

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1940

Served electronically at Salem, Oregon, April 23, 2018, to:

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Re: UM 1940, NORTHWEST AND INTERMOUNTAIN POWER PRODUCERS COALITION (NIPPC), RENEWABLE ENERGY COALITION (REC), and COMMUNITY RENEWABLE ENERGY ASSOCIATION (CREA), Complainants, vs. PORTLAND GENERAL ELECTRIC COMPANY (PGE), Defendant. Pursuant to ORS 756.500 and OAR 860-001-0170.

NIPPC, REC, and CREA have filed a complaint against PGE. A copy of the complaint is attached and served on Respondent, under ORS 756.512(1). The Commission has assigned Docket No. UM 1940 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 its attorney by May 14, 2018 under OAR 860-001-0400(4)(a). A copy must be served on the complainants.

After the filing of the answer, the PUC will contact the parties to provide information about further proceedings in this matter.

PUBLIC UTILITY COMMISSION OF OREGON

/s/ Cheryl Walker
Cheryl Walker
Administrative Specialist 2
Administrative Hearings Division

(503) 378-2849

c: Barbara Parr, barbara.parr@pgn.com

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. 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.

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

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

I. INTRODUCTION

This complaint (“Complaint”) is filed by the Northwest and Intermountain Power Producers Coalition (“NIPPC”), Renewable Energy Coalition (“Coalition”) and Community Renewable Energy Association (“CREA”) (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. Portland General Electric Company (“PGE”) is refusing to execute its standard qualifying facility (“QF”) contracts, which is inconsistent with Commission policy and precedent implementing the Public Utility Regulatory Policies Act (“PURPA”). PGE has unilaterally decided to stop the standard contract negotiation process and is refusing to provide executable or countersign partially executed power purchase agreements (“PPAs”) until QFs agree to the terms of a not yet approved Schedule 201. While PGE only recently began refusing to finalize PPAs, PGE appears to have been planning to use the excuse of a “typographical error” as a tool for months to delay negotiations with the goal of ensuring that QFs are unable to obtain fully executed contracts at the current avoided cost

rates. To make matters worse, PGE is once again not informing QFs of its plans and appears to only raise this issue late in its Schedule 201 process, when QFs are due executable or counter-signed PPAs. This means that numerous QFs negotiating contracts with PGE, which are due executable PPAs, will soon be surprised when PGE informs them that that PGE will not execute their PPAs using the currently effective Schedule 201.

PGE has essentially manufactured a crisis that once again places QFs at risk of losing the current Schedule 201 rates. QFs should not be forced to accept lower avoided cost rates due to PGE's own "error" in its September 2017 avoided cost rate filing. Neither the Company's decision to wait months to fix its "error" nor its secret unilateral determination to stop executing QF contracts in the weeks and days before it intends to propose a major avoided cost rate decrease should be sanctioned by the Commission.

The Commission should provide immediate relief to all QFs currently negotiating contracts with PGE instead. First, PGE should be directed to adhere to its Commission approved process, which requires PGE to provide QFs executable PPAs with the current Schedule 201, and to countersign without modification any executable PPAs that PGE has already provided to QFs. Second, the Commission should provide QFs interim relief by delaying the effective date of any changes associated with PGE's May 1 Update until all the affected PPAs are fully executed.

Given the time sensitive nature of PGE's actions, Complainants ask that the Commission immediately issue an order no later than April 31, 2018 to provide immediate equitable injunctive relief for all QFs that should have been provided executable PPAs by May 8, 2018, and specifically directing PGE to:

- Provide executable PPAs and execute them under the current Schedule 201; and

- Prohibit PGE from filing its May 1 Update or clearly state that PGE’s May 1 Update will not become effective until after PGE has executed the PPAs.

To ensure that PGE complies with the Commission’s direction, PGE should also be required to file an officer attestation confirming that it has countersigned all affected PPAs before its rates change.

The Commission should keep in mind that there will be another flood of complaints if PGE does not voluntarily change its behavior or if the Commission does not direct PGE to change its behavior to comply with the law. There is no reason to unnecessarily burden the Commission’s already overtaxed docket with additional project-specific filings when the Commission can expeditiously resolve this dispute now by simply directing PGE to provide executable and countersign PPAs immediately.

