement

The Standard PPAs applicable to variable resources are available only to QFs utilizing wind, solar or run of river hydro as the primary motive force.

GUIDELINES FOR 10 MW OR LESS FACILITIES ELECTING STANDARD PPA

To execute the Standard PPA the Seller must complete all of the general project information requested in the applicable Standard PPA.

When all information required in the Standard PPA has been received in writing from the Seller, the Company will respond within 15 business days with a draft Standard PPA.

The Seller may request in writing that the Company prepare a final draft Standard PPA. The Company will respond to this request within 15 business days. In connection with such request, the QF must provide the Company with any additional or clarified project information that the Company reasonably determines to be necessary for the preparation of a final draft Standard PPA.

When both parties are in full agreement as to all terms and conditions of the draft Standard PPA, the Company will prepare and forward to the Seller a final executable version of the agreement within 15 business days. Following the Company's execution, an executed copy will be returned to the Seller. Prices and other terms and conditions in the PPA will not be final and binding until the Standard PPA has been executed by both parties.

SCHEDULE 201 (Continued)

OFF-SYSTEM PPA

A Seller with a facility that interconnects with an electric system other than the Company's electric system may enter into a PPA with the Company after following the applicable Standard or Negotiated PPA guidelines and making the arrangements necessary for transmission of power to the Company's system.

BASIS FOR POWER PURCHASE PRICE

AVOIDED COST SUMMARY

The power purchase prices are based on either the Company's Standard Avoided Costs or Renewable Avoided Costs in effect at the time the agreement is executed. Avoided Costs are defined in 18 CFR 292.101(6) as "the incremental costs to an electric utility of electric energy or capacity or both which, but for the purchase from the qualifying facility or qualifying facilities, such utility would generate itself or purchase from another source."

Monthly On-Peak prices are included in both the Standard Avoided Costs as listed in Tables 1a, 2a, and 3a and Renewable Avoided Costs as listed in Tables 4a, 5a, and 6a. Monthly Off-Peak prices are included in both the Standard Avoided Costs as listed in Tables 1b, 2b, and 3b and Renewable Avoided Costs as listed in Tables 4b, 5b, and 6b.

ON-PEAK PERIOD

The On-Peak period is 6:00 a.m. until 10:00 p.m., Monday through Saturday.

OFF-PEAK PERIOD

The Off-Peak period is 10:00 p.m. until 6:00 a.m., Monday through Saturday, and all day on Sunday.

Standard Avoided Costs are based on forward market price estimates through the Resource Sufficiency Period, the period of time during which the Company's Standard Avoided Costs are associated with incremental purchases of Energy and capacity from the market. For the Resource Deficiency Period, the Standard Avoided Costs reflect the fully allocated costs of a natural gas fueled combined cycle combustion turbine (CCCT) including fuel and capital costs. The CCCT Avoided Costs are based on the variable cost of Energy plus capitalized Energy costs at a 93% capacity factor based on a natural gas price forecast, with prices modified for shrinkage and transportation costs.

Renewable Avoided Costs are based on forward market price estimates through the Renewable Resource Sufficiency Period, the period of time during which the Company's Renewable Avoided Costs are associated with incremental purchases of energy and capacity from the market. For the Renewable Resource Deficiency Period, the Renewable Avoided Costs reflect the fully allocated costs of a wind plant including capital costs.

SCHEDULE 201 (Continued)

PRICING FOR STANDARD PPA

Pricing represents the purchase price per MWh the Company will pay for electricity delivered to a Point of Delivery (POD) within the Company's service territory pursuant to a Standard PPA up to the nameplate rating of the QF in any hour. Any Energy delivered in excess of the nameplate rating will be purchased at the applicable Off-Peak Prices for the selected pricing option.

The Standard PPA pricing will be based on either the Standard or Renewable Avoided Costs in effect at the time the agreement is executed.

The Company will pay the Seller either the Off-Peak Standard Avoided Cost pursuant to Tables 1b, 2b, or 3b or the Off-Peak Renewable Avoided Costs pursuant to Tables 4b, 5b, or 6b for: (a) all Net Output delivered prior to the Commercial Operation Date; (b) all Net Output deliveries greater than Maximum Net Output in any PPA year; (c) any generation subject to and as adjusted by the provisions of Section 4.3 of the Standard PPA; (d) Net Output delivered in the Off-Peak Period; and (e) deliveries above the nameplate capacity in any hour. The Company will pay the Seller either the On-Peak Standard Avoided Cost pursuant to Tables 1a, 2a, or 3a or the On-Peak Renewable Avoided Costs pursuant to Tables 4a, 5a, or 6a for all other Net Output. (See the PPA for defined terms.)

1) Standard Fixed Price Option

The Standard Fixed Price Option is based on Standard Avoided Costs including forecasted natural gas prices. It is available to all QFs.

This option is available for a maximum term of 15 years. Prices will be as established at the time the Standard PPA is executed and will be equal to the Standard Avoided Costs in Tables 1a and 1b, 2a and 2b, or 3a and 3c, depending on the type of QF, effective at execution. QFs using any resource type other than wind and solar are assumed to be Base Load QFs.

Prices paid to the Seller under the Standard Fixed Price Option include adjustments for the capacity contribution of the QF resource type relative to that of the avoided proxy resource. Both the Base Load QF resources (Tables 1a and 1b) and the avoided proxy resource, the basis used to determine Standard Avoided Costs for the Standard Fixed Price Option, are assumed to have a capacity contribution to peak of 100%. The capacity contribution for Wind QF resources (Tables 2a and 2b) is assumed to be 5%. The capacity contribution for Solar QF resources (Tables 3a and 3b) is assumed to be 5%.

Prices paid to the Seller under the Standard Fixed Price Option for Wind QFs (Tables 2a and 2b) include a reduction for the wind integration costs in Table 7. However, if the Wind QF is outside of PGE's Balancing Authority Area as contemplated in the Commission's Order No. 14-058, the Seller is paid the wind integration charges in Table 7, in addition to the prices listed in Tables 2a and 2b, for a net-zero effect.

SCHEDULE 201 (Continued)

PRICING OPTIONS FOR STANDARD PPA (Continued)
Standard Fixed Price Option (Continued)

Sellers with PPAs exceeding 15 years will receive pricing equal to the Mid-C Index Price for all years up to five in excess of the initial 15.

SCHEDULE 201 (Continued)

PRICING OPTIONS FOR STANDARD PPA (Continued)
Standard Fixed Price Option (Continued)

TABLE 1a
Avoided Costs
Standard Fixed Price Option for Base Load QF
On-Peak Forecast ($/MWH)

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2016	28.21	22.46	15.61	14.71	12.46	16.96	23.96	26.96	24.96	23.71	26.71	31.46
2017	29.96	28.21	24.71	20.96	19.46	20.46	27.96	30.96	29.46	27.71	28.71	33.71
2018	31.71	31.11	28.11	22.13	21.28	21.28	29.93	33.37	30.63	28.61	31.86	35.71
2019	33.94	31.95	27.97	23.70	22.00	23.13	31.67	35.08	33.37	31.38	32.52	38.21
2020	35.74	33.64	29.45	24.95	23.15	24.35	33.34	36.94	35.14	33.04	34.24	40.24
2021	67.43	67.34	65.41	64.69	64.41	64.50	64.61	64.73	64.84	65.48	68.60	68.72
2022	69.01	68.84	68.08	67.13	66.81	66.91	67.04	67.17	67.29	67.83	71.38	71.70
2023	71.95	71.76	70.39	69.19	69.07	69.18	69.31	69.45	69.58	70.12	73.56	73.70
2024	74.17	73.85	72.67	71.29	71.10	71.21	71.35	71.50	71.63	72.20	76.49	76.64
2025	77.19	77.30	75.84	74.88	75.02	75.14	75.30	75.47	75.62	75.80	82.57	82.89
2026	85.18	85.30	82.77	81.28	81.22	81.36	81.56	81.74	81.90	82.36	89.02	88.72
2027	86.85	86.76	85.14	83.12	82.89	83.03	83.00	83.32	83.46	83.97	91.39	91.15
2028	89.32	89.31	87.96	85.46	85.30	85.46	85.31	85.64	85.95	86.65	94.66	93.55
2029	94.06	93.99	91.23	88.74	87.97	88.15	87.71	88.06	88.61	89.34	98.37	98.11
2030	97.60	97.54	94.87	92.62	92.40	92.57	92.61	93.00	93.12	93.68	102.42	102.70
2031	99.56	99.50	96.78	94.48	94.26	94.43	94.47	94.87	94.99	95.56	104.47	104.76
2032	103.85	103.80	100.57	98.18	97.96	98.15	98.23	98.65	98.76	99.36	108.86	109.41
2033	106.56	106.51	103.17	100.72	100.50	100.69	100.78	101.21	101.32	101.93	111.67	112.26
2034	109.12	109.07	105.60	103.10	102.88	103.08	103.17	103.61	103.72	104.35	114.33	114.96
2035	111.55	111.51	107.91	105.35	105.12	105.33	105.43	105.89	105.99	106.63	116.87	117.54
2036	113.85	113.80	110.14	107.53	107.30	107.51	107.60	108.07	108.18	108.83	119.27	119.95
2037	116.50	116.45	112.72	110.06	109.82	110.04	110.14	110.61	110.73	111.39	122.03	122.73
2038	119.08	119.03	115.22	112.51	112.27	112.49	112.59	113.08	113.19	113.87	124.71	125.42
2039	121.47	121.42	117.54	114.77	114.53	114.75	114.85	115.35	115.47	116.15	127.21	127.93
2040	124.25	124.20	120.25	117.43	117.18	117.41	117.51	118.02	118.14	118.84	130.10	130.85
2041	126.72	126.67	122.64	119.76	119.51	119.74	119.85	120.36	120.49	121.20	132.68	133.44

SCHEDULE 201 (Continued)

PRICING OPTIONS FOR STANDARD PPA (Continued)
Standard Fixed Price Option (Continued)

TABLE 1b Avoided Costs Standard Fixed Price Option for Base Load QF Off-Peak Forecast ($/MWH)												
Year	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**Jun**	**Jul**	**Aug**	**Sep**	**Oct**	**Nov**	**Dec**
2016	25.61	20.71	13.96	11.41	6.31	10.11	15.71	20.96	20.96	21.21	23.46	26.71
2017	25.71	24.21	22.21	15.71	13.71	12.71	19.71	25.21	25.46	24.71	25.71	27.96
2018	26.17	28.12	25.56	19.46	14.68	12.54	19.71	27.04	26.93	25.35	28.20	30.62
2019	29.84	28.09	25.75	18.15	15.81	14.64	22.83	29.26	29.55	28.67	29.84	32.47
2020	31.75	29.88	27.38	19.28	16.79	15.54	24.27	31.12	31.43	30.50	31.75	34.55
2021	28.88	28.79	26.86	26.15	25.87	25.95	26.07	26.19	26.30	26.94	30.06	30.18
2022	29.73	29.56	28.79	27.85	27.53	27.63	27.75	27.88	28.00	28.54	32.09	32.42
2023	31.78	31.59	30.21	29.01	28.90	29.00	29.14	29.27	29.40	29.95	33.38	33.52
2024	33.48	33.16	31.98	30.60	30.41	30.52	30.66	30.81	30.95	31.51	35.80	35.96
2025	35.58	35.69	34.24	33.27	33.42	33.53	33.70	33.86	34.01	34.19	40.97	41.28
2026	42.77	42.89	40.36	38.87	38.81	38.95	39.15	39.34	39.50	39.95	46.62	46.31
2027	43.63	43.54	41.91	39.89	39.66	39.80	39.77	40.09	40.24	40.74	48.16	47.92
2028	45.26	45.25	43.90	41.40	41.23	41.40	41.25	41.58	41.89	42.59	50.60	49.48
2029	49.15	49.08	46.32	43.83	43.06	43.24	42.80	43.15	43.70	44.43	53.46	53.20
2030	51.82	51.76	49.09	46.84	46.62	46.79	46.83	47.22	47.34	47.90	56.64	56.92
2031	52.90	52.84	50.11	47.82	47.59	47.77	47.81	48.21	48.33	48.90	57.81	58.10
2032	56.59	56.54	53.31	50.92	50.70	50.89	50.97	51.39	51.50	52.10	61.60	62.15
2033	58.08	58.03	54.69	52.24	52.02	52.21	52.30	52.73	52.84	53.45	63.19	63.78
2034	59.54	59.50	56.03	53.52	53.30	53.50	53.59	54.04	54.15	54.77	64.76	65.39
2035	61.18	61.14	57.54	54.98	54.75	54.96	55.06	55.52	55.62	56.26	66.50	67.17
2036	62.67	62.62	58.96	56.35	56.12	56.33	56.43	56.89	57.00	57.65	68.09	68.78
2037	64.17	64.12	60.39	57.73	57.49	57.71	57.80	58.28	58.39	59.06	69.69	70.39
2038	65.73	65.69	61.88	59.17	58.93	59.15	59.25	59.73	59.85	60.52	71.37	72.08
2039	67.09	67.04	63.16	60.40	60.15	60.38	60.48	60.98	61.09	61.78	72.83	73.56
2040	68.83	68.78	64.83	62.01	61.76	61.99	62.09	62.60	62.72	63.42	74.68	75.42
2041	70.23	70.17	66.14	63.27	63.02	63.25	63.36	63.87	63.99	64.71	76.19	76.95

