

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 1885

**Served electronically at Salem, Oregon, 8/11/17, to:**

*Respondent's Attorney*

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Re: UM 1885, Complainant OSPREY SOLAR LLC  
vs. PORTLAND GENERAL ELECTRIC COMPANY, Respondent

OSPREY SOLAR LLC has filed a complaint against Portland General Electric. A copy of the complaint is attached and served on Respondent, under ORS 756.512(1). The Commission has assigned Docket No. UM 1885 to this complaint. Please use this number whenever you refer to this case.

The Public Utility Commission must receive an Answer from the Respondent or their attorney by August 31, 2017, under OAR 860-001-0400(4)(a). A copy must be served on the complainant.

After the filing of the answer, the matter will be set for hearing and you will be notified of the time and place.

PUBLIC UTILITY COMMISSION OF OREGON

/s/Diane Davis for  
Cheryl Walker  
Administrative Specialist 2  
Administrative Hearings Division  
(503) 378-2849

c: Barbara Parr, [barbara.parr@pgn.com](mailto:barbara.parr@pgn.com)

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Attachments: Complaint; Notice of Contested Case Rights and Procedures

## NOTICE OF CONTESTED CASE RIGHTS AND PROCEDURES

Oregon law requires state agencies to provide parties written notice of contested case rights and procedures. Under ORS 183.413, you are entitled to be informed of the following:

**Hearing:** The time and place of any hearing held in these proceedings will be noticed separately. The Commission will hold the hearing under its general authority set forth in ORS 756.040 and use procedures set forth in ORS 756.518 through 756.610 and OAR Chapter 860, Division 001. Copies of these statutes and rules may be accessed via the Commission's website at [www.puc.state.or.us](http://www.puc.state.or.us). The Commission will hear issues as identified by the parties.

**Right to Attorney:** As a party to these proceedings, you may be represented by counsel. Should you desire counsel but cannot afford one, legal aid may be able to assist you; parties are ordinarily represented by counsel. The Commission Staff, if participating as a party in the case, will be represented by the Department of Justice. Generally, once a hearing has begun, you will not be allowed to postpone the hearing to obtain counsel.

**Administrative Law Judge:** The Commission has delegated the authority to preside over hearings to Administrative Law Judges (ALJs). The scope of an ALJ's authority is defined in OAR 860-001-0090. The ALJs make evidentiary and other procedural rulings, analyze the contested issues, and present legal and policy recommendations to the Commission.

**Hearing Rights:** You have the right to respond to all issues identified and present evidence and witnesses on those issues. *See* OAR 860-001-0450 through OAR 860-001-0490. You may obtain discovery from other parties through depositions, subpoenas, and data requests. *See* ORS 756.538 and 756.543; OAR 860-001-0500 through 860-001-0540.

**Evidence:** Evidence is generally admissible if it is of a type relied upon by reasonable persons in the conduct of their serious affairs. *See* OAR 860-001-0450. Objections to the admissibility of evidence must be made at the time the evidence is offered. Objections are generally made on grounds that the evidence is unreliable, irrelevant, repetitious, or because its probative value is outweighed by the danger of unfair prejudice, confusion of the issues, or undue delay. The order of presenting evidence is determined by the ALJ. The burden of presenting evidence to support an allegation rests with the person raising the allegation. Generally, once a hearing is completed, the ALJ will not allow the introduction of additional evidence without good cause.

**Record:** The hearing will be recorded, either by a court reporter or by audio digital recording, to preserve the testimony and other evidence presented. Parties may contact the court reporter about ordering a transcript or request, if available, a copy of the audio recording from the Commission for a fee set forth in OAR 860-001-0060. The hearing record will be made part of the evidentiary record that serves as the basis for the Commission's decision and, if necessary, the record on any judicial appeal.

**Final Order and Appeal:** After the hearing, the ALJ will prepare a draft order resolving all issues and present it to the Commission. The draft order is not open to party comment. The Commission will make the final decision in the case and may adopt, modify, or reject the ALJ's recommendation. If you disagree with the Commission's decision, you may request reconsideration of the final order within 60 days from the date of service of the order. *See* ORS 756.561 and OAR 860-001-0720. You may also file a petition for review with the Court of Appeals within 60 days from the date of service of the order. *See* ORS 756.610.