II. BACKGROUND

PGE’s last avoided cost price change was filed on August 18, 2017.¹ PGE requested that the Commission issue an order immediately relieving PGE of the obligation to offer or enter into PPAs with QFs at prices based on the then current avoided cost prices under PGE’s Schedule 201. Alternatively, PGE requested the Commission declare that its updated Schedule 201, including the prices filed on August 18, 2017, would be effective immediately. Prior to that filing, PGE did not notify any QFs that it was planning the request to suspend its PURPA obligations. Promptly after that filing, PGE discovered it included “typographical errors” and immediately filed an errata page on August 25, 2017.²

¹ Re PGE Application to Update Schedule 201 QF Information, Docket No. UM 1728, PGE Compliance Filing and Motion for Temporary Relief (Aug. 18, 2017).

² Re PGE Application to Update Schedule 201 QF Information, Docket No. UM 1728, PGE Errata to 8/18/17 Compliance Filing (Aug. 25, 2017).

The Commission approved PGE's current avoided cost prices at the public meeting on September 12, 2017. PGE's filing was contested, and QF parties and advocates requested that any new rates not be immediately effective. A later effective date would have allowed sufficient time to review the filing for errors and ensure that QFs negotiating contracts were able to obtain executed PPAs. The Commission decided to approve, with modification, PGE's Schedule 201, but rejected PGE's request to suspend its PURPA obligations and retroactively reduce prices. The Commission provided Staff and other parties only two days to review PGE's compliance filing. The Commission directed PGE to make substantive changes, including: 1) removing the solar integration charge; 2) using a 2021 deficiency period for nonrenewable avoided cost prices and a 2025 deficiency period for renewable avoided cost prices; and 3) addressing certain anomalies in monthly price on-peak calculations for renewable resources.³ Staff reviewed PGE's compliance filing, found it compliant with the Commission's order, and the new rates became effective on September 18, 2017.⁴

PGE's September 14 compliance filing included another error, however, and PGE promptly filed an errata page on September 19, 2017.⁵ PGE took only one business day to correct that error. That error was arguably more substantive rather than typographic. PGE's correction clarified that QFs were entitled to fifteen years of fixed prices after commercial

³ Re PGE Application to Update Schedule 201 QF Information, Docket No. UM 1728, Order No. 17-347 (Sept. 14, 2017).

⁴ Re PGE Application to Update Schedule 201 QF Information, Docket No. UM 1728, Staff Letter Stating PGE's Filing of 9/14/17 is in Compliance with Order No. 17-347 (Sept. 18, 2017).

⁵ Re PGE Application to Update Schedule 201 QF Information, Docket No. UM 1728, PGE Errata to Compliance Filing of 9/14/17 (Sept. 19, 2017).

operations rather than contract execution.⁶ Between September 20, 2017 and at least February 2018, PGE entered into a number of PPAs using the now current Schedule 201.⁷

PGE discovered no later than January 2018 that its currently effective Schedule 201 contains what PGE describes as a typographical error. Instead of promptly filing to correct the error, PGE waited months until April 12, 2018 to make another errata filing. The error could also be described as substantive and PGE states that it “inadvertently did not modify the definitions ... to reflect the new deficiency periods ordered by the Commission in Order No. 17-347.”⁸

While it is reasonable for PGE to correct its mistakes, this is not the whole story. PGE’s April 12 filing did not: 1) explain why it waited *several months* before making its errata filing; 2) request expedited approval of its errata filing (as PGE has requested expedited and even retroactive relief repeatedly in the past); 3) inform the Commission or provide any notice to QFs that it intended to refuse to execute any PPAs with the currently effective Schedule 201 until its newly filed Schedule 201 was approved; 4) inform the Commission or provide any notice to QFs that it would require any QFs to execute PPAs with a Schedule 201 that has not been approved yet; or 5) inform the Commission or QFs that it would otherwise use the April 12 errata as a tool to delay contract negotiations.

⁶ Id. Complainants believe that all past and current versions of Schedule 201 require PGE to provide 15 years of fixed prices upon commercial operation and not contract execution, but supported PGE’s revised Schedule 201 because it made the rate schedule more clear on this point.

⁷ The Commission’s website lists PGE’s PPAs with QFs filed as of February 13, 2018, and include some PPAs executed after September 18, 2018, available at <http://apps.puc.state.or.us/edockets/docket.asp?DocketID=19098>. Complainants are not aware whether PGE has entered into additional PPAs since February 2018.