SCHEDULE 201 (Continued)

PRICING OPTIONS FOR STANDARD PPA (Continued)
Standard Fixed Price Option (Continued)

TABLE 2a
Avoided Costs
Standard Fixed Price Option for Wind QF
On-Peak Forecast ($/MWH)

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2016	24.37	18.62	11.77	10.87	8.62	13.12	20.12	23.12	21.12	19.87	22.87	27.62
2017	26.05	24.30	20.80	17.05	15.55	16.55	24.05	27.05	25.55	23.80	24.80	29.80
2018	27.72	27.12	24.12	18.14	17.29	17.29	25.94	29.38	26.64	24.62	27.87	31.72
2019	29.87	27.88	23.90	19.63	17.93	19.06	27.60	31.01	29.30	27.31	28.45	34.14
2020	31.59	29.49	25.30	20.80	19.00	20.20	29.19	32.79	30.99	28.89	30.09	36.09
2021	30.68	30.59	28.66	27.94	27.66	27.75	27.87	27.99	28.10	28.74	31.86	31.98
2022	31.56	31.39	30.62	29.68	29.36	29.46	29.59	29.72	29.84	30.38	33.93	34.25
2023	33.67	33.48	32.11	30.91	30.79	30.90	31.03	31.17	31.30	31.84	35.28	35.42
2024	35.38	35.06	33.88	32.49	32.30	32.42	32.56	32.70	32.84	33.40	37.70	37.85
2025	37.53	37.64	36.18	35.22	35.36	35.48	35.64	35.81	35.96	36.14	42.91	43.23
2026	44.75	44.87	42.35	40.86	40.79	40.94	41.13	41.32	41.48	41.94	48.60	48.29
2027	45.65	45.56	43.93	41.91	41.68	41.82	41.79	42.12	42.26	42.76	50.18	49.94
2028	47.32	47.31	45.96	43.46	43.30	43.46	43.31	43.64	43.95	44.65	52.66	51.55
2029	51.25	51.18	48.43	45.94	45.16	45.34	44.90	45.25	45.80	46.53	55.57	55.30
2030	53.96	53.90	51.23	48.98	48.76	48.93	48.97	49.36	49.48	50.04	58.78	59.06
2031	55.08	55.02	52.29	50.00	49.77	49.95	49.99	50.38	50.51	51.08	59.99	60.28
2032	58.77	58.72	55.49	53.10	52.88	53.07	53.15	53.57	53.68	54.28	63.78	64.33
2033	60.35	60.30	56.96	54.51	54.29	54.49	54.57	55.00	55.11	55.72	65.46	66.05
2034	61.88	61.83	58.36	55.86	55.63	55.84	55.93	56.37	56.48	57.10	67.09	67.72
2035	63.54	63.49	59.90	57.34	57.11	57.32	57.42	57.87	57.98	58.62	68.86	69.53
2036	65.04	65.00	61.33	58.72	58.49	58.70	58.80	59.27	59.38	60.03	70.46	71.15
2037	66.61	66.57	62.83	60.17	59.93	60.15	60.25	60.73	60.84	61.50	72.14	72.84
2038	68.23	68.18	64.37	61.66	61.42	61.64	61.74	62.23	62.34	63.02	73.86	74.57
2039	69.64	69.59	65.71	62.94	62.70	62.92	63.03	63.52	63.64	64.33	75.38	76.11
2040	71.42	71.37	67.41	64.60	64.35	64.58	64.68	65.18	65.30	66.00	77.27	78.01
2041	72.87	72.82	68.79	65.92	65.66	65.90	66.00	66.52	66.64	67.35	78.84	79.59

SCHEDULE 201 (Continued)

PRICING OPTIONS FOR STANDARD PPA (Continued)
Standard Fixed Price Option (Continued)

TABLE 2b Avoided Costs Standard Fixed Price Option for Wind QF Off-Peak Forecast ($/MWH)												
Year	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**Jun**	**Jul**	**Aug**	**Sep**	**Oct**	**Nov**	**Dec**
2016	21.77	16.87	10.12	7.57	2.47	6.27	11.87	17.12	17.12	17.37	19.62	22.87
2017	21.80	20.30	18.30	11.80	9.80	8.80	15.80	21.30	21.55	20.80	21.80	24.05
2018	22.18	24.13	21.57	15.47	10.69	8.55	15.72	23.05	22.94	21.36	24.21	26.63
2019	25.77	24.02	21.68	14.08	11.74	10.57	18.76	25.19	25.48	24.60	25.77	28.40
2020	27.60	25.73	23.23	15.13	12.64	11.39	20.12	26.97	27.28	26.35	27.60	30.40
2021	24.65	24.56	22.63	21.92	21.64	21.72	21.84	21.96	22.07	22.71	25.83	25.95
2022	25.42	25.25	24.48	23.54	23.22	23.32	23.44	23.57	23.69	24.23	27.78	28.11
2023	27.39	27.20	25.82	24.62	24.51	24.61	24.75	24.88	25.01	25.56	28.99	29.13
2024	29.01	28.69	27.51	26.13	25.94	26.05	26.19	26.34	26.48	27.04	31.33	31.49
2025	31.02	31.13	29.68	28.71	28.86	28.97	29.14	29.30	29.45	29.63	36.41	36.72
2026	38.12	38.24	35.71	34.22	34.16	34.30	34.50	34.69	34.85	35.30	41.97	41.66
2027	38.89	38.80	37.17	35.15	34.92	35.06	35.03	35.35	35.50	36.00	43.42	43.18
2028	40.43	40.42	39.07	36.57	36.40	36.57	36.42	36.75	37.06	37.76	45.77	44.65
2029	44.23	44.16	41.40	38.91	38.14	38.32	37.88	38.23	38.78	39.51	48.54	48.28
2030	46.80	46.74	44.07	41.82	41.60	41.77	41.81	42.20	42.32	42.88	51.62	51.90
2031	47.78	47.72	44.99	42.70	42.47	42.65	42.69	43.09	43.21	43.78	52.69	52.98
2032	51.38	51.33	48.10	45.71	45.49	45.68	45.76	46.18	46.29	46.89	56.39	56.94
2033	52.77	52.72	49.38	46.93	46.71	46.90	46.99	47.42	47.53	48.14	57.88	58.47
2034	54.12	54.08	50.61	48.10	47.88	48.08	48.17	48.62	48.73	49.35	59.34	59.97
2035	55.66	55.62	52.02	49.46	49.23	49.44	49.54	50.00	50.10	50.74	60.98	61.65
2036	57.04	56.99	53.33	50.72	50.49	50.70	50.80	51.26	51.37	52.02	62.46	63.15
2037	58.43	58.38	54.65	51.99	51.75	51.97	52.06	52.54	52.65	53.32	63.95	64.65
2038	59.88	59.84	56.03	53.32	53.08	53.30	53.40	53.88	54.00	54.67	65.52	66.23
2039	61.13	61.08	57.20	54.44	54.19	54.42	54.52	55.02	55.13	55.82	66.87	67.60
2040	62.75	62.70	58.75	55.93	55.68	55.91	56.01	56.52	56.64	57.34	68.60	69.34
2041	64.04	63.98	59.95	57.08	56.83	57.06	57.17	57.68	57.80	58.52	70.00	70.76

SCHEDULE 201 (Continued)

PRICING OPTIONS FOR STANDARD PPA (Continued)
Standard Fixed Price Option (Continued)

TABLE 3a Avoided Costs Standard Fixed Price Option for Solar QF On-Peak Forecast ($/MWH)												
Year	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**Jun**	**Jul**	**Aug**	**Sep**	**Oct**	**Nov**	**Dec**
2016	28.21	22.46	15.61	14.71	12.46	16.96	23.96	26.96	24.96	23.71	26.71	31.46
2017	29.96	28.21	24.71	20.96	19.46	20.46	27.96	30.96	29.46	27.71	28.71	33.71
2018	31.71	31.11	28.11	22.13	21.28	21.28	29.93	33.37	30.63	28.61	31.86	35.71
2019	33.94	31.95	27.97	23.70	22.00	23.13	31.67	35.08	33.37	31.38	32.52	38.21
2020	35.74	33.64	29.45	24.95	23.15	24.35	33.34	36.94	35.14	33.04	34.24	40.24
2021	33.98	33.89	31.96	31.24	30.96	31.05	31.16	31.28	31.39	32.03	35.15	35.27
2022	34.92	34.75	33.98	33.04	32.72	32.82	32.94	33.08	33.20	33.74	37.28	37.61
2023	37.09	36.90	35.52	34.32	34.21	34.31	34.44	34.58	34.71	35.26	38.69	38.83
2024	38.86	38.54	37.36	35.98	35.79	35.90	36.04	36.19	36.32	36.88	41.18	41.33
2025	41.08	41.19	39.73	38.77	38.92	39.03	39.19	39.36	39.51	39.69	46.46	46.78
2026	48.37	48.49	45.97	44.48	44.42	44.56	44.75	44.94	45.10	45.56	52.22	51.91
2027	49.34	49.25	47.62	45.61	45.38	45.51	45.48	45.81	45.95	46.45	53.87	53.63
2028	51.08	51.07	49.72	47.22	47.06	47.22	47.07	47.40	47.72	48.41	56.42	55.31
2029	55.08	55.01	52.26	49.77	48.99	49.17	48.73	49.08	49.63	50.36	59.40	59.13
2030	57.87	57.81	55.14	52.89	52.67	52.84	52.88	53.27	53.39	53.95	62.69	62.97
2031	59.07	59.00	56.28	53.98	53.76	53.93	53.98	54.37	54.49	55.06	63.98	64.26
2032	62.83	62.78	59.56	57.16	56.94	57.13	57.21	57.64	57.75	58.34	67.85	68.39
2033	64.49	64.44	61.09	58.64	58.42	58.62	58.70	59.14	59.25	59.86	69.60	70.18
2034	66.10	66.05	62.58	60.08	59.85	60.05	60.14	60.59	60.70	61.32	71.31	71.94
2035	67.84	67.79	64.20	61.64	61.41	61.62	61.71	62.17	62.28	62.92	73.16	73.83
2036	69.43	69.38	65.72	63.11	62.88	63.09	63.19	63.66	63.77	64.42	74.85	75.54
2037	71.08	71.04	67.30	64.64	64.40	64.62	64.72	65.20	65.31	65.97	76.61	77.31
2038	72.78	72.73	68.93	66.22	65.98	66.20	66.30	66.78	66.90	67.57	78.42	79.13
2039	74.28	74.23	70.35	67.58	67.34	67.56	67.67	68.16	68.28	68.97	80.02	80.75
2040	76.15	76.10	72.15	69.33	69.08	69.31	69.42	69.92	70.04	70.74	82.01	82.75
2041	77.69	77.64	73.61	70.74	70.48	70.72	70.82	71.34	71.46	72.17	83.66	84.41

SCHEDULE 201 (Continued)

PRICING OPTIONS FOR STANDARD PPA (Continued)
Standard Fixed Price Option (Continued)

TABLE 3b
Avoided Costs
Standard Fixed Price Option for Solar QF
Off-Peak Forecast ($/MWH)