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**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

Osprey Solar, LLC,	)	
Complainant,	)	DOCKET NO. ____
	)	
v.	)	COMPLAINT
	)	
Portland General Electric Company,	)	
Defendant.	)	
	)	
	)	
_____	)	

**I. INTRODUCTION**

1  
2           This is a complaint (“Complaint”) filed by Osprey Solar LLC (“Osprey Solar” or  
3 “Complainant”) with the Oregon Public Utility Commission (the “Commission” or  
4 “OPUC”) under Oregon Revised Statute (“ORS”) 756.500 and Oregon Administrative  
5 Rule (“OAR”) 860-001-0170. Portland General Electric Company (“PGE” or the  
6 “Company”) has not agreed to purchase the net output from Osprey Solar’s qualifying  
7 facility (“QF”) as a mandatory purchase under the Public Utility Regulatory Policies Act  
8 of 1978 (“PURPA”). PGE has failed to comply with its own rate Schedule 201, the  
9 Commission’s rules and policies, the Federal Energy Regulatory Commission’s  
10 (“FERC’s”) rules and policies, and the Oregon and federal PURPA statutes. PGE has  
11 refused to finalize or execute a power purchase agreement (“PPA”) with Osprey Solar.

1           Osprey Solar has formed a legally enforceable obligation because it has been  
2 ready, willing, and able to sign a PPA with PGE since at least March 22, 2017, and has  
3 repeatedly and unequivocally committed itself to sell the net output to PGE at the  
4 Schedule 201 avoided cost rates and standard PPA terms and conditions in effect prior to  
5 June 1, 2017 (the “Pre-June 1 Rates and Terms”). PGE should be required to execute a  
6 PPA with Osprey Solar at the Pre-June 1 Rates and Terms because the establishment of a  
7 legally enforceable obligation turns on Osprey Solar’s commitment rather than PGE’s  
8 actions.

9           The concept of a legally enforceable obligation under PURPA exists precisely to  
10 prevent what PGE has sought to achieve here: preventing Osprey Solar from obtaining a  
11 PPA on favorable terms. PGE’s actions seeking to prevent Osprey Solar from entering  
12 into a PPA at the the Pre-June 1 Rates and Terms include, but are not limited to: 1)  
13 delaying the PPA negotiation process; 2) seeking interim and/or expedited relief to  
14 prevent Osprey Solar from being able to execute a PPA and to lower rates; and 3) failing  
15 to inform Osprey Solar about its filings seeking to change its Standard PPA rules and  
16 rates. These actions by PGE violated PURPA, the Commission’s and FERC’s rules and  
17 policies, and PGE’s own Schedule 201.

18           Among other things, PGE failed to meet its own Schedule 201 timeline after  
19 Osprey Solar’s initial submission of information on March 22; ignored Osprey Solar’s  
20 requests for expedited processing on May 23 and May 31; ignored Osprey Solar’s  
21 requests for an executable PPA on May 23 and May 31; waited until May 31 to inform  
22 Osprey Solar about its June 1 rate change; and completely ignored the partially executed  
23 PPA Osprey Solar submitted on May 31.



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9 515 North Flagler Drive, Suite 203  
10 West Palm Beach, Florida 33401  
11 steve@sabalsolar.com  
12

13 In support of this Complaint, Osprey Solar alleges as follows:

14 **III. IDENTITY OF THE PARTIES**

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

18 2. Osprey Solar, a limited liability company organized under the laws of  
19 Oregon, is the owner of the QF and will be the seller of the net output of the QF project.  
20 Osprey Solar's address is c/o Steve Cohen, Sabal Solar Development LLC, 515 North  
21 Flagler Drive, Suite 203, West Palm Beach, Florida 33401

22 **IV. APPLICABLE STATUTES AND RULES**

23 3. The Oregon statutes expected to be involved in this case include:  
24 ORS 756.040-756.068, 756.500-756.558, 756.990, and 758.505-758.575. The Oregon  
25 rules expected to be involved in this case include: OAR 860-001, and 860-029.

26 4. The federal statute expected to be involved in this case is PURPA, 16  
27 United States Code ("USC") 824a-3. The federal rules expected to be involved in this  
28 case include: 18 Code of Federal Regulations ("CFR") 292.101-292.602. FERC's

1 regulations regarding its pro forma Open Access Transmission Tariffs (“OATT”) may  
2 also be involved.