⁸ Re PGE Application to Update Schedule 201 QF Information, UM 1728, PGE Second Errata to Compliance Filing of 9/14/17 (Apr. 12, 2018).

PGE is planning on filing an avoided cost rate change on May 1, 2018. According to Commission policy, those rates should go into effect within 60 days. The Complainants expect PGE to file an avoided cost rate reduction, but are uncertain of the exact size of the rate change. The Complainants have requested that PGE inform the developer community of the effective date that PGE will request and whether PGE will request any suspensions of its PURPA obligations or retroactive relief, but PGE refuses to do so. Complainants are keenly aware this new filing may contain other typographical errors.

III. SUMMARY

PGE is intentionally and deliberately weaponizing an “error” to prevent QFs from executing contracts before the May 1 Update’s avoided cost rate change. PGE learned about this mistake no later than January 2018 and subsequently entered into other PPAs with the Schedule 201 error. PGE waited to take any affirmative steps to correct or address the error until April—less than three weeks before PGE plans to substantially lower its rates. PGE also waited until April to begin informing QFs of its error and requiring them to either voluntarily use an unapproved Schedule 201 or to wait until the Commission approves its new tariffs and accept much lower rates).

PGE intentionally withheld this information from QFs during the standard contracts negotiation process. PGE appears to be waiting to provide these QFs with the unhappy news that they may no longer be eligible for the current rates. This appears to be the most plausible explanation for PGE’s actions to wait months to make its errata filing; PGE raised these issues in the days and weeks before its May 1 Update to create an obstacle to prevent QFs from being able to execute PPAs prior to its upcoming avoided cost rate reduction.

PGE does not have the authority to unilaterally decide that it will not enter into QF contracts or to request a QF execute a PPA with contract provisions, rates, terms or conditions that have not been approved by the Commission. Oregon law and policy require PGE to follow the its currently established rates and terms, and prevent PGE from insisting that a QF agree to new tariff filings that have not been approved by the Commission. The plain meaning of Oregon’s mini-PURPA laws require utilities to file avoided cost rate schedules prospectively. Pursuant to the statute, utilities must file “a schedule of avoided costs equaling the utility’s forecasted incremental cost” and those prices “shall be reviewed and approved by the commission.”⁹ PGE’s Schedule 201 is the schedule referred to in the statute. Read plainly, this statute contemplates that new avoided cost rates will be filed prospectively, reviewed and then approved before they become effective, and that QFs are entitled to the old rate schedules until any new ones are approved.

PGE is also not allowed to make or provide undue or unreasonable preference to any particular person, or subject that person to any due or unreasonable prejudice or disadvantage in any respect.¹⁰ PGE has previously entered into PPAs with some QFs using the currently effective Schedule 201. PGE cannot now refuse to execute PPAs with other similarly situated QFs because it has filed but not yet obtained approval of a new Schedule 201.

The Commission has implemented QF’s rights to enter into contracts at whatever the currently approved rates are by establishing rules, policies, standard contracts, and rate schedules to facilitate and direct the process by which a QF and an Oregon electric utility enter into a

⁹ ORS 758.525(1) (emphasis added).

¹⁰ ORS 757.325.

contract.¹¹ The purpose of the Commission approving standard contracts and schedules for each utility is to pre-establish “rates, terms and conditions that an eligible QF can elect without any negotiation with the purchasing utility” and to “eliminate negotiations”¹² These forms and rate schedules are approved by the Commission and deemed compliant with PURPA. PGE is required to execute PPAs according to all the rates, terms and conditions in its form contract without modification.¹³

The Commission has directed PGE to revise its rate schedules and contracts in the past to include terms more favorable to QFs, and PGE has refused to allow QFs to use the more favorable terms during the period between filing and approval of those changes. For example, Complainants previously filed a complaint against PGE requesting that the Commission reaffirm its policy and direct PGE to conform its business practices to pay 15 years of fixed prices after the QF begins delivering its net output to the utility rather than contract execution. The Commission issued an order that did not interpret or address the terms of PGE’s past or then-current PPAs on July 13, 2017, but directed PGE to expeditiously correct any ambiguities in its standard contracts by filing corrected PPAs within five business days.¹⁴ PGE filed compliance filing on July 20, 2017, but the Commission did not approve the filing until two months later on September 12, 2017.¹⁵

¹¹ Investigation Relating to Electric Utility Purchases from QFs, Docket No. UM 1129, Order No. 05-584 at 6-12, 16 (May 13, 2005).

