

**BEFORE THE  
PUBLIC UTILITY COMMISSION OF OREGON**

Riley Solar I LLC, Complainant,	)	Docket No. _____
	)	
vs.	)	COMPLAINT
	)	
PORTLAND GENERAL ELECTRIC COMPANY, Defendant.	)	

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**I**

**INTRODUCTION**

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3 This is a Complaint filed by Riley Solar I LLC (also referred to herein as “Riley Solar I”  
4 or “Complainant”) with the Oregon Public Utility Commission (the “OPUC”) pursuant to ORS  
5 756.500, and OAR 860-001-0390 to -410. Riley Solar I is a qualifying facility (“QF”) under the  
6 Public Utility Regulatory Policies Act (“PURPA”), 16 U.S.C. § 824a-3, and is therefore entitled  
7 under PURPA and related state law and regulation, to obligated itself to sell the entire net output  
8 of its QF to Portland General Electric Company (“PGE”) under the OPUC-approved standard  
9 contract. Riley Solar I has committed itself to the standard contract by executing that contract in  
10 a form provided by PGE and containing the OPUC-approved standard renewable avoided cost  
11 rates in effect on the date of this Complaint. However, in the week prior to a known event of rate  
12 decrease scheduled to occur on June 22, 2016, PGE has unreasonably delayed its own execution  
13 of the OPUC-approved standard contract and unreasonably required submission of a new list of  
14 information prior to PGE’s execution. Riley Solar I therefore respectfully requests that the  
15 OPUC require PGE to execute PGE’s currently approved standard contract containing the  
16 standard renewable rates for solar QFs selling to PGE in effect on the date of this Complaint,  
17 which are the rates approved in Order No. 15-251.

1 **II**

2 **PRELIMINARY MATTERS**

3 Pleadings, filings, rulings, orders, and other correspondence in this matter should be  
4 served upon counsel for Complainant:

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14  
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16 In support of this Complaint, Complainant alleges as follows:

17 **III**

18 **IDENTITY OF PARTIES**

19 1. Portland General Electric Company is an Oregon corporation with its principal place of  
20 business at 121 Southwest Salmon Street, Portland, Oregon 97204. PGE is an electric company  
21 and a public utility providing electric service in the State of Oregon within the meaning of ORS  
22 757.005. PGE is a regulated public utility subject to the jurisdiction of the OPUC and the Federal  
23 Energy Regulatory Commission (“FERC”).

24 2. Riley Solar I LLC is a Delaware limited liability company whose physical address is  
25 3500 South Dupont Highway, Dover, Delaware 18801. Riley Solar I is a self-certified QF. *See*  
26 FERC Docket No. QF16-812.

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**IV**

**APPLICABLE LAWS AND REGULATIONS**

3           3.       The Oregon statutes expected to be involved in this case include: ORS 756.500 to  
4 756.558; and ORS 758.505 to 758.555. The Oregon rules expected to be involved in this case  
5 include those within Divisions 1 and 29 of Chapter 860 of Oregon Administrative Rules.

6           4.       Additionally, federal law is implicated under the mandatory purchase provisions  
7 of PURPA, 16 USC § 824a-3, and FERC’s rules promulgated under PURPA, 18 CFR § 292.101  
8 to § 292.602.

**V**

**JURISDICTION**

11           5.       This case involves PURPA’s avoided cost provisions and FERC’s implementing  
12 rules thereto. *See* 16 USC § 824a-3; 18 CFR § 292.101 to § 292.602. PURPA directs state  
13 regulatory authorities to implement FERC’s PURPA rules for electric utilities regulated by the  
14 state regulatory authority. *See* 16 USC § 824a-3(f); *FERC v. Mississippi*, 456 US 742, 760-61,  
15 102 S Ct 2126, 2137-38 (1982); *Cedar Creek Wind, LLC*, 137 FERC ¶ 61,006, P 27 (2011).  
16 Among other provisions, FERC’s rules provide each QF with the right to unilaterally create a  
17 legally enforceable obligation (“LEO”) to sell its energy and capacity at projected avoided cost  
18 rates in effect on the date that the QF obligates itself to sell energy and capacity. 18 CFR §  
19 292.304(d)(2)(ii); *Cedar Creek Wind, LLC*, 137 FERC 61,006 at P 32.