### 3 V. JURISDICTION

4 5. FERC has adopted regulations and policies governing utility purchases  
5 from QFs under PURPA. 18 CFR 292.101-292.602. State regulatory agencies are  
6 required to implement FERC’s regulations. See 16 USC 824a-3(f); FERC v. Mississippi,  
7 456 U.S. 742, 751, 102 S. Ct. 2126 (1982). FERC’s rules provide each QF with the right  
8 to unilaterally create a legally enforceable obligation to sell its energy and capacity at  
9 projected avoided cost rates in effect on the date that the QF obligates itself to sell energy  
10 and capacity. 18 CFR 292.304(d)(2)(ii); FLS Energy Inc., 157 FERC ¶ 61,211 at PP 23-  
11 25 (2016).

12 6. Oregon law also includes a requirement that a QF has the right to legally  
13 obligate itself to sell its net output at a time prior to the delivery of its net output.  
14 Specifically, ORS 758.525(2)(b) provides: “At the option of the qualifying facility,  
15 exercised before beginning delivery of the energy or energy and capacity, such prices  
16 may be based on . . . [t]he projected avoided costs calculated at the time the legal  
17 obligation to purchase the energy or energy and capacity is incurred.” Thus, the  
18 “obligation to purchase power is imposed by law on a utility; it is not voluntarily  
19 assumed.” Snow Mountain Pine Co. v. Maudlin, 734 P.2d 1366, 84 Or. App. 590, 598  
20 (1987).

21 7. The Commission is the Oregon state agency that implements the state and  
22 federal PURPA statutes. ORS 758.505(3); OAR 860-029-0001; Snow Mountain, 84 Or.  
23 App. at 593. Public utilities are defined in ORS 758.505(7), and include PGE. Oregon

1 law provides that the “terms and conditions for the purchase of energy or energy and  
2 capacity from a qualifying facility shall . . . [b]e established by rule by the commission if  
3 the purchase is by a public utility.” ORS 758.535(2)(a). The Commission has the power  
4 and jurisdiction to hear complaints by QFs against public utilities, including PGE. ORS  
5 756.040, 756.500-756.558, and 758.505-758.555; OAR 860-001-0010(3), and 860-029-  
6 0030.

## 7 **VI. FACTUAL BACKGROUND**

8 8. The Osprey Solar project will be a 2.2 megawatt (“MW”) nameplate solar  
9 generation facility located in Clackamas County, Oregon.

10 9. On March 22, 2017, Osprey Solar provided information and materials  
11 required for a Standard PPA with PGE.

12 10. Osprey Solar was aware that PGE would make its annual cost rate update  
13 filing on May 1, 2017, and expected PGE’s avoided cost rate might change in the end of  
14 June 2017.

15 11. Osprey Solar was aware that PGE’s integrated resource plan was  
16 scheduled for consideration at the August 8, 2017 Public Meeting, and expected any  
17 acknowledgment to occur at the end of August 2017, resulting in PGE’s avoided cost  
18 rates to be revisited about two months later, or the end of October 2017.

19 12. Over the course of the next several weeks, Osprey Solar and PGE  
20 exchanged information and communicated regarding issues related to the sale of Osprey  
21 Solar’s net output to PGE, including but not limited to contract terms, required  
22 information, and project details.



1           13.           On April 13, 2017, Osprey Solar requested an update from PGE on its  
2 PPA request, noting that it believed PGE was required to provide Osprey Solar with  
3 either a draft Standard PPA or clarifying questions by April 13, 2017.

4           14.           Later that same day, on April 13, 2017, PGE sent Osprey Solar a letter  
5 stating that Osprey Solar's application was missing certain specific information, and  
6 requested certain additional information be filled in rather than including references to  
7 certain attached documents.

8           15.           PGE's April 13 letter indicated that Osprey Solar's application was  
9 received by PGE on March 23, 2017 rather than March 22, 2017 when Osprey Solar  
10 submitted the request. April 13, 2017 is sixteen business days from March 22, 2017.

11          16.           On April 26, 2017, Osprey Solar submitted the additional information  
12 requested by PGE.

13          17.           On April 27, 2017, PGE acknowledged receipt of the additional  
14 information provided by Osprey Solar. PGE incorrectly stated that Osprey Solar's April  
15 26 submission was in respond to a May 16 letter rather than PGE's April 13 letter. PGE  
16 failed to provide a date by which it would send Osprey Solar a draft PPA or request  
17 additional or clarifying information.