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2016	25.61	20.71	13.96	11.41	6.31	10.11	15.71	20.96	20.96	21.21	23.46	26.71
2017	25.71	24.21	22.21	15.71	13.71	12.71	19.71	25.21	25.46	24.71	25.71	27.96
2018	26.17	28.12	25.56	19.46	14.68	12.54	19.71	27.04	26.93	25.35	28.20	30.62
2019	29.84	28.09	25.75	18.15	15.81	14.64	22.83	29.26	29.55	28.67	29.84	32.47
2020	31.75	29.88	27.38	19.28	16.79	15.54	24.27	31.12	31.43	30.50	31.75	34.55
2021	28.88	28.79	26.86	26.15	25.87	25.95	26.07	26.19	26.30	26.94	30.06	30.18
2022	29.73	29.56	28.79	27.85	27.53	27.63	27.75	27.88	28.00	28.54	32.09	32.42
2023	31.78	31.59	30.21	29.01	28.90	29.00	29.14	29.27	29.40	29.95	33.38	33.52
2024	33.48	33.16	31.98	30.60	30.41	30.52	30.66	30.81	30.95	31.51	35.80	35.96
2025	35.58	35.69	34.24	33.27	33.42	33.53	33.70	33.86	34.01	34.19	40.97	41.28
2026	42.77	42.89	40.36	38.87	38.81	38.95	39.15	39.34	39.50	39.95	46.62	46.31
2027	43.63	43.54	41.91	39.89	39.66	39.80	39.77	40.09	40.24	40.74	48.16	47.92
2028	45.26	45.25	43.90	41.40	41.23	41.40	41.25	41.58	41.89	42.59	50.60	49.48
2029	49.15	49.08	46.32	43.83	43.06	43.24	42.80	43.15	43.70	44.43	53.46	53.20
2030	51.82	51.76	49.09	46.84	46.62	46.79	46.83	47.22	47.34	47.90	56.64	56.92
2031	52.90	52.84	50.11	47.82	47.59	47.77	47.81	48.21	48.33	48.90	57.81	58.10
2032	56.59	56.54	53.31	50.92	50.70	50.89	50.97	51.39	51.50	52.10	61.60	62.15
2033	58.08	58.03	54.69	52.24	52.02	52.21	52.30	52.73	52.84	53.45	63.19	63.78
2034	59.54	59.50	56.03	53.52	53.30	53.50	53.59	54.04	54.15	54.77	64.76	65.39
2035	61.18	61.14	57.54	54.98	54.75	54.96	55.06	55.52	55.62	56.26	66.50	67.17
2036	62.67	62.62	58.96	56.35	56.12	56.33	56.43	56.89	57.00	57.65	68.09	68.78
2037	64.17	64.12	60.39	57.73	57.49	57.71	57.80	58.28	58.39	59.06	69.69	70.39
2038	65.73	65.69	61.88	59.17	58.93	59.15	59.25	59.73	59.85	60.52	71.37	72.08
2039	67.09	67.04	63.16	60.40	60.15	60.38	60.48	60.98	61.09	61.78	72.83	73.56
2040	68.83	68.78	64.83	62.01	61.76	61.99	62.09	62.60	62.72	63.42	74.68	75.42
2041	70.23	70.17	66.14	63.27	63.02	63.25	63.36	63.87	63.99	64.71	76.19	76.95

SCHEDULE 201 (Continued)

PRICING OPTIONS FOR STANDARD PPA (Continued)

2) Renewable Fixed Price Option

The Renewable Fixed Price Option is based on Renewable Avoided Costs. It is available only to Renewable QFs that generate electricity from a renewable energy source that may be used by the Company to comply with the Oregon Renewable Portfolio Standard as set forth in ORS 469A.005 to 469A.210.

This option is available for a maximum term of 15 years. Prices will be as established at the time the Standard PPA is executed and will be equal to the Renewable Avoided Costs in Tables 4a and 4b, 5a and 5b, or 6a and 6b, depending on the type of QF, effective at execution. QFs using any resource type other than wind and solar are assumed to be Base Load QFs.

Sellers will retain all Environmental Attributes generated by the facility during the Renewable Resource Sufficiency Period. A Renewable QF choosing the Renewable Fixed Price Option must cede all RPS Attributes generated by the facility to the Company from the start of the Renewable Resource Deficiency Period through the remainder of the PPA term.

Prices paid to the Seller under the Renewable Fixed Price Option include adjustments for the capacity contribution of the QF resource type relative to that of the avoided proxy resource. Both Wind QF resources (Tables 5a and 5b) and the avoided proxy resource, the basis used to determine Renewable Avoided Costs for the Renewable Fixed Price Option, are assumed to have a capacity contribution to peak of 5%. The capacity contribution for Solar QF resources (Tables 6a and 6b) is assumed to be 5%. The capacity contribution for Base Load QF resources (Tables 4a and 4b) is assumed to be 100%.

The Renewable Avoided Costs during the Renewable Resource Deficiency Period reflect an increase for avoided wind integration costs, shown in Table 7.

Prices paid to the Seller under the Renewable Fixed Price Option for Wind QFs (Tables 5a and 5b) include a reduction for the wind integration costs in Table 7, which cancels out wind integration costs included in the Renewable Avoided Costs during the Renewable Resource Deficiency Period. However, if the Wind QF is outside of PGE's Balancing Authority Area as contemplated in the Commission's Order No. 14-058, the Seller is paid the wind integration charges in Table 7, in addition to the prices listed in Tables 5a and 5b.

Sellers with PPAs exceeding 15 years will receive pricing equal to the Mid-C Index Price for all years up to five in excess of the initial 15.

SCHEDULE 201 (Continued)

PRICING OPTIONS FOR STANDARD PPA (Continued)
Renewable Fixed Price Option (Continued)

TABLE 4a												
Renewable Avoided Costs												
Renewable Fixed Price Option for Base Load QF												
On-Peak Forecast ($/MWH)												
Year	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**Jun**	**Jul**	**Aug**	**Sep**	**Oct**	**Nov**	**Dec**
2016	28.36	22.61	15.76	14.86	12.61	17.11	24.11	27.11	25.11	23.86	26.86	31.61
2017	30.11	28.36	24.86	21.11	19.61	20.61	28.11	31.11	29.61	27.86	28.86	33.86
2018	31.86	31.26	28.26	22.28	21.43	21.43	30.08	33.52	30.78	28.76	32.01	35.86
2019	34.10	32.11	28.13	23.86	22.16	23.29	31.83	35.24	33.53	31.54	32.68	38.37
2020	115.34	115.32	114.56	115.02	118.22	117.33	117.01	116.89	115.60	114.63	115.47	114.45
2021	117.94	118.18	116.67	117.75	120.59	119.83	119.26	119.77	118.26	117.25	118.55	117.22
2022	120.48	120.36	118.46	120.19	123.17	122.14	121.69	121.65	120.55	119.55	120.98	119.53
2023	123.26	122.83	120.85	122.92	125.37	124.64	124.29	123.92	123.08	121.92	123.63	122.53
2024	124.86	125.01	123.06	125.07	127.80	126.78	126.67	126.41	126.22	123.83	124.83	124.96
2025	127.73	128.05	125.86	128.21	131.66	130.48	129.53	129.66	128.84	126.59	127.76	127.41
2026	130.91	130.58	129.12	131.30	135.76	132.28	132.28	132.69	132.40	129.34	131.17	130.23
2027	133.47	133.03	131.38	133.50	139.48	134.88	134.51	135.95	134.79	131.96	133.26	132.78
2028	135.95	134.91	132.89	136.24	141.79	136.93	137.64	137.65	136.77	134.76	135.84	135.06
2029	138.81	138.57	135.91	139.29	149.30	140.74	140.82	140.82	140.86	137.50	138.32	138.21
2030	141.68	141.39	139.11	142.00	153.18	145.20	143.05	142.93	144.31	140.18	140.75	140.79
2031	144.29	143.79	142.17	145.52	156.10	149.27	145.71	146.65	146.86	143.04	144.15	143.71
2032	146.51	146.00	144.35	147.76	158.51	151.58	147.95	148.91	149.13	145.24	146.37	145.92
2033	149.91	149.40	147.71	151.19	162.18	155.09	151.39	152.37	152.59	148.62	149.77	149.31
2034	152.96	152.43	150.71	154.26	165.46	158.24	154.46	155.46	155.68	151.64	152.81	152.35
2035	155.76	155.22	153.46	157.08	168.50	161.14	157.29	158.31	158.54	154.41	155.60	155.13
2036	158.31	157.76	155.97	159.65	171.26	163.78	159.86	160.90	161.13	156.94	158.15	157.67
2037	161.83	161.27	159.44	163.20	175.07	167.42	163.42	164.48	164.71	160.43	161.67	161.18
2038	164.95	164.38	162.52	166.35	178.45	170.65	166.57	167.65	167.89	163.52	164.79	164.29
2039	168.13	167.55	165.66	169.56	181.89	173.94	169.79	170.89	171.13	166.68	167.97	167.46
2040	171.05	170.46	168.54	172.51	185.04	176.96	172.74	173.85	174.10	169.58	170.89	170.37
2041	174.69	174.08	172.11	176.17	188.98	180.72	176.40	177.55	177.80	173.18	174.52	173.99

SCHEDULE 201 (Continued)

PRICING OPTIONS FOR STANDARD PPA (Continued)
Renewable Fixed Price Option (Continued)

TABLE 4b
Renewable Avoided Costs
Renewable Fixed Price Option for Base Load QF
Off-Peak Forecast ($/MWH)

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2016	25.76	20.86	14.11	11.56	6.46	10.26	15.86	21.11	21.11	21.36	23.61	26.86
2017	25.86	24.36	22.36	15.86	13.86	12.86	19.86	25.36	25.61	24.86	25.86	28.11
2018	26.32	28.27	25.71	19.61	14.83	12.69	19.86	27.19	27.08	25.50	28.35	30.77
2019	30.00	28.25	25.91	18.31	15.97	14.80	22.99	29.42	29.71	28.83	30.00	32.63
2020	62.76	63.02	64.56	63.31	59.92	60.16	60.45	61.61	62.52	63.74	63.55	63.99
2021	64.93	64.15	65.85	64.48	61.58	61.62	62.27	62.62	63.78	65.82	63.38	65.09
2022	65.85	65.52	67.77	65.49	62.45	62.82	64.33	63.35	65.00	67.04	64.42	66.29
2023	66.70	66.75	69.10	67.28	62.84	64.01	65.40	64.85	66.14	68.41	65.38	67.63
2024	67.25	67.31	70.47	67.09	63.18	65.92	64.75	65.12	66.62	68.68	67.42	68.05
2025	68.62	68.60	71.94	68.08	63.17	66.28	66.12	67.12	67.23	70.19	69.68	69.06
2026	68.95	69.85	72.28	68.56	63.85	67.22	67.05	67.75	67.05	71.12	69.85	69.89
2027	71.31	71.29	73.13	70.34	63.69	68.45	68.79	68.16	68.57	73.22	70.67	71.18
2028	72.28	72.90	75.41	72.10	63.09	69.98	70.15	68.82	70.20	73.79	71.48	73.41
2029	72.78	73.60	76.79	73.50	58.25	70.29	71.37	70.00	71.53	74.58	73.61	74.68
2030	73.91	74.82	78.36	73.64	58.00	70.89	72.02	72.19	72.00	75.99	75.36	76.23
2031	75.51	76.70	79.40	74.00	59.17	70.67	73.55	73.71	72.16	77.24	77.07	76.31
2032	76.76	77.97	80.71	75.23	60.15	71.83	74.76	74.93	73.35	78.52	78.34	77.57
2033	78.46	79.69	82.50	76.89	61.48	73.42	76.42	76.58	74.97	80.25	80.07	79.29
2034	79.97	81.23	84.09	78.37	62.66	74.84	77.89	78.06	76.42	81.80	81.62	80.82
2035	81.52	82.80	85.71	79.88	63.87	76.28	79.39	79.57	77.89	83.38	83.19	82.38
2036	82.86	84.17	87.13	81.20	64.93	77.54	80.70	80.88	79.18	84.76	84.57	83.74
2037	84.69	86.03	89.05	83.00	66.36	79.25	82.49	82.67	80.93	86.63	86.44	85.59
2038	86.33	87.69	90.77	84.60	67.64	80.78	84.08	84.26	82.49	88.30	88.11	87.24
2039	87.99	89.38	92.52	86.23	68.95	82.34	85.70	85.89	84.08	90.01	89.81	88.92
2040	89.45	90.85	94.05	87.66	70.09	83.70	87.12	87.31	85.47	91.49	91.29	90.39
2041	91.42	92.86	96.13	89.59	71.63	85.55	89.04	89.24	87.36	93.51	93.31	92.39

SCHEDULE 201 (Continued)

PRICING OPTIONS FOR STANDARD PPA (Continued)
Renewable Fixed Price Option (Continued)

TABLE 5a
Renewable Avoided Costs
Renewable Fixed Price Option for Wind QF
On-Peak Forecast ($/MWH)

