

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

NORTHWEST AND INTERMOUNTAIN	)	
POWER PRODUCERS COALITION;	)	DOCKET NO. _____
COMMUNITY RENEWABLE ENERGY	)	
ASSOCIATION; and RENEWABLE	)	COMPLAINT
ENERGY COALITION,	)	
Complainants,	)	
	)	
v.	)	
	)	
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**

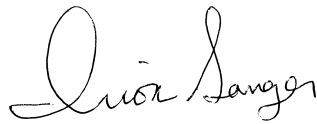
WHEREFORE, Complainants respectfully requests that the Commission issue an order:

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,

A handwritten signature in black ink, appearing to read "Irion A. Sanger". The signature is written in a cursive style with a large initial "I".

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Irion A. Sanger  
Sidney Villanueva

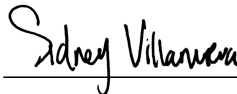
Of Attorneys for Northwest and Intermountain Power  
Producers Coalition

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.



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