18          18.           On May 1, 2017, PGE filed its May 1 Update, which requested an  
19 effective date of May 17, 2017 for its updated avoided cost rates rather than the end of  
20 June as Osprey Solar expected. PGE's May 1 Update proposed to lower PGE's avoided  
21 cost rate significantly.

1           19.           PGE never informed Osprey Solar that it was planning to seek approval of  
2 its May 1 Update at the May 16, 2017 Public Meeting rather than the last Public Meeting  
3 scheduled in June as it had done in past years.

4           20.           Similarly, PGE never informed Osprey Solar that it was planning to  
5 request an effective date of May 17, 2017 for its May 1 Update.

6           21.           Osprey Solar would have proceeded through its PPA negotiations more  
7 quickly, and may not have requested any changes to PGE's draft PPA, if it had been  
8 aware that PGE intended to request a May 17, 2017 effective date for its May 1 Update.  
9 Osprey Solar was denied the opportunity to make decisions on the basis of complete  
10 information, because PGE did not share its plans with the QFs it was negotiating with.

11          22.           Commission Staff considered addressing PGE's May 1 Update at the May  
12 30, 2017 Public Meeting, but ultimately moved that consideration to a Special Public  
13 Meeting on May 18, 2017 per PGE's request. Re Portland General Electric Company  
14 Updates Qualifying Facilities Avoided Cost Payments, Schedule 201, UM 1728, Special  
15 Public Meeting at 2:18 (May 18, 2017).

16          23.           On or about May 1, 2017, PGE also decided to file a request for new solar  
17 QF limits, which is currently being reviewed under docket number UM 1845 ("Request  
18 for New Solar QF Limits"). PGE's Request for New Solar Limits would, among other  
19 things, declare that a solar QF project with a capacity above 100 kilowatts ("kW") is not  
20 eligible for a standard contract or standard prices from PGE if any owner of the solar QF  
21 project has requested or obtained standard prices from PGE for more than 10 MW of  
22 solar QF capacity; or in the alternative, lower to 2 MW the eligibility cap for a solar QF  
23 project to obtain prices from PGE.

1           24.           PGE’s Request for New Solar Limits could affect Osprey Solar’s  
2 eligibility for standard avoided cost prices, if Osprey Solar were not able to establish a  
3 legally enforceable obligation under PGE’s Standard PPA terms and rates in effect on  
4 May 31, 2017.

5           25.           PGE chose not to inform Osprey Solar that it was planning to file the  
6 Request for New Solar QF Limits, or that PGE was planning to seek interim relief.

7           26.           Osprey Solar would have proceeded through its PPA negotiations more  
8 quickly, and may not have requested any changes to PGE’s draft PPA, if it had been  
9 aware that PGE intended to file the Request for New Solar QF Limits. Osprey Solar was  
10 denied the opportunity to make decisions on the basis of complete information,, because  
11 PGE did not share its plans with the QFs it was negotiating with.

12          27.           On May 16, 2017, PGE provided Osprey Solar with a draft PPA.

13          28.           On May 18, 2017, the Commission held a Special Public Meeting to  
14 consider PGE’s May 1 Update, and allowed PGE’s new, and substantially lower, avoided  
15 cost rates to go into effect on June 1, 2017. Re Portland General Electric Company  
16 Application to Update Schedule 201 Qualifying Facility Information, Docket No. UM  
17 1728, Order No. 17-177 (May 19, 2017).

18          29.           After the May 18, 2017 Special Public Meeting, PGE chose not to inform  
19 Osprey Solar that its updated Schedule 201 had been adopted, or that its avoided cost  
20 rates were going to drop substantially on June 1, 2017.

21          30.           On May 23, 2017, Osprey Solar requested execution copies of the May 16  
22 draft with two minor edits: 1) removing point 7 from Exhibit C; and 2) updating the  
23 expected commercial operation date in Sections 2.2.1 and 2.2.2 to May 1, 2020. Osprey

1 Solar indicated that its intention for revising the change requests was to avoid any  
2 substantive updates and proceed with executable PPAs the same week.

3 31. On May 31, 2017, PGE sent Osprey Solar a form email confirming that  
4 PGE did not anticipate executing a contract with Osprey Solar before June 1, 2017, at  
5 which point PGE's avoided cost rates would change.

6 32. PGE's May 31 email stated that Osprey Solar would be eligible for prices  
7 at the time its PPAs were executed, and that Osprey would not be eligible for PGE's Pre-  
8 June 1 Rates and Terms.