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2016	24.52	18.77	11.92	11.02	8.77	13.27	20.27	23.27	21.27	20.02	23.02	27.77
2017	26.20	24.45	20.95	17.20	15.70	16.70	24.20	27.20	25.70	23.95	24.95	29.95
2018	27.87	27.27	24.27	18.29	17.44	17.44	26.09	29.53	26.79	24.77	28.02	31.87
2019	30.03	28.04	24.06	19.79	18.09	19.22	27.76	31.17	29.46	27.47	28.61	34.30
2020	75.38	75.37	74.61	75.06	78.26	77.37	77.05	76.93	75.64	74.67	75.51	74.49
2021	77.10	77.33	75.83	76.90	79.75	78.99	78.41	78.92	77.41	76.40	77.70	76.38
2022	78.85	78.72	76.82	78.56	81.53	80.51	80.05	80.02	78.92	77.92	79.34	77.90
2023	80.71	80.27	78.29	80.37	82.82	82.08	81.73	81.37	80.53	79.36	81.08	79.97
2024	81.74	81.89	79.93	81.95	84.68	83.66	83.55	83.28	83.10	80.71	81.71	81.84
2025	83.64	83.97	81.78	84.13	87.57	86.40	85.44	85.57	84.75	82.51	83.68	83.32
2026	85.97	85.64	84.18	86.37	90.82	87.34	87.34	87.75	87.46	84.40	86.23	85.29
2027	87.67	87.23	85.57	87.69	93.67	89.07	88.71	90.15	88.99	86.16	87.45	86.98
2028	89.26	88.22	86.20	89.55	95.10	90.24	90.95	90.96	90.08	88.07	89.15	88.37
2029	91.22	90.98	88.32	91.70	101.72	93.16	93.23	93.23	93.28	89.92	90.73	90.62
2030	93.17	92.88	90.60	93.49	104.67	96.69	94.54	94.42	95.80	91.67	92.24	92.28
2031	94.84	94.34	92.72	96.07	106.65	99.82	96.26	97.20	97.42	93.59	94.70	94.26
2032	96.40	95.90	94.24	97.65	108.40	101.47	97.85	98.80	99.02	95.13	96.26	95.82
2033	98.55	98.03	96.34	99.82	110.81	103.72	100.02	101.00	101.22	97.25	98.40	97.95
2034	100.44	99.91	98.19	101.74	112.94	105.72	101.94	102.94	103.17	99.12	100.29	99.83
2035	102.38	101.85	100.09	103.71	115.13	107.76	103.92	104.93	105.16	101.04	102.23	101.76
2036	104.06	103.51	101.72	105.40	117.01	109.53	105.61	106.65	106.88	102.69	103.90	103.42
2037	106.37	105.81	103.99	107.74	119.61	111.96	107.96	109.02	109.26	104.97	106.21	105.72
2038	108.42	107.86	105.99	109.82	121.92	114.12	110.05	111.12	111.37	107.00	108.26	107.76
2039	110.52	109.94	108.04	111.95	124.27	116.33	112.17	113.27	113.52	109.07	110.36	109.85
2040	112.32	111.73	109.81	113.77	126.31	118.23	114.00	115.12	115.37	110.85	112.16	111.64
2041	114.83	114.23	112.26	116.31	129.12	120.86	116.55	117.69	117.95	113.32	114.66	114.13

SCHEDULE 201 (Continued)

PRICING OPTIONS FOR STANDARD PPA (Continued)
Renewable Fixed Price Option (Continued)

TABLE 5b
Renewable Avoided Costs
Renewable Fixed Price Option for Wind QF
Off-Peak Forecast ($/MWH)

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2016	21.92	17.02	10.27	7.72	2.62	6.42	12.02	17.27	17.27	17.52	19.77	23.02
2017	21.95	20.45	18.45	11.95	9.95	8.95	15.95	21.45	21.70	20.95	21.95	24.20
2018	22.33	24.28	21.72	15.62	10.84	8.70	15.87	23.20	23.09	21.51	24.36	26.78
2019	25.93	24.18	21.84	14.24	11.90	10.73	18.92	25.35	25.64	24.76	25.93	28.56
2020	58.61	58.87	60.41	59.16	55.77	56.01	56.30	57.46	58.37	59.59	59.40	59.84
2021	60.70	59.92	61.62	60.25	57.35	57.39	58.04	58.39	59.55	61.59	59.15	60.86
2022	61.54	61.21	63.46	61.18	58.14	58.51	60.02	59.04	60.69	62.73	60.11	61.98
2023	62.31	62.36	64.71	62.89	58.45	59.62	61.01	60.46	61.75	64.02	60.99	63.24
2024	62.78	62.84	66.00	62.62	58.71	61.45	60.28	60.65	62.15	64.21	62.95	63.58
2025	64.06	64.04	67.38	63.52	58.61	61.72	61.56	62.56	62.67	65.63	65.12	64.50
2026	64.30	65.20	67.63	63.91	59.20	62.57	62.40	63.10	62.40	66.47	65.20	65.24
2027	66.57	66.55	68.39	65.60	58.95	63.71	64.05	63.42	63.83	68.48	65.93	66.44
2028	67.45	68.07	70.58	67.27	58.26	65.15	65.32	63.99	65.37	68.96	66.65	68.58
2029	67.86	68.68	71.87	68.58	53.33	65.37	66.45	65.08	66.61	69.66	68.69	69.76
2030	68.89	69.80	73.34	68.62	52.98	65.87	67.00	67.17	66.98	70.97	70.34	71.21
2031	70.39	71.58	74.28	68.88	54.05	65.55	68.43	68.59	67.04	72.12	71.95	71.19
2032	71.55	72.76	75.50	70.02	54.94	66.62	69.55	69.72	68.14	73.31	73.13	72.36
2033	73.15	74.38	77.19	71.58	56.17	68.11	71.11	71.27	69.66	74.94	74.76	73.98
2034	74.55	75.81	78.67	72.95	57.24	69.42	72.47	72.64	71.00	76.38	76.20	75.40
2035	76.00	77.28	80.19	74.36	58.35	70.76	73.87	74.05	72.37	77.86	77.67	76.86
2036	77.23	78.54	81.50	75.57	59.30	71.91	75.07	75.25	73.55	79.13	78.94	78.11
2037	78.95	80.29	83.31	77.26	60.62	73.51	76.75	76.93	75.19	80.89	80.70	79.85
2038	80.48	81.84	84.92	78.75	61.79	74.93	78.23	78.41	76.64	82.45	82.26	81.39
2039	82.03	83.42	86.56	80.27	62.99	76.38	79.74	79.93	78.12	84.05	83.85	82.96
2040	83.37	84.77	87.97	81.58	64.01	77.62	81.04	81.23	79.39	85.41	85.21	84.31
2041	85.23	86.67	89.94	83.40	65.44	79.36	82.85	83.05	81.17	87.32	87.12	86.20

SCHEDULE 201 (Continued)

PRICING OPTIONS FOR STANDARD PPA (Continued)
Renewable Fixed Price Option (Continued)

TABLE 6a												
Renewable Avoided Costs												
Renewable Fixed Price Option for Solar QF												
On-Peak Forecast ($/MWH)												
Year	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**Jun**	**Jul**	**Aug**	**Sep**	**Oct**	**Nov**	**Dec**
2016	28.36	22.61	15.76	14.86	12.61	17.11	24.11	27.11	25.11	23.86	26.86	31.61
2017	30.11	28.36	24.86	21.11	19.61	20.61	28.11	31.11	29.61	27.86	28.86	33.86
2018	31.86	31.26	28.26	22.28	21.43	21.43	30.08	33.52	30.78	28.76	32.01	35.86
2019	34.10	32.11	28.13	23.86	22.16	23.29	31.83	35.24	33.53	31.54	32.68	38.37
2020	78.62	78.60	77.84	78.30	81.50	80.60	80.29	80.17	78.88	77.91	78.74	77.73
2021	80.39	80.63	79.12	80.20	83.04	82.28	81.71	82.22	80.71	79.70	81.00	79.67
2022	82.21	82.08	80.18	81.92	84.89	83.87	83.41	83.38	82.27	81.27	82.70	81.25
2023	84.12	83.69	81.71	83.78	86.23	85.50	85.15	84.78	83.94	82.78	84.50	83.39
2024	85.22	85.37	83.41	85.43	88.16	87.14	87.03	86.76	86.58	84.19	85.19	85.32
2025	87.19	87.52	85.33	87.68	91.12	89.95	88.99	89.12	88.30	86.06	87.23	86.87
2026	89.59	89.26	87.80	89.99	94.44	90.96	90.96	91.37	91.08	88.02	89.85	88.91
2027	91.36	90.92	89.26	91.39	97.36	92.76	92.40	93.84	92.68	89.85	91.14	90.67
2028	93.02	91.98	89.96	93.31	98.86	94.00	94.71	94.72	93.84	91.84	92.91	92.13
2029	95.05	94.81	92.15	95.53	105.55	96.99	97.06	97.06	97.11	93.75	94.56	94.45
2030	97.08	96.79	94.51	97.40	108.58	100.60	98.45	98.33	99.71	95.58	96.15	96.19
2031	98.83	98.33	96.70	100.05	110.63	103.81	100.25	101.19	101.40	97.58	98.69	98.25
2032	100.47	99.96	98.30	101.71	112.47	105.53	101.91	102.87	103.08	99.20	100.32	99.88
2033	102.68	102.16	100.47	103.95	114.95	107.86	104.16	105.14	105.36	101.38	102.53	102.08
2034	104.66	104.13	102.41	105.96	117.16	109.94	106.16	107.16	107.38	103.34	104.51	104.05
2035	106.68	106.15	104.39	108.01	119.43	112.06	108.21	109.23	109.46	105.34	106.53	106.06
2036	108.44	107.90	106.11	109.79	121.40	113.91	110.00	111.04	111.27	107.08	108.29	107.81
2037	110.84	110.28	108.46	112.21	124.08	116.43	112.43	113.49	113.73	109.44	110.68	110.19
2038	112.98	112.41	110.55	114.38	126.47	118.68	114.60	115.68	115.92	111.55	112.82	112.32
2039	115.16	114.58	112.68	116.59	128.92	120.97	116.81	117.91	118.16	113.71	115.00	114.49
2040	117.06	116.47	114.54	118.51	131.04	122.96	118.74	119.86	120.11	115.58	116.89	116.37
2041	119.65	119.05	117.07	121.13	133.94	125.68	121.37	122.51	122.76	118.14	119.48	118.95

SCHEDULE 201 (Continued)

PRICING OPTIONS FOR STANDARD PPA (Continued)
Renewable Fixed Price Option (Continued)

TABLE 6b Renewable Avoided Costs Renewable Fixed Price Option for Solar QF Off-Peak Forecast ($/MWH)												
Year	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**Jun**	**Jul**	**Aug**	**Sep**	**Oct**	**Nov**	**Dec**
2016	25.76	20.86	14.11	11.56	6.46	10.26	15.86	21.11	21.11	21.36	23.61	26.86
2017	25.86	24.36	22.36	15.86	13.86	12.86	19.86	25.36	25.61	24.86	25.86	28.11
2018	26.32	28.27	25.71	19.61	14.83	12.69	19.86	27.19	27.08	25.50	28.35	30.77
2019	30.00	28.25	25.91	18.31	15.97	14.80	22.99	29.42	29.71	28.83	30.00	32.63
2020	62.76	63.02	64.56	63.31	59.92	60.16	60.45	61.61	62.52	63.74	63.55	63.99
2021	64.93	64.15	65.85	64.48	61.58	61.62	62.27	62.62	63.78	65.82	63.38	65.09
2022	65.85	65.52	67.77	65.49	62.45	62.82	64.33	63.35	65.00	67.04	64.42	66.29
2023	66.70	66.75	69.10	67.28	62.84	64.01	65.40	64.85	66.14	68.41	65.38	67.63
2024	67.25	67.31	70.47	67.09	63.18	65.92	64.75	65.12	66.62	68.68	67.42	68.05
2025	68.62	68.60	71.94	68.08	63.17	66.28	66.12	67.12	67.23	70.19	69.68	69.06
2026	68.95	69.85	72.28	68.56	63.85	67.22	67.05	67.75	67.05	71.12	69.85	69.89
2027	71.31	71.29	73.13	70.34	63.69	68.45	68.79	68.16	68.57	73.22	70.67	71.18
2028	72.28	72.90	75.41	72.10	63.09	69.98	70.15	68.82	70.20	73.79	71.48	73.41
2029	72.78	73.60	76.79	73.50	58.25	70.29	71.37	70.00	71.53	74.58	73.61	74.68
2030	73.91	74.82	78.36	73.64	58.00	70.89	72.02	72.19	72.00	75.99	75.36	76.23
2031	75.51	76.70	79.40	74.00	59.17	70.67	73.55	73.71	72.16	77.24	77.07	76.31
2032	76.76	77.97	80.71	75.23	60.15	71.83	74.76	74.93	73.35	78.52	78.34	77.57
2033	78.46	79.69	82.50	76.89	61.48	73.42	76.42	76.58	74.97	80.25	80.07	79.29
2034	79.97	81.23	84.09	78.37	62.66	74.84	77.89	78.06	76.42	81.80	81.62	80.82
2035	81.52	82.80	85.71	79.88	63.87	76.28	79.39	79.57	77.89	83.38	83.19	82.38
2036	82.86	84.17	87.13	81.20	64.93	77.54	80.70	80.88	79.18	84.76	84.57	83.74
2037	84.69	86.03	89.05	83.00	66.36	79.25	82.49	82.67	80.93	86.63	86.44	85.59
2038	86.33	87.69	90.77	84.60	67.64	80.78	84.08	84.26	82.49	88.30	88.11	87.24
2039	87.99	89.38	92.52	86.23	68.95	82.34	85.70	85.89	84.08	90.01	89.81	88.92
2040	89.45	90.85	94.05	87.66	70.09	83.70	87.12	87.31	85.47	91.49	91.29	90.39
2041	91.42	92.86	96.13	89.59	71.63	85.55	89.04	89.24	87.36	93.51	93.31	92.39

SCHEDULE 201 (Continued)

WIND INTEGRATION

TABLE 7	
Wind Integration	
Year	**Cost**
2015	3.77
2016	3.84
2017	3.91
2018	3.99
2019	4.07
2020	4.15
2021	4.23
2022	4.31
2023	4.39
2024	4.47
2025	4.56
2026	4.65
2027	4.74
2028	4.83
2029	4.92
2030	5.02
2031	5.12
2032	5.21
2033	5.31
2034	5.42
2035	5.52
2036	5.63
2037	5.74
2038	5.85
2039	5.96
2040	6.08

SCHEDULE 201 (Continued)

MONTHLY SERVICE CHARGE

Each separately metered QF not associated with a retail Customer account will be charged $10.00 per month.

