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**V. Denise Saunders**  
*Associate General Counsel*

September 19, 2017

***Via Electronic Filing***

Public Utility Commission of Oregon  
Filing Center  
201 High St SE, Suite 100  
PO Box 1088  
Salem, OR 97308-1088

Re: **UM 1865 – SSD Marion 1 LLC, Complainant vs. Portland General Electric Company, Defendant**

Attention Filing Center:

Enclosed for filing in Docket UM 1865 is Portland General Electric Company's Answer.

Thank you in advance for your assistance.

Sincerely,

A handwritten signature in blue ink that reads "V. Denise Saunders". The signature is written in a cursive, flowing style.

V. Denise Saunders  
Associate General Counsel

VDS:hp

Enclosure

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UM 1865**

SSD MARION 1, LLC,

Complainant,

vs.

PORTLAND GENERAL ELECTRIC  
COMPANY,

Defendant.

**ANSWER OF PORTLAND GENERAL  
ELECTRIC COMPANY**

**I. INTRODUCTION**

Pursuant to ORS 756.512 and OAR 860-001-0400, defendant Portland General Electric Company (“PGE”) submits the following answer (“Answer”) to the complaint (“Complaint”) filed by SSD Marion 1, LLC (“SSD Marion 1” or “Complainant”). PGE has complied with the Commission’s rules and orders and with PGE’s Schedule 201 in processing SSD Marion 1’s request for a power purchase agreement (“PPA”). SSD Marion 1 neglected to follow the process for requesting a PPA which is set forth in PGE’s Schedule 201 and SSD Marion 1 changed material information concerning its project during the contracting process. At the time it filed its Complaint, Complainant was not entitled to an executable PPA for its proposed project, nor had it established a legally enforceable obligation.

## II. SERVICE

Copies of all pleadings, motions and correspondence should be served on PGE's counsel and representatives at the addresses below:

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Associate General Counsel  
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## III. ANSWER

PGE denies each and every allegation contained in the Complaint except as hereinafter expressly admitted.

Unless otherwise specified, the capitalized term "Paragraph" refers to the numbered paragraphs of the Complaint beginning on page five of the Complaint.

The first four pages of the Complaint contain a narrative introduction and legal argument. PGE does not understand the introduction to contain allegations requiring a response. PGE expects to respond to Complainant's narrative and legal arguments as part of the dispositive motion practice or, if needed, at a hearing in this proceeding. In the event the Commission deems the introduction to contain allegations requiring a response, PGE denies the allegations.

In answer to some of the allegations contained in numbered Paragraphs, PGE has indicated that no response is required because the allegations are legal conclusions or legal arguments. If the Commission deems that responses are required in such instances, then PGE denies the allegations in question.

Some of the numbered Paragraphs in the Complaint allege the exchange of written communications between the parties. In answer to some of these numbered Paragraphs, PGE has admitted the existence of the written communications and indicated that the communications

speak for themselves. In these instances, PGE denies all of the allegations in the associated numbered Paragraphs except to the extent that PGE expressly admits an allegation.

Some of the numbered Paragraphs in the Complaint characterize the contents of a Commission order or of a FERC order, or a filing made by PGE in a Commission docket. In answer to these numbered Paragraphs, PGE has indicated that the Commission order, FERC order, or PGE filing speaks for itself. In such instances, PGE denies all of the allegations in the associated numbered Paragraph except to the extent PGE expressly admits an allegation.

In response to the numbered Paragraphs in the Complaint, PGE admits, denies, or otherwise responds as follows:

#### **IDENTITY OF THE PARTIES**

1. PGE admits the allegations contained in Paragraph 1.
2. PGE admits that Complainant has submitted responses to PGE's Schedule 201 Initial Information Form or PGE's Schedule 201 Initial Information Request and that those responses assert the facts alleged in Paragraph 2. PGE lacks information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 and therefore denies them.

#### **APPLICABLE STATUTES AND RULES**

3. The allegations contained in Paragraph 3 constitute legal conclusions to which no response is required.
4. The allegations contained in Paragraph 4 constitute legal conclusions to which no response is required.

## **JURISDICTION**

5. The allegations contained in Paragraph 5 constitute legal conclusions to which no response is required.

6. The allegations contained in Paragraph 6 constitute legal conclusions to which no response is required.

7. The allegations contained in Paragraph 7 constitute legal conclusions to which no response is required.

## **FACTUAL BACKGROUND**

8. PGE admits that on the date the Complaint was filed (August 7, 2017), Complainant was seeking a Schedule 201 PPA from PGE for a proposed 4-megawatt (“MW”) nameplate solar generation facility to be located in Marion County, Oregon.