9 33. On May 31, 2017, Osprey Solar reaffirmed its desire to sell power to at the  
10 Pre-June 1 Rates and Terms, and reiterated its understanding that the changes it had  
11 requested to the draft PPA on May 23, 2017 were not substantive.

12 34. On May 31, 2017, Osprey Solar executed the draft PPA with the two  
13 minor alterations previously requested on May 23, 2017. Attachment A to this  
14 Complaint is a true and correct copy of this partially executed PPA.

15 35. On June 14, 2017, PGE responded by providing a revised draft PPA to  
16 Osprey Solar.

17 36. PGE's June 14 letter explained that it was providing a revised draft PPA,  
18 rather than a final draft PPA, because Osprey Solar's May 23 request to revise the the  
19 commercial operation date constituted a substantive change.

20 37. PGE's June 14 letter did not address Osprey Solar's May 23 request to  
21 expedite to process of receiving an executable PPA by avoiding any substantive changes.

22 38. PGE's June 14 letter also ignored that Osprey Solar sent a partially-  
23 executed PPA to PGE on May 31, 2017.



1           47.           PGE has an obligation to purchase the net output of a QF pursuant to  
2 either a contract or a legally enforceable obligation. 18 CFR 292.304(d); Order No. 69,  
3 FERC Stats. & Regs. ¶ 30,128, 45 Fed. Reg. 12,214 at 12,219-20, 12,224 (1980). A  
4 legally enforceable obligation is broader than a simple contract between an electric utility  
5 and a QF, and may exist without a contract. FLS Energy, 157 FERC ¶ 61,211 at PP 24,  
6 26; Grouse Creek, LLC, 142 FERC ¶ 61,187 at P 38 (2013).

7           48.           The establishment of a legally enforceable obligation turns on the QF's  
8 commitment to sell its net output to the electric utility. FLS Energy, 157 FERC ¶ 61,211  
9 at P 24; JD Wind 1, LLC, 129 FERC ¶ 61,148, at P 25 (2009). A QF can establish a  
10 legally enforceable obligation by committing itself to sell power to an electric utility.  
11 FLS Energy, 157 FERC ¶ 61,211 at P 25; Cedar Creek Wind, LLC, 137 FERC ¶ 61,006  
12 at PP 36, 39 (2011); Snow Mountain, 734 P.2d at 1371.

13           49.           A QF can require a utility to purchase its net output, even if the utility has  
14 refused to enter into a contract. Id. at 1370-71; FLS Energy, 157 FERC ¶ 61,211 at P 24;  
15 Murphy Flat Power, 141 FERC ¶ 61,145 at P 24 (2012); Grouse Creek, 142 FERC ¶  
16 61,187 at P 38. A utility cannot refuse to sign a contract “so that a later and lower  
17 avoided cost is applicable.” FLS Energy, 157 FERC ¶ 61,211 at P 25; Cedar Creek  
18 Wind, 137 FERC ¶ 61,006 at P 36. Similarly, a QF cannot be required to tender an  
19 executed interconnection agreement to form a legally enforceable obligation because that  
20 requirement would allow “the utility to control whether and when a legally enforceable  
21 obligation exists.” FLS Energy, 157 FERC ¶ 61,211 at PP 23, 26.

22           50.           The Commission has confirmed the process for obtaining a PPA: “(1) a  
23 QF initiates the process by submitting certain information, the utilities then have 15 days

1 to provide a draft standard contract; (2) the QF may agree to the terms of the draft  
2 contract and ask the utility to provide a final executable contract, or suggest changes; (3)  
3 the utility provides iterations of the draft standard contract no later than 15 days after  
4 each round of comments by the negotiating QF; and (4) when the QF indicates that it  
5 agrees to all the terms in the draft contract, the utility has 15 days to forward a final  
6 executable contract to the QF.” Re Investigation Into QF Contracting and Pricing,  
7 Docket No. UM 1610, Order No. 16-174 at 24 (May 13, 2016). Thus, when the QF  
8 informs PGE that it has agreed to all terms and conditions in the draft PPA, PGE is  
9 required to provide an executable PPA to the QF.