INSURANCE REQUIREMENTS

The following insurance requirements are applicable to Sellers with a Standard PPA:

1) QFs with nameplate capacity ratings greater than 200 kW are required to secure and maintain a prudent amount of general liability insurance. The Seller must certify to the Company that it is maintaining general liability insurance coverage for each QF at prudent amounts. A prudent amount will be deemed to mean liability insurance coverage for both bodily injury and property damage liability in the amount of not less than $1,000,000 each occurrence combined single limit, which limits may be required to be increased or decreased by the Company as the Company determines in its reasonable judgment, that economic conditions or claims experience may warrant.

2) Such insurance will include an endorsement naming the Company as an additional insured insofar as liability arising out of operations under this schedule and a provision that such liability policies will not be canceled or their limits reduced without 30 days' written notice to the Company. The Seller will furnish the Company with certificates of insurance together with the endorsements required herein. The Company will have the right to inspect the original policies of such insurance.

3) QFs with a design capacity of 200 kW or less are encouraged to pursue liability insurance on their own. The Oregon Public Utility Commission in Order No. 05-584 determined that it is inappropriate to require QFs that have a design capacity of 200 kW or less to obtain general liability insurance.

TRANSMISSION AGREEMENTS

If the QF is located outside the Company's service territory, the Seller is responsible for the transmission of power at its cost to the Company's service territory.

INTERCONNECTION REQUIREMENTS

Except as otherwise provided in a generation Interconnection Agreement between the Company and Seller, if the QF is located within the Company's service territory, switching equipment capable of isolating the QF from the Company's system will be accessible to the Company at all times. At the Company's option, the Company may operate the switching equipment described above if, in the sole opinion of the Company, continued operation of the QF in connection with the utility's system may create or contribute to a system emergency.

SCHEDULE 201 (Continued)

INTERCONNECTION REQUIREMENTS (Continued)

The QF owner interconnecting with the Company's distribution system must comply with all requirements for interconnection as established pursuant to Commission rule, in the Company's Rules and Regulations (Rule C) or the Company's Interconnection Procedures contained in its FERC Open Access Transmission Tariff (OATT), as applicable. The Seller will bear full responsibility for the installation and safe operation of the interconnection facilities.

DEFINITION OF A SMALL COGENERATION FACILITY OR SMALL POWER PRODUCTION FACILITY ELIGIBLE TO RECEIVE PRICING UNDER THE STANDARD PPA

A QF will be eligible to receive pricing under the Standard PPA if the nameplate capacity of the QF, together with any other electric generating facility using the same motive force, owned or controlled by the Same Person(s) or Affiliated Person(s), and located at the Same Site, does not exceed 10 MW. A Community-Based or Family-Owned QF is exempt from these restrictions.

Definition of Community-Based

a. A community project (or a community sponsored project) must have a recognized and established organization located within the county of the project or within 50 miles of the project that has a genuine role in helping the project be developed and must have some not insignificant continuing role with or interest in the project after it is completed and placed in service.

b. After excluding the passive investor whose ownership interests are primarily related to green tag values and tax benefits as the primary ownership benefit, the equity (ownership) interests in a community sponsored project must be owned in substantial percentage (80 percent or more) by the following persons (individuals and entities): (i) the sponsoring organization, or its controlled affiliates; (ii) members of the sponsoring organization (if it is a membership organization) or owners of the sponsorship organization (if it is privately owned); (iii) persons who live in the county in which the project is located or who live a county adjoining the county in which the project is located; or (iv) units of local government, charities, or other established nonprofit organizations active either in the county in which the project is located or active in a county adjoining the county in which the project is located.

Definition of Family-Owned

After excluding the ownership interest of the passive investor whose ownership interests are primarily related to green tag values and tax benefits as the primary ownership benefit, five or fewer individuals own 50 percent or more of the equity of the project entity, or fifteen or fewer individuals own 90 percent or more of the project entity. A "look through" rule applies to closely held entities that hold the project entity, so that equity held by LLCs, trusts, estates, corporations, partnerships or other similar entities is considered held by the equity owners of the look through entity. An individual is a natural person. In counting to five or fifteen, spouses or children of an equity owner of the project owner who also have an equity interest are aggregated and counted as a single individual.

SCHEDULE 201 (Continued)

DEFINITION OF A SMALL COGENERATION FACILITY OR SMALL POWER PRODUCTION FACILITY ELIGIBLE TO RECEIVE PRICING UNDER THE STANDARD PPA (Continued)

Definition of Person(s) or Affiliated Person(s)

As used above, the term "Same Person(s)" or "Affiliated Person(s)" means a natural person or persons or any legal entity or entities sharing common ownership, management or acting jointly or in concert with or exercising influence over the policies or actions of another person or entity. However, two facilities will not be held to be owned or controlled by the Same Person(s) or Affiliated Person(s) solely because they are developed by a single entity.

Furthermore, two facilities will not be held to be owned or controlled by the Same Person(s) or Affiliated Person(s) if such common person or persons is a "passive investor" whose ownership interest in the QF is primarily related to utilizing production tax credits, green tag values and MACRS depreciation as the primary ownership benefit and the facilities at issue are independent family-owned or community-based projects. A unit of Oregon local government may also be a "passive investor" in a community-based project if the local governmental unit demonstrates that it will not have an equity ownership interest in or exercise any control over the management of the QF and that its only interest is a share of the cash flow from the QF, which share will not exceed 20%. The 20% cash flow share limit may only be exceeded for good cause shown and only with the prior approval of the Commission.

Definition of Same Site

For purposes of the foregoing, generating facilities are considered to be located at the same site as the QF for which qualification for pricing under the Standard PPA is sought if they are located within a five-mile radius of any generating facilities or equipment providing fuel or motive force associated with the QF for which qualification for pricing under the Standard PPA is sought.

Definition of Shared Interconnection and Infrastructure

QFs otherwise meeting the above-described separate ownership test and thereby qualified for entitlement to pricing under the Standard PPA will not be disqualified by utilizing an interconnection or other infrastructure not providing motive force or fuel that is shared with other QFs qualifying for pricing under the Standard PPA so long as the use of the shared interconnection complies with the interconnecting utility's safety and reliability standards, interconnection agreement requirements and Prudent Electrical Practices as that term is defined in the interconnecting utility's approved Standard PPA.

OTHER DEFINITIONS

Mid-C Index Price

As used in this schedule, the daily Mid-C Index Price shall be the Day Ahead Intercontinental Exchange ("ICE") for the bilateral OTC market for energy at the Mid-C Physical for Average

SCHEDULE 201 (Continued)

OTHER DEFINITIONS (Continued)

On-Peak Power and Average Off-Peak Power found on the following website: https://www.theice.com/products/OTC/Physical-Energy/Electricity. In the event ICE no longer publishes this index, PGE and the Seller agree to select an alternative successor index representative of the Mid-C trading hub.

Definition of RPS Attributes

As used in this schedule, RPS Attributes means all attributes related to the Net Output generated by the Facility that are required in order to provide PGE with "qualifying electricity," as that term is defined in Oregon's Renewable Portfolio Standard Act, Ore. Rev. Stat. 469A.010, in effect at the time of execution of this Agreement. RPS Attributes do not include Environmental Attributes that are greenhouse gas offsets from methane capture not associated with the generation of electricity and not needed to ensure that there are zero net emissions associated with the generation of electricity.

Definition of Environmental Attributes

As used in this schedule, Environmental Attributes shall mean any and all claims, credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, resulting from the avoidance of the emission of any gas, chemical, or other substance to the air, soil or water. Environmental Attributes include but are not limited to: (1) any avoided emissions of pollutants to the air, soil, or water such as (subject to the foregoing) sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO), and other pollutants; and (2) any avoided emissions of carbon dioxide (C02), methane (CH4), and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere.

Definition of Resource Sufficiency Period

This is the period from the current year through 2020.

Definition of Resource Deficiency Period

This is the period from 2021 through 2034.

Definition of Renewable Resource Sufficiency Period

This is the period from the current year through 2019.

Definition of Renewable Resource Deficiency Period

This is the period from 2020 through 2034.

SCHEDULE 201 (Concluded)

DISPUTE RESOLUTION

Upon request, the QF will provide the purchasing utility with documentation verifying the ownership, management and financial structure of the QF in reasonably sufficient detail to allow the utility to make an initial determination of whether or not the QF meets the above-described criteria for entitlement to pricing under the Standard PPA.

The QF may present disputes to the Commission for resolution using the following process:

> The QF may file a complaint asking the Commission to adjudicate disputes regarding the formation of the standard contract. The QF may not file such a complaint during any 15-day period in which the utility has the obligation to respond, but must wait until the 15-day period has passed.
>
> The utility may respond to the complaint within ten days of service.
>
> The Commission will limit its review to the issues identified in the complaint and response, and utilize a process similar to the arbitration process adopted to facilitate the execution of interconnection agreements among telecommunications carriers. See OAR 860, Division 016. The administrative law judge will not act as an arbitrator.

SPECIAL CONDITIONS

1. Delivery of energy by Seller will be at a voltage, phase, frequency, and power factor as specified by the Company.

2. If the Seller also receives retail Electricity Service from the Company at the same location, any payments under this schedule will be credited to the Seller's retail Electricity Service bill. At the option of the Customer, any net credit over $10.00 will be paid by check to the Customer.

3. Unless required by state or federal law, if the 1978 Public Utility Regulatory Policies Act (PURPA) is repealed, PPAs entered into pursuant to this schedule will not terminate prior to the Standard or Negotiated PPA's termination date.

TERM OF AGREEMENT

Not less than one year and not to exceed 20 years.

Pages Omitted From Excerpt

STANDARD RENEWABLE IN-SYSTEM VARIABLE POWER PURCHASE AGREEMENT

THIS AGREEMENT is between _____ _____ ("Seller") and Portland General Electric Company ("PGE") (hereinafter each a "Party" or collectively, "Parties") and is effective upon execution by both Parties ("Effective Date").

RECITALS

Seller intends to construct, own, operate and maintain a _____ facility for the generation of electric power located in _____ County, _____ with a Nameplate Capacity Rating of _____ kilowatt ("kW"), as further described in Exhibit A ("Facility"); and

Seller intends to operate the Facility as a "Qualifying Facility," as such term is defined in Section 3.1.3, below.

Seller shall sell and PGE shall purchase the entire Net Output, as such term is defined in Section 1.21, below, from the Facility in accordance with the terms and conditions of this Agreement.

AGREEMENT

NOW, THEREFORE, the Parties mutually agree as follows:

SECTION 1: DEFINITIONS

When used in this Agreement, the following terms shall have the following meanings:

1.1. "As-built Supplement" means the supplement to Exhibit A provided by Seller in accordance with Section 4.3 following completion of construction of the Facility, describing the Facility as actually built.

1.2. "Base Hours" is defined as the total number of hours in each Contract Year (8,760 or 8,784 for leap year).

1.3. "Billing Period" means a period between PGE's readings of its power purchase billing meter at the Facility in the normal course of PGE's business. Such periods may vary and may not coincide with calendar months; however, PGE shall use best efforts to read the power purchase billing meter in 12 equally spaced periods per year.

1.4. "Cash Escrow" means an agreement by two parties to place money into the custody of a third party for delivery to a grantee only after the fulfillment of the conditions specified.

1.5. "Commercial Operation Date" means the date that the Facility is deemed by PGE to be fully operational and reliable. PGE may, at its discretion, require, among other things, that all of the following events have occurred:

1.5.1. (facilities with nameplate under 500 kW exempt from following requirement) PGE has received a certificate addressed to PGE from a Licensed Professional Engineer ("LPE") acceptable to PGE in its reasonable judgment stating that the Facility is able to generate electric power reliably in accordance with the terms and conditions of this Agreement (certifications required under this Section 1.5 can be provided by one or more LPEs);

1.5.2. Start-Up Testing of the Facility has been completed in accordance with Section 1.36;

1.5.3. (facilities with nameplate under 500 kW exempt from following requirement) After PGE has received notice of completion of Start-Up Testing, PGE has received a certificate addressed to PGE from an LPE stating that the Facility has operated for testing purposes under this Agreement and was continuously mechanically available for operation for a minimum of 120 hours. The Facility must provide ten (10) working days written notice to PGE prior to the start of the initial testing period. If the mechanical availability of the Facility is interrupted during this initial testing period or any subsequent testing period, the Facility shall promptly start a new Test Period and provide PGE forty-eight (48) hours written notice prior to the start of such testing period;

1.5.4. (facilities with nameplate under 500 kW exempt from following requirement) PGE has received a certificate addressed to PGE from an LPE stating that in accordance with the Generation Interconnection Agreement, all required interconnection facilities have been constructed all required interconnection tests have been completed; and the Facility is physically interconnected with PGE's electric system.