¹² Id. at 12, 16.

¹³ PaTu Wind Farm, LLC, v. PGE, Docket No. UM 1566, Order No. 14-287 at 13 (Aug. 13, 2014).

¹⁴ NIPPC, CREA, and Coalition v. PGE, Docket No. UM 1805, Order No. 18-079 at 1 (Mar. 5, 2018); NIPPC, CREA, and Coalition v. PGE, Docket No. UM 1805, Order No. 17-256 at 5 (July 13, 2017).

¹⁵ NIPPC, CREA, and Coalition v. PGE, Docket No. UM 1805, Order No. 17-346 at 1 (Sept. 14, 2017).

From July 13, 2017 to September 12, 2017, PGE insisted that QFs enter into contracts using the then-current and approved standard contract forms and Schedule 201 (i.e., those that PGE claims provide for fixed price payments from contract execution and not delivery). PGE rejected requests by QFs to use its filed, but not yet approved, contract forms (i.e., those that clearly provided for fixed price payments on the scheduled commercial operation date). Even though the Commission had re-affirmed its policy and directed PGE to make compliance filings to be consistent with that policy, PGE insisted on QFs using the older forms so that it could later argue that the QFs should be paid less than 15-years of fixed prices.

The Commission should also be aware that PGE often uses “typographical errors” as a tool to delay and refuse to execute PPAs with QFs. When a QF makes a typographical mistake in their PPA request, or even when PGE makes a mistake inserting the information the QF provides, PGE will then use this against the QF. Once PGE inserts an error or finds a mistake by the QF, PGE will then generally insist on taking all the time PGE believes it is allowed to provide a corrected document. For example, Falls Creek Hydro is a small hydroelectric facility that asked PGE provide it with a renewable PPA and Falls Creek filled out a renewable PPA with all the project specific information.¹⁶ PGE instead returned a non-renewable PPA, and inserted incorrect information, including listing “Lane” instead of “Linn” County, the nameplate capacity as 4.96 MW rather than 4.1 MW, and incorrect minimum deliveries.¹⁷ When Falls Creek Hydro noticed PGE’s errors related to the county and nameplate capacity and asked PGE to correct them, PGE informed Falls Creek that because it was requesting substantive changes

¹⁶ Falls Creek Hydro v. PGE, Docket No. UM 1859, Amended Complaint at ¶¶ 18-24 (Apr. 6, 2018).

¹⁷ Id. at ¶¶ 61-72.

Falls Creek would need to wait another 15 business days for a new draft PPA.¹⁸ When Falls Creek later noticed PGE provided the wrong contract form (non-renewable as opposed to renewable) and wrong minimum deliveries, PGE ultimately refused to correct them.¹⁹ This example merely illustrates how PGE consistently uses errors (either its own or a QF's) as a tool to delay the Schedule 201 process to prevent QFs from obtaining the then-current rates.

Regardless of the lawfulness or reasonableness of any particular PGE past practice, there is a consistent theme in PGE's actions. When avoided cost rates are dropping, PGE will raise a broad range of tactics to slow down the contract negotiation process and make surprise filings to ensure that as few as possible QFs are able to execute PPAs. In addition, when the Commission directs or PGE is entitled to make changes that benefit QFs, PGE will refuse to agree with QFs in the negotiation process to make changes that reflect the improved contract terms (e.g., 15 years of prices from power deliveries). When new rates or contract terms harm QFs or could even be interpreted to harm QFs (e.g., a price drop or the current incorrect definitions of resource sufficiency-deficiency), PGE will delay or seek to suspend contracting until the changes are approved and/or request that the QFs agree to use not yet approved changes to obtain an executable PPA.

IV. REQUEST FOR INJUNCTIVE RELIEF

The Commission has “the authority to order utilities or other entities under [its] jurisdiction to do or refrain from doing acts.”²⁰ Oregon courts will grant a temporary restraining order or preliminary injunction when it appears that: 1) a party is entitled to relief and the relief “consists of restraining the commission or continuance of some act, the commission or

¹⁸ Id. at ¶ 75.

¹⁹ Id. at ¶¶ 86-87, 90-93, 112, 127-128.