10 51. The Commission has determined a legally enforceable obligation will be  
11 established “once a QF signs the final draft of an executable contract provided by a utility  
12 to commit itself to sell power to the utility.” Re Investigation Into QF Contracting and  
13 Pricing, Docket No. UM 1610, Order No. 16-174 at 3 (May 13, 2016). However, a  
14 legally enforceable obligation “may be established earlier if a QF demonstrates delay or  
15 obstruction of progress towards a final draft of an executable contract, such as a failure  
16 by a utility to provide a QF with required information or documents on a timely basis.”  
17 Id. This is exactly what has occurred in this case.

18 52. The Commission has determined that a PPA can be executed and a legally  
19 enforceable obligation can be created in less than two months. Re Investigation Into QF  
20 Contracting and Pricing, Docket No. UM 1610, Order No. 16-174 at 24, 27-28 (May 13,  
21 2016).

1           53.           FERC has determined that a legally enforceable obligation can be created  
2 in about one month. Rainbow Ranch Wind, LLC, 139 FERC ¶ 61,077 at PP 2-5, 24  
3 (2012); Grouse Creek Wind Park, LLC, 142 FERC ¶ 61,187, at PP 37-43 (2013).

4           54.           Osprey Solar has continued to commit, and is still committing, itself to sell  
5 the net output of the Osprey Solar project to PGE at the Pre-June 1 Rates and Terms, as  
6 set forth in the partially executed final PPA. These commitments include, but are not  
7 limited to Osprey Solar's request for an executable PPA on May 23, 2017, Osprey Solar's  
8 execution of the draft PPA on May 31, 2017, and Osprey Solar's demand letter on  
9 August 2, 2017.

10          55.           Osprey Solar has continued to commit, and is still committing itself to sell  
11 its net output to PGE at the Schedule 201 rates, terms, and conditions in the partially  
12 executed final PPA.

13          56.           PGE is required to purchase the net output of the Osprey Solar project at  
14 the Pre-June 1 Rates and Terms set forth in the partially executed final PPA, despite  
15 PGE's refusal to execute the partially executed PPA.

16          57.           Osprey Solar's repeated statements of commitment, execution of the  
17 executable final PPA, continuing commitment to sell the net output of the Osprey Solar  
18 project, and efforts to obtain PGE's execution of the partially executed PPA establish a  
19 legally enforceable obligation at the Pre-June 1 Rates and Terms, and all the terms and  
20 conditions in the partially executed PPA.



1 **Complainant's Second Claim for Relief**

2 **Osprey Solar is entitled to PGE's standard contract at the Pre-June 1 Rates and**  
3 **Terms because Osprey Solar legally obligated itself to sell the net output prior to the**  
4 **filing of this Complaint, before the Schedule 201 rates changed on June 1, 2017, and**  
5 **PGE violated the OPUC's and FERC's policies and rules, and Schedule 201**  
6

7 58. Osprey Solar re-alleges all the preceding paragraphs.

8 59. The Commission has established rules, policies, standard contracts, and  
9 rate schedules to facilitate and direct the process by which a QF and an Oregon electric  
10 utility enter into a contract. Re Investigation Relating to Electric Utility Purchases from  
11 QFs, Docket No. UM 1129, Order No. 05-584 at 6-12, 16 (May 13, 2005). The purpose  
12 of the Commission approving standard contacts and schedules for each utility is to pre-  
13 establish "rates, terms and conditions that an eligible QF can elect without any  
14 negotiation with the purchasing utility" and to "eliminate negotiations . . . ." Id. at 12, 16.

15 60. PGE's failure to abide by the terms of the Commission's rules and  
16 policies, FERC's rules and policies, and/or Schedule 201 can result in the creation of a  
17 legally enforceable obligation. Docket No. UM 1610, Order No. 16-174 at 3; Snow  
18 Mountain, 734 P.2d at 1371; International Paper v. PacifiCorp, Docket No. UM 1449,  
19 Order No. 09-439 at 6 (Nov. 4, 2009).

20 61. The Commission's polices include that, "when the QF indicates that it  
21 agrees to all the terms in the draft contract, the utility has 15 days to forward a final  
22 executable contract to the QF." Re Investigation Into QF Contracting and Pricing,  
23 Docket No. UM 1610, Order No. 16-174 at 24 (May 13, 2016).

24 62. PGE's Schedule 201 includes timelines and requirements that a utility  
25 should follow when entering into a PPA with a QF 10 MWs and under. Pursuant to  
26 Schedule 201, "When all information required in the Standard PPA has been received in

1 writing from the Seller, the Company will respond within 15 business days with a draft  
2 Standard PPA.”