1.5.5. (facilities with nameplate under 500kW exempt from following requirement) PGE has received a certificate addressed to PGE from an LPE stating that Seller has obtained all Required Facility Documents and, if requested by PGE in writing, has provided copies of any or all such requested Required Facility Documents;

1.6. "Contract Price" means the applicable price, including on-peak and off-peak prices, as specified in the Schedule.

1.7. "Contract Year" means each twelve (12) month period commencing upon the Commercial Operation Date or its anniversary during the Term, except the final contract year will be the period from the last anniversary of the Commercial Operation Date during the Term until the end of the Term.

1.8. "Effective Date" has the meaning set forth in Section 2.1.

1.9. "Environmental Attributes" shall mean any and all claims, credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, resulting from the avoidance of the emission of any gas, chemical or other substance to the air, soil or water. Environmental Attributes include but are not limited to: (1) any avoided

emissions of pollutants to the air, soil or water such as (subject to the foregoing) sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO), and other pollutants; and (2) any avoided emissions of carbon dioxide (CO2), methane (CH4), and other greenhouse gasses (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere.

1.10. "Facility" has the meaning set forth in the Recitals.

1.11. "Generation Interconnection Agreement" means the generation interconnection agreement to be entered into separately between Seller and PGE, providing for the construction, operation, and maintenance of interconnection facilities required to accommodate deliveries of Seller's Net Output.

1.12. "Generation Unit" means each separate electrical generator that contributes towards Nameplate Capacity Rating included in Exhibit A. For solar facilities, a generating unit is a complete solar electrical generation system within the Facility that is able to generate and deliver energy to the Point of Delivery independent of other Generation Units within the same Facility.

1.13. "Letter of Credit" means an engagement by a bank or other person made at the request of a customer that the issuer will honor drafts or other demands for payment upon compliance with the conditions specified in the letter of credit.

1.14. "Licensed Professional Engineer" or "LPE" means a person who is licensed to practice engineering in the state where the Facility is located, who has no economic relationship, association, or nexus with the Seller, and who is not a representative of a consulting engineer, contractor, designer or other individual involved in the development of the Facility, or of a manufacturer or supplier of any equipment installed in the Facility. Such Licensed Professional Engineer shall be licensed in an appropriate engineering discipline for the required certification being made and be acceptable to PGE in its reasonable judgment.

1.15. "Lost Energy" means ((the Guarantee of Mechanical Availability as set forth in 3.1.10 / MAP) X Net Output for a Calendar Year) – Net Output for the Calendar Year. Lost Energy shall be zero unless the result of the calculation in this subsection results in a positive number.

1.16. "Lost Energy Value" means Lost Energy X the excess of the annual time-weighted average Mid-C Index Price for On-Peak and Off-Peak Hours over the time-weighted average Contract Price for On-Peak and Off-Peak Hours for the corresponding time period (provided that such excess shall not exceed the Contract Price and further provided that Lost Energy is deemed to be zero prior to reaching the Commercial Operation Date) plus any reasonable costs incurred by PGE to purchase replacement power and/or transmission to deliver the replacement power to the Point of Delivery. (For Start-Up Lost Energy Value see Section 1.35).

1.17. “Mechanical Availability Percentage” or “MAP” shall mean that percentage for any Contract Year for the Facility calculated in accordance with the following formula:

MAP = 100 X (Operational Hours) /(Base Hours X Number of Units)

1.18. “Mid-C Index Price” means the Day Ahead Intercontinental Exchange (“ICE”) index price for the bilateral OTC market for energy at the Mid-C Physical for Average On Peak Power and Average Off Peak Power found on the following website: https://www.theice.com/products/OTC/Physical-Energy/Electricity. In the event ICE no longer publishes this index, PGE and the Seller agree to select an alternative successor index representative of the Mid-C trading hub.

1.19. “Nameplate Capacity Rating” means the maximum capacity of the Facility as stated by the manufacturer, expressed in kW, which shall not exceed 10,000 kW.

1.20. “Net Dependable Capacity” means the maximum capacity the Facility can sustain over a specified period modified for seasonal limitations, if any, and reduced by the capacity required for station service or auxiliaries.

1.21. "Net Output" means all energy expressed in kWhs produced by the Facility, less station and other onsite use and less transformation and transmission losses. Net Output does not include any environmental attributes.

1.22. “Number of Units” means the number of Generating Units in the Facility described in Exhibit A.

1.23. “Off-Peak Hours” has the meaning provided in the Schedule.

1.24. “On-Peak Hours” has the meaning provided in the Schedule.

1.25. “Operational Hours” for the Facility means the total across all Generating Units of the number of hours each of the Facility’s Generating Units are potentially capable of producing power at its Nameplate Capacity Rating regardless of actual weather, season and time of day or night, without any mechanical operating constraint or restriction, and potentially capable of delivering such power to the Point of Delivery in a Contract Year. During up to, but not more than, 200 hours of Planned Maintenance during a Contract Year for each Generation Unit and hours during which an event of Force Majeure exists, a Generation Unit shall be considered potentially capable of delivering such power to the Point of Delivery. For example, in the absence of any Planned Maintenance beyond 200 hours on any Generation Unit of Event of Force Majeure, the Operational Hours for a wind farm with five separate two MW turbines would be 43,800 for a Contract Year.

1.26. “Planned Maintenance” means outages scheduled 90 days in advance, with PGE’s prior written consent, which shall not be unreasonably withheld.

1.27. "Point of Delivery" means the high side of the generation step up transformer(s) located at the point of interconnection between the Facility and PGE's distribution or transmission system, as specified in the Generation Interconnection Agreement.

1.28. “Pre-Commercial Operation Date Minimum Net Output” shall mean, unless such MWh is specifically set forth by Seller in Exhibit A, an amount in MWh equal to seventy-five percent (75%) of the Nameplate Capacity Rating X thirty percent (30%) for a wind or other renewable QF or fifty percent (50%) for a solar QF X (whole months since the date selected in Section 2.2.1 / 12) X (8760 hours – 200 hours (assumed Planned Maintenance)) for each month. If Seller has provided specific expected monthly Net Output amounts for the Facility in Exhibit A, “Pre-Commercial Operation Date Minimum Net Output” shall mean seventy-five (75%) X expected Net Output set forth in Exhibit A for each month.

1.29. “Prime Rate” means the publicly announced prime rate or reference rate for commercial loans to large businesses with the highest credit rating in the United States in effect from time to time quoted by Citibank, N.A. If a Citibank, N.A. prime rate is not available, the applicable Prime Rate shall be the announced prime rate or reference rate for commercial loans in effect from time to time quoted by a bank with $10 billion or more in assets in New York City, N.Y., selected by the Party to whom interest based on the prime rate is being paid.

1.30. "Prudent Electrical Practices" means those practices, methods, standards and acts engaged in or approved by a significant portion of the electric power industry in the Western Electricity Coordinating Council that at the relevant time period, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with good business practices, reliability, economy, safety and expedition, and which practices, methods, standards and acts reflect due regard for operation and maintenance standards recommended by applicable equipment suppliers and manufacturers, operational limits, and all applicable laws and regulations. Prudent Electrical Practices are not intended to be limited to the optimum practice, method, standard or act to the exclusion of all others, but rather to those practices, methods and acts generally acceptable or approved by a significant portion of the electric power generation industry in the relevant region, during the relevant period, as described in the immediate preceding sentence.

1.31. "Required Facility Documents" means all licenses, permits, authorizations, and agreements necessary for construction, operation, interconnection, and maintenance of the Facility including without limitation those set forth in Exhibit B.

1.32. “RPS Attributes” means all attributes related to the Net Output generated by the Facility that are required in order to provide PGE with “qualifying electricity,” as that term is defined in Oregon’s Renewable Portfolio Standard Act, Ore. Rev. Stat. 469A.010, in effect at the time of execution of this Agreement. RPS Attributes do not include Environmental Attributes that are greenhouse gas offsets from methane capture not associated with the generation of electricity and not needed to ensure that there are zero net emissions associated with the generation of electricity.

1.33. Schedule” shall mean PGE Schedule 201 filed with the Oregon Public Utilities Commission (“Commission”) in effect on the Effective Date of this Agreement

and attached hereto as Exhibit D, the terms of which are hereby incorporated by reference.

1.34. Senior Lien" means a prior lien which has precedence as to the property under the lien over another lien or encumbrance.

1.35. "Start-Up Lost Energy Value" means for the period after the date specified in Section 2.2.2 but prior to achievement of the Commercial Operation Date: zero, unless the Net Output is less than the pro-rated Pre-Commercial Operation Date Minimum Net Output for the applicable delay period, and the time-weighted average of the delay period's Mid-C Index Price for On-Peak Hours and Off-Peak Hours is greater than the time-weighted average of the delay period's Contract Price for On-Peak Hours and Off-Peak Hours, in which case Startup Lost Energy Value equals: (pro-rated Pre-Commercial Operation Date Minimum Net Output for the applicable period - Net Output for the applicable period) X (the lower of: the time-weighted average of the Contract Price for On-Peak hours and Off-Peak Hours during the applicable period; or (the time-weighted average of the Mid-C Index Price for On-Peak Hours and Off-Peak Hours during the applicable period – the time-weighted average of the Contract Price for On-Peak Hours and Off-Peak Hours during the applicable period)). The time-weighted average in this section will reflect the relative proportions of On-Peak Hours and Off-Peak Hours in each day.

1.36. "Start-Up Testing" means the completion of applicable required factory and start-up tests as set forth in Exhibit C.

1.37. "Step-in Rights" means the right of one party to assume an intervening position to satisfy all terms of an agreement in the event the other party fails to perform its obligations under the agreement.

1.38. "Term" shall mean the period beginning on the Effective Date and ending on the Termination Date.

1.39. "Test Period" shall mean a period of sixty (60) days or a commercially reasonable period determined by the Seller.

References to Recitals, Sections, and Exhibits are to be the recitals, sections and exhibits of this Agreement.

SECTION 2: TERM; COMMERCIAL OPERATION DATE

2.1. This Agreement shall become effective upon execution by both Parties ("Effective Date").

2.2. Time is of the essence of this Agreement, and Seller's ability to meet certain requirements prior to the Commercial Operation Date and to complete all requirements to establish the Commercial Operation Date is critically important. Therefore,

2.2.1 By _____ [*date to be determined by the Seller*] Seller shall begin initial deliveries of Net Output; and

2.2.2 By _____ [*date to be determined by the Seller subject to Section 2.2.3 below*] Seller shall have completed all requirements under Section 1.5 and shall have established the Commercial Operation Date.

2.2.3 Unless the Parties agree in writing that a later Commercial Operation Date is reasonable and necessary, the Commercial Operation Date shall be no more than three (3) years from the Effective Date. PGE will not unreasonably withhold agreement to a Commercial Operation Date that is more than three (3) years from the Effective date if the Seller has demonstrated that a later Commercial Operation Date is reasonable and necessary.

2.3. This Agreement shall terminate on _____, ____ [*date to be chosen by Seller*], or the date the Agreement is terminated in accordance with Section 9 or 11, whichever is earlier ("Termination Date").

SECTION 3: REPRESENTATIONS AND WARRANTIES

3.1. Seller and PGE represent, covenant, and warrant as follows:

3.1.1. Seller warrants it is a _____ duly organized under the laws of _____.

3.1.2. Seller warrants that the execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on Seller or any valid order of any court, or any regulatory agency or other body having authority to which Seller is subject.

3.1.3. Seller warrants that the Facility is and shall for the Term of this Agreement continue to be a "Qualifying Facility" ("QF") as that term is defined in the version of 18 C.F.R. Part 292 in effect on the Effective Date. Seller has provided the appropriate QF certification, which may include a Federal Energy Regulatory Commission ("FERC") self-certification to PGE prior to PGE's execution of this Agreement. At any time during the Term of this Agreement, PGE may require Seller to provide PGE with evidence satisfactory to PGE in its reasonable discretion that the Facility continues to qualify as a QF under all applicable requirements.

3.1.4. Seller warrants that it has not within the past two (2) years been the debtor in any bankruptcy proceeding, and Seller is and will continue to be for the Term of this Agreement current on all of its financial obligations.