20           6.       Oregon has specifically adopted FERC’s LEO rule by statute, ORS 758.525(2)(b),  
21 which provides: “At the option of the qualifying facility, exercised before beginning delivery of  
22 the energy or energy and capacity, such prices may be based on \* \* \* The projected avoided  
23 costs calculated at the time the legal obligation to purchase the energy or energy and capacity is

1 incurred.” Thus, the “obligation to purchase power is imposed by law on a utility; it is not  
2 voluntarily assumed.” *Snow Mt. Pine Company v. Maudlin*, 84 Or App 590, 598, 734 P2d 1366  
3 (1987).

4 7. The OPUC is the regulatory agency in Oregon that implements these mandatory  
5 purchase obligations, including the LEO rule, for public utilities, including PGE. *Id.*; ORS  
6 758.535. The OPUC therefore possesses the jurisdiction to adjudicate this Complaint alleging  
7 that Complainant created a legally enforceable obligation to sell to PGE at the currently effective  
8 standard rates and PGE must therefore execute the standard contract containing those rates.

9 **VI**

10 **FACTUAL BACKGROUND**

11 8. Complainant has been engaged in developing a solar generation facility that will  
12 have a nameplate capacity of 10 megawatts (“MW”) alternating current.

13 9. Complainant’s QF is located in Harney County, OR.

14 10. Complainant’s QF will enter into a point-to-point transmission service agreement  
15 with Bonneville Power Administration (“BPA”) to transmit its entire net output for sale to PGE  
16 at PGE’s system.

17 11. On May 10, 2016, Complainant requested that PGE provide it with PGE’s  
18 standard contract for a term ending 16 years after the commercial operation date with the  
19 standard renewable avoided cost rates approved by the OPUC for solar QFs selling to PGE.

20 12. Riley Solar I’s manager had previously been in contact with PGE’s PURPA  
21 contract administrators and formally submitted all necessary information for completion of the  
22 standard contract for Riley Solar I containing the standard renewable avoided cost rates,  
23 including Schedule 201, a site control letter, a site map, a Form 556, and a data sheet and redline

1 of standard contract on May 10, 2016.

2 13. PGE provided Riley Solar I notice of completion, confirming that all necessary  
3 information had been submitted, on May 19, 2016, and sent Riley Solar I a draft PPA on the  
4 same date.

5 14. On May 27, 2016, Riley Solar I executed and returned to PGE the final standard  
6 contract and has remained obligated to the material terms of that standard contract.

7 15. At all times during Complainant's discussions and requests for a standard  
8 contract, the standard rates in effect were the rates approved by the OPUC on August 25, 2015 in  
9 Order No. 15-251.

10 16. PGE was aware that Complainant intended to execute the standard contract prior  
11 to the effective date of PGE's annual May 1<sup>st</sup> rate update so as to commit to sell to PGE under  
12 the rates in effect prior to that time, i.e. the standard renewable rates for solar QFs approved in  
13 Order No. 15-251.

14 17. On June 8, 2016, the OPUC issued Order No. 16-220, which updated PGE's  
15 standard avoided cost rates in accordance with the annual May 1<sup>st</sup> rate update authorized by the  
16 OPUC. When it takes final effect, this order will result in a significant reduction to the standard  
17 renewable avoided cost rates available for a solar QF such as Complainant's facility. The  
18 OPUC's Order No. 16-220 states that the effective date of the rate change is June 22, 2016.

19 18. On June 17, 2016, PGE representatives demanded that Complainant supply a long  
20 list of additional information *prior* to execution of the standard contract. PGE's representative,  
21 John Morton, stated in his e-mail correspondence, "If you provide the information within **15**  
22 **business days** and your project qualifies for the standard contract, then we will provide an  
23 executable standard contract at the avoided cost rates in effect at the time of this request." (bold

1 in PGE's email.) However, PGE had previously stated that Complainant's information submittal  
2 was complete, and Complainant had therefore already signed the standard contract supplied by  
3 PGE for execution.

4 19. Thus, in the days prior to a known event of rate decrease scheduled to occur on  
5 June 22, 2016, PGE has unreasonably delayed its own execution of the OPUC-approved standard  
6 contract and unreasonably required submission of a new list of information prior to PGE's  
7 execution, including information already provided, information optional under the explicit terms  
8 of the Schedule 201 contract and tariff, and information not affecting contract terms. PGE made  
9 this request despite having already informed the Complainant it had provided the required  
10 information, and even requested (and received) Complainant's agreement to move straight from  
11 draft to executable to facilitate meeting the June 21, 2016 target execution deadline.