9. PGE admits that Complainant has proposed a qualifying facility that will directly interconnect to PGE’s system.

10. PGE lacks information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 10 and therefore denies them.

11. PGE lacks information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 11 and therefore denies them.

12. PGE denies the allegations in Paragraph 12.

13. PGE admits the allegations contained in Paragraph 13.

14. PGE admits the allegations contained in Paragraph 14.

15. PGE denies it had any obligation to inform Qualifying Facilities (“QFs”) that it was planning to file a May 1, 2017 price update. PGE is required by Commission Order No. 14-058 to file a May 1 price update each year and all QFs have access to that order. PGE

denies it sought an early effective date; Order No. 14-058 makes it clear that avoided cost prices may be effective *within* 60 days of the May 1 filing.

16. Paragraph 16 does not appear to allege any facts that require a response, and PGE therefore denies any allegations contained in Paragraph 16. PGE admits that it did not directly inform Complainant that PGE made its May 1 update filing.

17. PGE denies the allegations contained in Paragraph 17.

18. Commission Order No. 17-177 issued on May 19, 2017, in Docket No. UM 1728 is publicly available. Order No. 17-177 speaks for itself.

19. PGE admits that SSD Marion 1 sent emails to PGE on June 13, 2017 and June 15, 2017 inquiring about the status of its Schedule 201 request but denies that PGE received the emails or any other inquiries regarding the status of its PPA request prior to June 22, 2017.

20. PGE denies the allegations in Paragraph 20.

21. PGE denies the allegations in Paragraph 21.

22. PGE has been able to find no records showing that on June 15 2017 counsel for SSD Marion 1 contacted counsel for PGE regarding the status of the SSD Marion 1 PPA. PGE therefore denies the allegations in Paragraph 22.

23. PGE admits that on June 22, 2017, counsel for SSD Marion 1 raised concerns regarding the status of SSD Marion 1's request for a PPA with counsel for PGE. Counsel for PGE informed counsel for SSD Marion 1 that PGE had not been able to find any application by SSD Marion 1 for a PPA.

24. PGE denies the allegations in Paragraph 24.

25. PGE admits the allegations in Paragraph 25.

26. PGE admits that after May 1, 2017, it decided to prepare its application and motion for interim relief filed in Docket No. UM 1854. The remainder of the allegations contained in Paragraph 26 characterize PGE's application and motion for interim relief which are available as part of the public record in Docket No. UM 1854 and which speak for themselves; PGE therefore denies all remaining allegations in Paragraph 26.

27. PGE denies that it had any obligation to inform SSD Marion 1 that PGE intended to file PGE's application and motion for interim relief in Docket No. UM 1854. PGE admits that it provided no advanced notice of that filing to SSD Marion 1. PGE denies any other allegations contained in Paragraph 27.

28. PGE denies the allegations contained in Paragraph 28.

29. The allegation contained in Paragraph 29 to the effect that SSD Marion 1 was "materially prejudiced" is a legal conclusion and therefore requires no response. PGE lacks information or knowledge sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 29 and therefore denies them.

30. PGE admits that on July 5, 2017, SSD Marion 1 provided PGE with a letter requesting that PGE calculate its response time for providing a draft PPA or seeking additional information as of May 17, 2017. PGE denies the remaining allegations contained in Paragraph 30.

31. PGE denies the allegations in Paragraph 31.

32. PGE admits that on July 13, 2017, PGE sent SSD Marion 1 a letter asking for clarification of the maximum project output which resulted in a maximum capacity factor well above the industry average and that PGE also inquired about inconsistencies between information provided in the one line and information provided on the Initial Information Form.

PGE admits that because of these inconsistencies PGE was not able to and did not provide a draft PPA. PGE denies the remaining allegations in Paragraph 32.

33. PGE admits that on July 17, 2017, SSD Marion 1 revised its Maximum Output. PGE denies that the change was required by PGE.

34. PGE admits that on July 25, 2017, SSD Marion 1 sent PGE an email containing the statements alleged in Paragraph 34.

35. PGE admits the allegations contained in Paragraph 35.

36. PGE admits the allegations contained in Paragraph 36.

37. PGE admits that on August 4, 2017, in Docket No. LC 66, PGE filed a response to the Commission Staff's July 28, 2017 report. A copy of PGE's August 4, 2017 response is publicly available on the Commission's electronic docket. The allegations in Paragraph 37 attempt to characterize PGE's response, but the document speaks for itself.

38. PGE admits that its August 4, 2017 response in Docket No. LC 66 indicated that the Commission's regular process requires PGE to file updated avoided cost prices within 30 days of Commission acknowledgment of PGE's IRP. PGE admits that its August 4, 2017 response in Docket No. LC 66 indicated that there is a 90-day review period before prices become effective; however, PGE's statement about a 90-day review period was in error.

39. PGE's August 4, 2017 response in Docket No. LC 66 speaks for itself.

40. PGE denies that it had any obligation to provide Complainant with notice that PGE intended to make comments in Docket No. LC 66 that Complainant has labeled or characterized as the "August Early Rate Effective Date Request," and PGE therefore denies all allegations in Paragraph 40.