3.1.5. Seller warrants that during the Term of this Agreement, all of Seller's right, title and interest in and to the Facility shall be free and clear of all liens and encumbrances other than liens and encumbrances arising from third-party financing of the Facility other than workers', mechanics', suppliers' or similar liens, or tax liens, in each case arising in the ordinary course of business that are either not yet due and payable or that have been released by means of a performance bond acceptable to PGE posted within eight (8) calendar days of the commencement of any proceeding to foreclose the lien.

3.1.6. Seller warrants that it will design and operate the Facility consistent with Prudent Electrical Practices.

3.1.7. Seller warrants that the Facility has a Nameplate Capacity Rating not greater than 10,000 kW.

3.1.8. Seller warrants that Net Dependable Capacity of the Facility is _____ kW.

3.1.9. Seller estimates that the average annual Net Output to be delivered by the Facility to PGE is _____ kilowatt-hours ("kWh"), which amount PGE will include in its resource planning.

3.1.10. Seller represents and warrants that the Facility shall achieve the following Mechanical Availability Percentages ("Guarantee of Mechanical Availability"):

3.1.10.1 Ninety percent (90%) beginning in the first Contract Year and extending through the Term for the Facility, if the Facility was operational and sold electricity to PGE or another buyer prior to the Effective Date of this Agreement; or

3.1.10.2 Ninety percent (90%) beginning in Contract Year three and extending throughout the remainder of the Term.

3.1.10.3 Annually, within 90 days of the end of each Contract Year Seller shall send to PGE a detailed written report demonstrating and providing evidence of the actual MAP for the previous Contract Year.

3.1.10.4 Seller's failure to meet the Guarantee of Mechanical Availability in a Calendar Year shall result in damages payable to PGE by Seller equal to the Lost Energy Value. PGE shall bill Seller for such damages in accordance with Section 8.

3.1.11. Seller will deliver from the Facility to PGE at the Point of Delivery Net Output not to exceed a maximum of _____ kWh of Net Output during each Contract Year ("Maximum Net Output").

3.1.12. By the Commercial Operation Date, Seller has entered into a Generation Interconnection Agreement for a term not less than the term of this Agreement.

3.1.13. PGE warrants that it has not within the past two (2) years been the debtor in any bankruptcy proceeding, and PGE is and will continue to be for the Term of this Agreement current on all of its financial obligations.

3.1.14. Seller warrants that (i) the Facility satisfies the eligibility requirements specified in the Definition of a Small Cogeneration Facility or Small Power Production Facility Eligible to Receive the Standard Renewable Rates and Standard Renewable PPA in PGE's Schedule and (ii) Seller will not make any changes in its ownership, control or management during the term of this Agreement that would cause it to not be in compliance with the Definition of a Small Cogeneration Facility or Small Power Production Facility Eligible to Receive the Standard Renewable Rates and Standard Renewable PPA in PGE's Schedule. Seller will provide, upon request by PGE not more frequently than every 36 months, such documentation and information as may be reasonably required to establish Seller's continued compliance with such Definition. PGE agrees to take reasonable steps to maintain the confidentiality of any portion of the above described documentation and information that the Seller identifies as confidential

except PGE will provide all such confidential information to the Public Utility Commission of Oregon upon the Commission's request.

3.1.15. Seller warrants that it will comply with all requirements necessary for all Transferred RECs (as defined in Section 4.5) associated with Net Output to be issued, monitored, accounted for, and transferred by and through the Western Renewable Energy Generation System consistent with the provisions of OAR 330-160-0005 through OAR 330-160-0050. PGE warrants that it will reasonably cooperate in Seller's efforts to meet such requirements, including, for example serving as the qualified reporting entity for the Facility if the Facility is located in PGE's balancing authority.

SECTION 4: DELIVERY OF POWER, PRICE AND ENVIRONMENTAL ATTRIBUTES

4.1. Commencing on the Effective Date and continuing through the Term of this Agreement, Seller shall sell to PGE the entire Net Output delivered from the Facility at the Point of Delivery.

4.2. PGE shall pay Seller the Contract Price for all delivered Net Output.

4.3. Upon completion of construction of the Facility, Seller shall provide PGE an As-built Supplement to specify the actual Facility as built. Seller shall not increase the Nameplate Capacity Rating above that specified in Exhibit A or increase the ability of the Facility to deliver Net Output in quantities in excess of the Net Dependable Capacity, or the Maximum Net Output as described in Section 3.1.11 above, through any means including, but not limited to, replacement, modification, or addition of existing equipment, except with prior written notice to PGE. In the event Seller increases the Nameplate Capacity Rating of the Facility to no more than 10,000 kW pursuant to this section, PGE shall pay the Contract Price for the additional delivered Net Output. In the event Seller increases the Nameplate Capacity Rating to greater than 10,000 kW, then Seller shall be required to enter into a new power purchase agreement for all delivered Net Output proportionally related to the increase of Nameplate Capacity above 10,000 kW.

4.4. To the extent not otherwise provided in the Generation Interconnection Agreement, all costs associated with the modifications to PGE's interconnection facilities or electric system occasioned by or related to the interconnection of the Facility with PGE's system, or any increase in generating capability of the Facility, or any increase of delivery of Net Dependable Capacity from the Facility, shall be borne by Seller.

4.5. From the start of the Renewable Resource Deficiency Period through the remainder of the Term of this Agreement, 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, 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.

SECTION 5: OPERATION AND CONTROL

5.1. Seller shall operate and maintain the Facility in a safe manner in accordance with the Generation Interconnection Agreement, and Prudent Electrical Practices. PGE shall have no obligation to purchase Net Output from the Facility to the extent the interconnection of the Facility to PGE's electric system is disconnected, suspended or interrupted, in whole or in part, pursuant to the Generation Interconnection Agreement, or to the extent generation curtailment is required as a result of Seller's noncompliance with the Generation Interconnection Agreement. Seller is solely responsible for the operation and maintenance of the Facility. PGE shall not, by reason of its decision to inspect or not to inspect the Facility, or by any action or inaction taken with respect to any such inspection, assume or be held responsible for any liability or occurrence arising from the operation and maintenance by Seller of the Facility.

5.2. Seller agrees to provide sixty (60) days advance written notice of any scheduled maintenance that would require shut down of the Facility for any period of time.

5.3. If the Facility ceases operation for unscheduled maintenance, Seller immediately shall notify PGE of the necessity of such unscheduled maintenance, the time when such maintenance has occurred or will occur, and the anticipated duration of such maintenance. Seller shall take all reasonable measures and exercise its best efforts to avoid unscheduled maintenance, to limit the duration of such unscheduled maintenance, and to perform unscheduled maintenance during Off-Peak hours.

SECTION 6: CREDITWORTHINESS

In the event Seller: a) is unable to represent or warrant as required by Section 3 that it has not been a debtor in any bankruptcy proceeding within the past two (2) years; b) becomes such a debtor during the Term; or c) is not or will not be current on all its financial obligations, Seller shall immediately notify PGE and shall promptly (and in no less than 10 days after notifying PGE) provide default security in an amount reasonably acceptable to PGE in one of the following forms: Senior Lien, Step-in Rights, a Cash Escrow or Letter of Credit. The amount of such default security that shall be acceptable to PGE shall be equal to: (annual On Peak Hours) X (On Peak Price – Off Peak Price) X (Net Dependable Capacity). Notwithstanding the foregoing, in the event Seller is not current on construction related financial obligations, Seller shall notify PGE of such delinquency and PGE may, in its discretion, grant an exception to the

requirements to provide default security if the QF has negotiated financial arrangements with the construction loan lender that mitigate Seller's financial risk to PGE.

SECTION 7: METERING

7.1. PGE shall design, furnish, install, own, inspect, test, maintain and replace all metering equipment at Seller's cost and as required pursuant to the Generation Interconnection Agreement.

7.2. Metering shall be performed at the location and in a manner consistent with this Agreement and as specified in the Generation Interconnection Agreement. All Net Output purchased hereunder shall be adjusted to account for electrical losses, if any, between the point of metering and the Point of Delivery, so that the purchased amount reflects the net amount of power flowing into PGE's system at the Point of Delivery.

7.3. PGE shall periodically inspect, test, repair and replace the metering equipment as provided in the Generation Interconnection Agreement. If any of the inspections or tests discloses an error exceeding two (2%) percent of the actual energy delivery, either fast or slow, proper correction, based upon the inaccuracy found, shall be made of previous readings for the actual period during which the metering equipment rendered inaccurate measurements if that period can be ascertained. If the actual period cannot be ascertained, the proper correction shall be made to the measurements taken during the time the metering equipment was in service since last tested, but not exceeding three (3) months, in the amount the metering equipment shall have been shown to be in error by such test. Any correction in billings or payments resulting from a correction in the meter records shall be made in the next monthly billing or payment rendered. Such correction, when made, shall constitute full adjustment of any claim between Seller and PGE arising out of such inaccuracy of metering equipment.

7.4. To the extent not otherwise provided in the Generation Interconnection Agreement, all of PGE's costs relating to all metering equipment installed to accommodate Seller's Facility shall be borne by Seller.

SECTION 8: BILLINGS, COMPUTATIONS AND PAYMENTS

8.1. On or before the thirtieth (30th) day following the end of each Billing Period, PGE shall send to Seller payment for Seller's deliveries of Net Output to PGE, together with computations supporting such payment. PGE may offset any such payment to reflect amounts owing from Seller to PGE pursuant to this Agreement, the Generation Interconnection Agreement, and any other agreement related to the Facility between the Parties or otherwise. On or before the thirtieth (30^{th}) day following the end of each Contract Year, PGE shall bill for any Lost Energy Value accrued pursuant to this Agreement.

8.2. Any amounts owing after the due date thereof shall bear interest at the Prime Rate plus two percent (2%) from the date due until paid; provided, however, that the interest rate shall at no time exceed the maximum rate allowed by applicable law.

SECTION 9: DEFAULT, REMEDIES AND TERMINATION

9.1. In addition to any other event that may constitute a default under this Agreement, the following events shall constitute defaults under this Agreement:

9.1.1. Breach by Seller or PGE of a representation or warranty, except for Section 3.1.4, set forth in this Agreement.

9.1.2. Seller's failure to provide default security, if required by Section 6, prior to delivery of any Net Output to PGE or within 10 days of notice.

9.1.3. Seller's failure to meet the Guarantee of Mechanical Availability established in Section 3.1.10 for two consecutive Contract Years or Seller's failure to provide any written report required by that section.

9.1.4. If Seller is no longer a Qualifying Facility.

9.1.5. Failure of PGE to make any required payment pursuant to Section 8.1.

9.1.6. Seller's failure to meet the Commercial Operation Date.

9.2. In the event of a default under Section 9.1.6, PGE may provide Seller with written notice of default. Seller shall have one year in which to cure the default during which time the Seller shall pay PGE damages equal to the Lost Energy Value. If Seller is unable to cure the default, PGE may immediately terminate this Agreement as provided in Section 9.3. PGE's resource sufficiency/deficiency position shall have no bearing on PGE's right to terminate the Agreement under this Section 9.2.

9.3. In the event of a default under this Agreement, 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.

9.4. If this Agreement is terminated as provided in this Section 9 PGE shall make all payments, within thirty (30) days, that, pursuant to the terms of this Agreement, are owed to Seller as of the time of receipt of notice of default. PGE shall not be required to pay Seller for any Net Output delivered by Seller after such notice of default.

9.5. In the event PGE terminates this Agreement pursuant to this Section 9, and Seller wishes to again sell Net Output to PGE following such termination, PGE in its sole discretion may require that Seller shall do so subject to the terms of this Agreement, including but not limited to the Contract Price until the Term of this Agreement (as set forth in Section 2.3) would have run in due course had the Agreement remained in effect. At such time Seller and PGE agree to execute a written document ratifying the terms of this Agreement.

9.6. Sections 9.1, 9.4, 9.5, 10, and 19.2 shall survive termination of this Agreement.

SECTION 10: INDEMNIFICATION AND LIABILITY

10.1. Seller agrees to defend, indemnify and hold harmless PGE, its directors, officers, agents, and representatives against and from any and all loss, claims, actions or suits, including costs and attorney's fees, both at trial and on appeal, resulting from, or arising out of or in any way connected with Seller's delivery of electric power to PGE or with the facilities at or prior to the Point of Delivery, or otherwise arising out of this Agreement, including without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property belonging to PGE, Seller or others, excepting to the extent such loss, claim, action or suit may be caused by the negligence of PGE, its directors, officers, employees, agents or representatives.

10.2. PGE agrees to defend, indemnify and hold harmless Seller, its directors, officers, agents, and representatives against and from any and all loss, claims, actions or suits, including costs and attorney's fees, both at trial and on appeal, resulting from, or arising out of or in any way connected with PGE's receipt of electric power from Seller or with the facilities at or after the Point of Delivery, or otherwise arising out of this Agreement, including without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property belonging to PGE, Seller or others, excepting to the extent such loss, claim, action or suit may be caused by the negligence of Seller, its directors, officers, employees, agents or representatives.