²⁰ Rio Communications, Inc. v. US West Communications, Inc., Docket No. UC 410, Order No. 99-349 at * 7-8 (LEXIS) (May 24, 1999).

continuance of which during the litigation would produce injury to the party seeking the relief”;
or 2) “[t]he party against whom a judgment is sought is doing or threatens, or is about to do, or is
procuring or suffering to be done, some act in violation of the rights of a party seeking
judgment.”²¹ Oregon courts also allow provisional injunctive relief when a party can show that:
1) threatened or existing irreparable injury is occurring or will occur before the case can be
decided in the regular of the case; and 2) the injury is of such nature that later monetary or
material compensation would be inadequate.²²

Complainants have satisfied these standards and are entitled to equitable relief directing
PGE to comply with its legal obligations. This complaint could take years to resolve.²³ Without
an injunction, PGE will produce injury to QFs over the course of the litigation. PGE is also
threatening and about to violate, and in process of violating, the rights of QFs that only
immediate injunctive relief can prevent.

Complainants therefore respectfully request the Commission direct PGE to enter into
contracts under the currently approved Schedule 201 and provide equitable relief to QFs with
current Schedule 201 applications pending to ensure that they are not harmed by PGE’s actions.
Additionally, Complainants ask the Commission to bar PGE from filing lower Schedule 201
rates or delay the effective date of any such update to allow QF caught up in PGE’s error to
finish their Schedule 201 process.

²¹ ORCP 79(A)(1).

²² See State ex rel. Tidewater Shaver Barge Lines v. Dobson, 195 Or. 533, 580–581 (1952).

²³ QF complaints often take years to resolve, the Commission’s overall docket is more full
and overburdened than at any time in recent memory, and one Commissioner has
announced that she will be resigning sometime next month.

V. 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:

VI. 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. 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.

3. 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.

4. 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.

VII. 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 PURPA mandatory purchase provisions, 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.

VIII. JURISDICTION

7. This case involves contracts PGE offers to QFs under PURPA's mandatory purchase provisions and FERC's implementing regulations, which PURPA directs states to implement.²⁴

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

²⁴ See 16 USC § 824a-3; FERC v. Mississippi, 456 U.S. 742, 751 (1982).

utilities must offer to QFs.²⁵ 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.”²⁶

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, as well as an alternative request for equitable relief as to the Commission’s policy for standard contracts or other legally enforceable obligations incurred with PGE after the resolution of this complaint.

IX. INTEREST OF COMPLAINANTS

10. Complainants collectively advocate for the interests of QFs and independent power producers. 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”

11. The Coalition’s organizational purpose is to ensure that renewable generation projects continue to make an important contribution to the future of energy in the region. The Coalition’s 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.

²⁵ See 16 USC § 824a-3(a), (f); ORS 758.505-758.555; Snow Mountain Pine Co. v. Maudlin, 84 Or. App. 590 (1987).

²⁶ ORS 758.535(2)(a).

12. 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.

13. 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.

X. FACTUAL BACKGROUND

14. On August 18, 2017, PGE filed revised Schedule 201 rates and a Motion for Temporary Relief from Schedule 201 rates.

15. On August 25, 2017, PGE filed an erratum to its August 18, 2017 filing.

16. At the September 12, 2017 Public Meeting, the Commission directed PGE to file a modified Schedule 201 using a 2021 deficiency period for its nonrenewable avoided cost prices and a 2025 deficiency period for its renewable avoided cost prices.

17. On September 14, 2017, PGE filed its current Schedule 201.

18. On September 18, 2017, the Commission Staff confirmed that PGE's filing "substantively complies" with the Commission's decision at the September 12, 2017 Public Meeting.

19. On September 18, 2017, PGE's Schedule 201 went into effect.

20. On September 19, 2017, PGE filed an erratum to its compliance filing of September 14, 2017.

21. Complainants are not certain whether the Commission approved PGE's September 19, 2017 errata filing.

22. No later than January 2018, PGE became aware of a mistake made in its September 14 filing. PGE's avoided cost prices reflected the modified deficiency periods, but its definitions for its sufficiency and deficiency periods were not updated and did not match the dates set by the Commission at the September 12, 2017 Public Meeting.

23. PGE's current Schedule 201 defines "Resource Deficiency Period" as "the period from 2025" (rather than 2021) and "Renewable Resource Deficiency Period" as "the period from 2029" (rather than 2025). It similarly incorrectly defines the sufficiency periods.