3 63. Schedule 201 also provides: “When both parties are in full agreement as to  
4 all terms and conditions of the draft Standard PPA, the Company will prepare and  
5 forward to the Seller a final executable version of the agreement within 15 business  
6 days.”

7 64. The Commission’s rules and policies prevent a utility from delaying or  
8 obstructing “progress towards a final draft of executable contract”. Re Investigation Into  
9 QF Contracting and Pricing, Docket No. UM 1610, Order No. 16-174 at 27-28 (May 13,  
10 2016).

11 65. The Commission’s rules and policies were to consider the utilities’ May 1  
12 Update at the last Public Meeting in June. See Re Portland General Electric Company  
13 Application to Update Schedule 201 Qualifying Facility Information, Docket No. UM  
14 1728, REC Comments at 6-7 (May 15, 2017); Re Portland General Electric Company  
15 Updates Qualifying Facilities Avoided Cost Payments, Schedule 201, UM 1728, Special  
16 Public Meeting at 5:58 (May 18, 2017).

17 66. PGE’s previous May 1 Update filings confirm the Commission’s policy.  
18 In 2016, PGE requested an effective date of June 22, 2016, noting “Order No. 14-058  
19 directs the annual avoided cost update to be presented at a public meeting and have rates  
20 effective within 60 days of the May 1 filing. The last public meeting within 60 days of  
21 May 1 is on June 21, 2016; hence the Company requests an effective date of June 22,  
22 2016.” Re Portland General Electric Company Application to Update Schedule 201  
23 Qualifying Facility Information, Docket No. UM 1728, PGE’s Application at 1 (April 29,

1 2016). In 2015, after debate and clarification about when the May 1 Update should go  
2 into effect, PGE ultimately requested an effective date of June 30, 2015. Re Portland  
3 General Electric Company Application to Update Schedule 201 Qualifying Facility  
4 Information, Docket No. UM 1728, PGE’s Revised Application at 1 (June 29, 2015).

5 67. Based upon the Commission’s rules and policies, and PGE’s pattern of  
6 practice adhering to those policies, QFs had a reasonable expectation that the May 1  
7 Update would take effect in late June.

8 68. PGE’s request to deviate from the Commission’s policies and their own  
9 practice and hasten the effective date of its May 1 Update resulted in the establishment of  
10 a legally enforceable obligation because PGE sought to control when a legally  
11 enforceable obligation existed and delay progress toward a final executable contract so  
12 that a lower avoided cost rate was applicable. By no later than May 23, 2017, Osprey  
13 Solar and PGE had agreed to all material terms and conditions, and Osprey Solar  
14 requested an executable version of the PPA.

15 69. PGE has not provided an executable version on the PPA.

16 70. PGE violated Commission rules and policies, FERC’s rules and policies,  
17 and Schedule 201 when PGE ignored Osprey Solar’s executed PPA of May 31, and  
18 provided a final draft PPA responsive to Osprey Solar’s May 23 request instead.

19 71. By refusing to execute a PPA because of alleged concerns regarding  
20 requests that had been superseded by Osprey Solar’s partially executed draft PPA  
21 submission, PGE has attempted to control whether and when a legally enforceable  
22 obligation exists to sell its net output at the currently effective Schedule 201 rates, by  
23 delaying negotiations.






- 1     2.    Requiring PGE to purchase the net output of the Osprey Solar project at the Pre-  
2           June 1 Rates and Terms in the partially executed PPA;
- 3     3.    Requiring PGE to enter into a PURPA PPA with Osprey Solar at the Pre-June 1  
4           Rates and Terms, and all the terms and conditions in the partially executed PPA;
- 5     4.    Instituting penalties up to \$10,000 under ORS 756.990 against PGE and paid by  
6           PGE's shareholders for each violation of ORS 758.525(2), 758.535(2)(b), 18 CFR  
7           292.303(a), 292.304(d), and Commission Order Nos. 05-584 and 16-174.
- 8     5.    Granting any other such relief as the Commission deems necessary.

Dated this 10th day of August, 2017.

Respectfully submitted,



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Of Attorneys for Osprey Solar

**CERTIFICATE OF FILING**

I certify that on August 10, 2017, on behalf of Osprey Solar, I filed the foregoing Complaint with the Oregon Public Utility Commission by electronic communication consistent with OAR 860-001-0170.



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