10.3. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a Party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or to the public, nor affect the status of PGE as an independent public utility corporation or Seller as an independent individual or entity.

10.4. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR SPECIAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES, WHETHER ARISING FROM CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.

SECTION 11: INSURANCE

11.1. Prior to the connection of the Facility to PGE's electric system, provided such Facility has a design capacity of 200 kW or more, Seller shall secure and continuously carry for the Term hereof, with an insurance company or companies rated not lower than "B+" by the A. M. Best Company, insurance policies for bodily injury and property damage liability. Such insurance shall include provisions or endorsements naming PGE, it directors, officers and employees as additional insureds; provisions that such insurance is primary insurance with respect to the interest of PGE and that any insurance or self-insurance maintained by PGE is excess and not contributory insurance with the insurance required hereunder; a cross-liability or severability of insurance interest clause; and provisions that such policies shall not be canceled or

their limits of liability reduced without thirty (30) days' prior written notice to PGE. Initial limits of liability for all requirements under this section shall be $1,000,000 million single limit, which limits may be required to be increased or decreased by PGE as PGE determines in its reasonable judgment economic conditions or claims experience may warrant.

11.2. Prior to the connection of the Facility to PGE's electric system, provided such facility has a design capacity of 200 kW or more, Seller shall secure and continuously carry for the Term hereof, in an insurance company or companies rated not lower than "B+" by the A. M. Best Company, insurance acceptable to PGE against property damage or destruction in an amount not less than the cost of replacement of the Facility. Seller promptly shall notify PGE of any loss or damage to the Facility. Unless the Parties agree otherwise, Seller shall repair or replace the damaged or destroyed Facility, or if the facility is destroyed or substantially destroyed, it may terminate this Agreement. Such termination shall be effective upon receipt by PGE of written notice from Seller. Seller shall waive its insurers' rights of subrogation against PGE regarding Facility property losses.

11.3. Prior to the connection of the Facility to PGE's electric system and at all other times such insurance policies are renewed or changed, Seller shall provide PGE with a copy of each insurance policy required under this Section, certified as a true copy by an authorized representative of the issuing insurance company or, at the discretion of PGE, in lieu thereof, a certificate in a form satisfactory to PGE certifying the issuance of such insurance. If Seller fails to provide PGE with copies of such currently effective insurance policies or certificates of insurance, PGE at its sole discretion and without limitation of other remedies, may upon ten (10) days advance written notice by certified or registered mail to Seller either withhold payments due Seller until PGE has received such documents, or purchase the satisfactory insurance and offset the cost of obtaining such insurance from subsequent power purchase payments under this Agreement.

SECTION 12: FORCE MAJEURE

12.1. As used in this Agreement, “Force Majeure” or “an event of Force Majeure” means any cause beyond the reasonable control of the Seller or of PGE which, despite the exercise of due diligence, such Party is unable to prevent or overcome. By way of example, Force Majeure may include but is not limited to acts of God, fire, flood, storms, wars, hostilities, civil strife, strikes, and other labor disturbances, earthquakes, fires, lightning, epidemics, sabotage, restraint by court order or other delay or failure in the performance as a result of any action or inaction on behalf of a public authority which by the exercise of reasonable foresight such Party could not reasonably have been expected to avoid and by the exercise of due diligence, it shall be unable to overcome, subject, in each case, to the requirements of the first sentence of this paragraph. Force Majeure, however, specifically excludes the cost or availability of resources to operate the Facility, changes in market conditions that affect the price of energy or transmission, wind or water droughts, and obligations for the payment of money when due.

12.2. If either Party is rendered wholly or in part unable to perform its obligation under this Agreement because of an event of Force Majeure, that Party shall be excused from whatever performance is affected by the event of Force Majeure to the extent and for the duration of the Force Majeure, after which such Party shall re-commence performance of such obligation, provided that:

12.2.1. the non-performing Party shall, promptly, but in any case within one (1) week after the occurrence of the Force Majeure, give the other Party written notice describing the particulars of the occurrence; and

12.2.2. the suspension of performance shall be of no greater scope and of no longer duration than is required by the Force Majeure; and

12.2.3. the non-performing Party uses its best efforts to remedy its inability to perform its obligations under this Agreement.

12.3. No obligations of either Party which arose before the Force Majeure causing the suspension of performance shall be excused as a result of the Force Majeure.

12.4. Neither Party shall be required to settle any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to the Party's best interests.

SECTION 13: SEVERAL OBLIGATIONS

Nothing contained in this Agreement shall ever be construed to create an association, trust, partnership or joint venture or to impose a trust or partnership duty, obligation or liability between the Parties. If Seller includes two or more parties, each such party shall be jointly and severally liable for Seller's obligations under this Agreement.

SECTION 14: CHOICE OF LAW

This Agreement shall be interpreted and enforced in accordance with the laws of the state of Oregon, excluding any choice of law rules which may direct the application of the laws of another jurisdiction.

SECTION 15: PARTIAL INVALIDITY AND PURPA REPEAL

It is not the intention of the Parties to violate any laws governing the subject matter of this Agreement. If any of the terms of the Agreement are finally held or determined to be invalid, illegal or void as being contrary to any applicable law or public policy, all other terms of the Agreement shall remain in effect. If any terms are finally held or determined to be invalid, illegal or void, the Parties shall enter into negotiations concerning the terms affected by such decision for the purpose of achieving conformity with requirements of any applicable law and the intent of the Parties to this Agreement.

In the event the Public Utility Regulatory Policies Act (PURPA) is repealed, this Agreement shall not terminate prior to the Termination Date, unless such termination is mandated by state or federal law.

SECTION 16: WAIVER

Any waiver at any time by either Party of its rights with respect to a default under this Agreement or with respect to any other matters arising in connection with this Agreement must be in writing, and such waiver shall not be deemed a waiver with respect to any subsequent default or other matter.

SECTION 17: GOVERNMENTAL JURISDICTION AND AUTHORIZATIONS

This Agreement is subject to the jurisdiction of those governmental agencies having control over either Party or this Agreement. Seller shall at all times maintain in effect all local, state and federal licenses, permits and other approvals as then may be required by law for the construction, operation and maintenance of the Facility, and shall provide upon request copies of the same to PGE.

SECTION 18: SUCCESSORS AND ASSIGNS

This Agreement and all of the terms hereof shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties. No assignment hereof by either Party shall become effective without the written consent of the other Party being first obtained and such consent shall not be unreasonably withheld. Notwithstanding the foregoing, either Party may assign this Agreement without the other Party's consent as part of (a) a sale of all or substantially all of the assigning Party's assets, or (b) a merger, consolidation or other reorganization of the assigning Party.

SECTION 19: ENTIRE AGREEMENT

19.1. This Agreement supersedes all prior agreements, proposals, representations, negotiations, discussions or letters, whether oral or in writing, regarding PGE's purchase of Net Output from the Facility. No modification of this Agreement shall be effective unless it is in writing and signed by both Parties.

19.2. By executing this Agreement, Seller releases PGE from any third party claims related to the Facility, known or unknown, which may have arisen prior to the Effective Date.

SECTION 20: NOTICES

20.1. All notices except as otherwise provided in this Agreement shall be in writing, shall be directed as follows and shall be considered delivered if delivered in person or when deposited in the U.S. Mail, postage prepaid by certified or registered mail and return receipt requested:

To Seller: _____
_____
_____
_____

with a copy to: _____

_____
_____
_____

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: _____

_____
(Name Seller)

By: _____
Name: _____
Title: _____

Date: _____

EXHIBIT A
DESCRIPTION OF SELLER'S FACILITY

[Seller to Complete]

[Sellers may include reasonable expected monthly Net Output for purposes of Section 1.35 (Start-Up Lost Energy Value). Amounts may vary by month and shall be assumed repeated for each Contract Year, unless amounts for each Contract Year of this Agreement are set forth in this Exhibit A. Such amounts, if provided, shall exceed zero, and shall be established in accordance with Prudent Electrical Practices and documentation supporting such a determination shall be provided to PGE upon execution of this Agreement. Such documentation shall be commercially reasonable, and may include, but is not limited to, documents used in financing the project, and data on output of similar projects operated by seller, PGE or others.]

EXHIBIT B
REQUIRED FACILITY DOCUMENTS

[Seller list all permits and authorizations required for this project]

Sellers Generation Interconnection Agreement

EXHIBIT C
START-UP TESTING

[Seller identify appropriate tests]

Required factory testing includes such checks and tests necessary to determine that the equipment systems and subsystems have been properly manufactured and installed, function properly, and are in a condition to permit safe and efficient start-up of the Facility, which may include but are not limited to (as applicable):

1. Pressure tests of all steam system equipment;
2. Calibration of all pressure, level, flow, temperature and monitoring instruments;
3. Operating tests of all valves, operators, motor starters and motor;
4. Alarms, signals, and fail-safe or system shutdown control tests;
5. Insulation resistance and point-to-point continuity tests;
6. Bench tests of all protective devices;
7. Tests required by manufacturer of equipment; and
8. Complete pre-parallel checks with PGE.

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 PGE's electrical system, which may include but are not limited to (as applicable):

1. Turbine/generator mechanical runs including shaft, vibration, and bearing temperature measurements;
2. Running tests to establish tolerances and inspections for final adjustment of bearings, shaft run-outs;
3. Brake tests;
4. Energization of transformers;
5. Synchronizing tests (manual and auto);
6. Stator windings dielectric test;
7. Armature and field windings resistance tests;
8. Load rejection tests in incremental stages from 5, 25, 50, 75 and 100 percent load;
9. Heat runs;
10. Tests required by manufacturer of equipment;
11. Excitation and voltage regulation operation tests;
12. Open circuit and short circuit; saturation tests;
13. Governor system steady state stability test;
14. Phase angle and magnitude of all PT and CT secondary voltages and currents to protective relays, indicating instruments and metering;
15. Auto stop/start sequence;
16. Level control system tests; and
17. Completion of all state and federal environmental testing requirements

EXHIBIT D
SCHEDULE

[Attach currently in-effect Schedule 201]

Pages Omitted From Excerpt

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1931

PORTLAND GENERAL ELECTRIC COMPANY, Complainant, v. ALFALFA SOLAR I LLC, et al. Defendants.	)	**DECLARATION OF THOMAS HARNSBERGER IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

I, Thomas Harnsberger, declare under the penalty of perjury as follows:

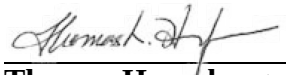
1. This declaration is based on my personal knowledge and, if called to testify to the following facts, I could and would competently do so. I submit this declaration in support of the Motion for Summary Judgment filed in the above-captioned docket before the Public Utility Commission of Oregon ("OPUC" or "Commission") by 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" or "Defendants").

2. I am the same Thomas Harnsberger who caused to be filed pre-filed testimony in this docket on December 28, 2018 (NewSun Parties/200).

3. The statements and answers provided in my pre-filed testimony remain the answers I would provide if asked those same questions today. My pre-filed testimony, NewSun Parties/200, is true and correct to the best of my knowledge and belief.

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 28 day of January 2019.



Thomas Harnsberger

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1931

PORTLAND GENERAL ELECTRIC COMPANY, Complainant, v. ALFALFA SOLAR I LLC, et al. Defendants.	)	**SUPPLEMENTAL DECLARATION OF JACOB STEPHENS IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

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 the Motion for Summary Judgment filed in the above-captioned docket before the Public Utility Commission of Oregon ("OPUC" or "Commission") by 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" or "Defendants").

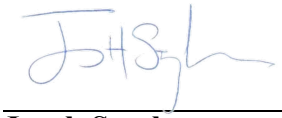
2. I am the same Jacob Stephens who caused to be filed pre-filed testimony and exhibits in this docket on December 28, 2018 (NewSun Parties/100-131).

3. The statements and answers provided in my pre-filed testimony remain the answers I would provide if asked those same questions today. My pre-filed testimony and

exhibits, NewSun Parties/100 through NewSun Parties/131, are true and correct to the best of my knowledge and belief.

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 28th day of January 2019.



Jacob Stephens

CERTIFICATE OF SERVICE

I hereby certify that I caused to be served the original and one copy of the DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND SUPPORTING DECLARATIONS; on the following named person(s) on the date and manner indicated below, addressed to said person(s) at the address of each shown below.

Public Utility Commission of Oregon
Attn: Filing Center
201 High Street SE, Suite 100
Salem, OR 97301-3398

___ by Hand Delivery
___ by Overnight Delivery
___ by Facsimile Request
___ by Email
_X_ by Federal Express 2-Day Delivery
___ by Electronic Mailing through the Filing Center

I further certify that all other parties to the docket and listed here have waived physical service of this filing and will be served electronically.

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brittany.andrus@state.or.us

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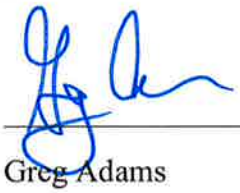
DATED this 29th day of January 2019.



Greg Adams