24. At the March 13, 2018 Public Meeting, PGE requested acknowledgment of its 2016 integrated resource plan ("IRP") Update in order to update IRP inputs in the May 1 avoided cost update filing.²⁷

25. At the March 13, 2018 Public Meeting PGE informed the Commission that it intends to file a double-digit reduction to its avoided cost rates in its May 1 Update.

26. On April 12, 2018, PGE filed another errata compliance filing to update its Schedule 201. PGE claims that it "correctly revised the price schedules" as directed by the Commission, but "inadvertently did not modify the definitions ... to reflect the new deficiency periods ordered by the Commission in Order No. 17-347."²⁸

27. Prior to the due date for providing an executable PPA, PGE has not informed the vast majority of QFs negotiating PPAs that Schedule 201 includes an error.

²⁷ PGE Presentation on 2016 IRP Update at 12 (Mar. 13, 2018).

²⁸ Re PGE Application to Update Schedule 201 QF Information, Docket No. UM 1728, PGE Second Errata to Compliance Filing of 9/14/17 at 1 (Apr. 12, 2018).

28. Prior to the due date for providing an executable PPA, PGE has not informed the vast majority of QFs negotiating PPAs that will not provide an executable PPA or execute a PPA that includes the currently effective Schedule 201.

29. PGE is refusing to provide some QFs with executable PPAs with the currently effective Schedule 201.

30. PGE has provided executable PPAs with the currently effective Schedule 201, but is refusing to countersign the PPAs because they contain errors.

31. PGE is requiring QFs to agree to replace the currently effective Schedule 201 with the unapproved errata filing to obtain an executable or countersigned PPA.

XI. LEGAL CLAIMS

First Claim for Relief

PGE Should Be Required to Enter into PPAs with the Currently Effective Schedule 201 and is in Violation of Commission Orders and Policies Implementing PURPA and Related Law

32. Complainants incorporate by reference paragraphs 1 through 31.

33. PGE is required to execute PPAs according to its currently effective standard contracts and rate schedules without modification.

34. PGE elected not to correct errors in Schedule 201 for the intent and purpose of delaying the final execution of PPAs.

35. PGE's decision not to correct the errors in Schedule 201 is keeping PGE from providing executable PPAs.

36. PGE's decision not to correct the errors in Schedule 201 is keeping PGE from countersigning partially executable PPAs.

37. PGE's decision not to inform QFs of the errors in Schedule 201 is keeping PGE from countersigning partially executable PPAs.

38. PGE's decision to require QFs to agree to replace the currently effective Schedule 201 with the not yet approved Schedule 201 is delaying PGE from executing PPAs.

39. PGE is illegally refusing to provide executable PPAs.

40. PGE is illegally refusing to countersign partially executable PPAs.

41. PGE is illegally requiring QFs to replace the currently effective Schedule 201 with the filed, but not yet approved, Schedule 201.

42. PGE is providing or has provided undue or unreasonable preference to some but not all QFs by executing PPAs with the currently effective Schedule 201 for some but not all QFs.

43. PGE's business practices are preventing QFs from obtaining the currently approved standard contracts, which violates the plain terms and intent of the Commission's orders and policy implementing PURPA and associated law.

XII. PRAYER FOR RELIEF

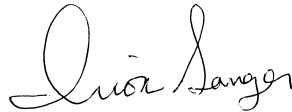
WHEREFORE, Complainants respectfully requests that the Commission issue an order:

1. Directing PGE to cease and desist from any business practices inconsistent with Commission policy and orders; and
2. Declaring that PGE's standard contract was approved by the Commission and must be utilized during PGE's Schedule 201 process until any updates are approved by the Commission;
3. Requiring PGE to continue entering into QF contracts with its currently approved PPA despite PGE's typographical errors;
4. Delaying the effective date for PGE's May 1 Update to allow affected QFs time to finish their Schedule 201 process;

5. Instituting penalties up to \$10,000 under ORS 756.990 against PGE, paid by PGE's shareholders, for each violation of ORS 758.525, 18 CFR 292.303(a), 292.304(d) and Commission orders; and
6. Granting any other such relief, including equitable relief, as the Commission deems necessary.

Dated this 23rd day of April 2018.

Respectfully submitted,



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Of Attorneys for the Community Renewable Energy
Association

CERTIFICATE OF SERVICE

I hereby certify that on the April 23, 2018, on the Renewable Energy 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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