12 20. Complainant is unaware of why PGE waited until days before the effective date  
13 of the new and significantly lower rates to raise its new proposed modifications to the standard  
14 contract the parties had exchanged multiple times in the previous months.

15 21. Complainant is unaware of whether PGE will ever execute the standard contract  
16 containing the standard renewable avoided cost rates in effect on the date of this Complaint.

17 22. Complainant has attempted to obtain PGE's signature on the standard contract  
18 since the June 17, 2016 communication from PGE.

19 23. As of the time of filing this Complaint, PGE has not counter-signed the standard  
20 contract or any comparable substitute standard contract containing terms and conditions that  
21 PGE believes are necessary.

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VII

LEGAL CLAIMS

**Complainant's First Claim for Relief**

Riley Solar I LLC created a legally enforceable obligation to sell under PGE's standard contract with the OPUC-approved standard renewable avoided cost rates for solar projects selling to PGE in effect on the date of this Complaint.

24. Complainant re-alleges all of the preceding paragraphs.

25. PGE has an obligation to enter into the standard contract for purchase of Complainant's QF output made available to PGE. 18 CFR § 292.303(a), (d), § 292.304(d)(2)(ii); ORS 758.525(2)(b); OAR 860-029-0030(1).

26. Complainant's execution of PGE's standard contract and its extended efforts to obtain PGE's signature on the standard contract were an exercise of Complainant's rights, under 18 CFR § 292.304(d)(2)(ii) and ORS 758.525(2)(b), to enter into a contract or other legally enforceable obligation despite PGE's refusal to execute the standard contract to this date. *Cedar Creek Wind, LLC*, 137 FERC 61,006 at ¶32; *Snow Mt. Pine Company*, 84 Or App at 598-600.

27. Complainant remains committed to the unconditionally executed standard contract submitted to PGE.

28. By committing itself to sell its QF output to PGE, Complainant also commits PGE to buy the QF output under the terms of that standard contract, or such other terms as the OPUC may, within the bounds of its discretion, determine to be reasonable.

29. FERC's LEO rule "is used to prevent an electric utility from avoiding its PURPA obligations by refusing to sign a contract, or as here, from delaying the signing of a contract, so that a later and lower avoided cost is applicable." *Cedar Creek Wind, LLC*, 137 FERC ¶ 61,006, at P 36; *accord Snow Mt. Pine Company*, 84 Or App at 598-600. PGE's refusal to sign the

1 standard contract submitted by Complainant does not defeat PGE’s purchase obligation to  
2 purchase the QF’s output at the rates in legal effect on the date Complainant obligated itself.

3 30. Complainant is entitled to a legally enforceable obligation to sell its QF’s entire  
4 net output at standard renewable avoided cost rates approved by the OPUC in Order No. 15-251,  
5 which rates were in legal effect on the date Complainant obligated itself, and are still in legal  
6 effect on the date of this Complaint.

7 **VIII**

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Riley Solar I LLC respectfully requests that the Oregon Public Utility  
10 Commission issue an Order:

11 31. Declaring PGE in violation of the mandatory purchase provisions of the Public  
12 Utility Regulatory Policies Act, the Federal Energy Regulatory Commission’s implementing  
13 rules thereto, and associated Oregon laws, rules, and orders by failing to execute the standard  
14 contract to purchase the output of Complainant’s qualifying facility.

15 32. Declaring that Complainant created a legally enforceable obligation to sell its  
16 qualifying facility’s output under the standard renewable avoided cost rates for solar QFs selling  
17 to PGE in legal effect on the date of this Complaint, i.e. the rates approved by the OPUC in  
18 Order No. 15-251.

19 33. Requiring PGE to execute PGE’s standard contract containing the standard  
20 renewable avoided cost rates for solar QFs selling to PGE in legal effect on the date of this  
21 Complaint, as previously submitted by Complainant to PGE, or containing those rates in effect  
22 on the date of this Complaint and such other terms and conditions as the OPUC may, within the  
23 bounds of its discretion, determine to be reasonable.



1           34.     Granting any other relief deemed necessary by the Oregon Public Utility  
2 Commission.

Respectfully submitted this 21st day of June 2016.

RICHARDSON ADAMS, PLLC

*/s/ Gregory M. Adams*

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