41. PGE denies the allegations contained in Paragraph 41.



42. The allegation contained in Paragraph 42 to the effect that Complainant was “materially prejudiced” is a legal conclusion and therefore requires no response. PGE lacks information or knowledge sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 42 and therefore denies them.

43. PGE denies the allegations in Paragraph 43.

44. PGE admits that Complainant attached a draft PPA to its August 7, 2017 Complaint, that the attached draft PPA appears to have been signed on August 7, 2017 by Complainant’s manager.

45. The only written correspondence pertaining to Complainant’s request for a PPA that PGE received on August 7, 2017 is the Complaint filed in this proceeding. The Complaint speaks for itself.

## LEGAL CLAIMS

### COMPLAINANT’S FIRST CLAIM FOR RELIEF

**SSD MARION 1 IS ENTITLED TO PGE’S STANDARD CONTRACT WITH CURRENTLY EFFECTIVE SCHEDULE 201 RATES BECAUSE SSD MARION 1 LEGALLY OBLIGATED ITSELF TO SELL THE NET OUTPUT PRIOR TO THE FILING OF THIS COMPLAINT**

46. In answer to the allegations contained in Paragraph 46, PGE repeats and realleges the responses made to Paragraphs 1 through 45.

47. The allegations contained in Paragraph 47 are legal conclusions and do not require a response.

48. The allegations contained in Paragraph 48 are legal conclusions and do not require a response.

49. The allegations contained in Paragraph 49 are legal conclusions and do not require a response.

50. The allegations contained in Paragraph 50 are legal conclusions and do not require a response.

51. The allegations contained in Paragraph 51 are legal conclusions and do not require a response.

52. The allegations contained in Paragraph 52 are legal conclusions and do not require a response.

53. The allegations contained in Paragraph 53 characterize the Commission's decision in Order No. 16-174. That document speaks for itself. To the extent that the allegations in Paragraph 53 are legal conclusions, they do not require a response.

54. The allegations contained in Paragraph 54 characterize cited FERC decisions and are legal arguments. The FERC decisions speak for themselves. To the extent that the allegations in Paragraph 54 are legal arguments, they do not require a response.

55. The allegations contained in Paragraph 55 are legal conclusions or legal arguments and do not require a response.

56. The allegations contained in Paragraph 56 are legal conclusions or legal arguments and do not require a response.

57. The allegations contained in Paragraph 57 are legal conclusions or legal arguments and do not require a response.

58. The allegations contained in Paragraph 58 are legal conclusions or legal arguments and do not require a response.

## COMPLAINANT'S SECOND CLAIM FOR RELIEF

**SSD MARION 1 IS ENTITLED TO PGE'S STANDARD CONTRACT WITH CURRENTLY EFFECTIVE SCHEDULE 201 RATES BECAUSE SSD MARION 1 LEGALLY OBLIGATED ITSELF TO SELL THE NET OUTPUT PRIOR TO THE FILING OF THIS COMPLAINT, AND PGE VIOLATED THE OPUC'S AND FERC'S POLICIES AND RULES, AND SCHEDULE 201**

59. In answer to the allegations contained in Paragraph 59, PGE repeats and realleges the responses made to Paragraphs 1 through 58.

60. The allegations contained in Paragraph 60 characterize the Commission's decision in Order No. 05-584. That document speaks for itself. To the extent that the allegations in Paragraph 60 are legal conclusions, they do not require a response.

61. The allegations contained in Paragraph 61 are legal conclusions or legal arguments and do not require any response.

62. The allegations contained in Paragraph 62 are legal conclusions or legal arguments and do not require a response.

63. The allegations contained in Paragraph 63 constitute legal conclusions or legal arguments to which no response is required. To the extent a response is deemed required, PGE denies that it has violated Schedule 201 and denies that PGE and SSD Marion 1 are in full agreement as to all the terms and conditions of the draft Standard PPA.

64. The allegations contained in Paragraph 64 constitute legal conclusions to which no response is required. To the extent a response is deemed required, PGE denies that it has delayed or obstructed progress towards a final draft or executable contract.

65. The allegations contained in Paragraph 65 constitute legal conclusions to which no response is required.

66. PGE denies the allegations contained in Paragraph 66.

67. PGE admits the allegations contained in Paragraph 67.

68. The allegations contained in Paragraph 68 are legal conclusions or legal arguments and do not require a response.

69. The allegations contained in Paragraph 69 are legal conclusions or legal arguments and do not require a response.

70. The allegations contained in Paragraph 70 are legal conclusions or legal arguments and do not require a response.

71. The allegations contained in Paragraph 71 are legal conclusions or legal arguments and do not require a response.

72. The allegations contained in Paragraph 72 are legal conclusions or legal arguments and do not require a response.

73. The allegations contained in Paragraph 73 are legal conclusions or legal arguments and do not require a response.

74. The allegations contained in Paragraph 74 are legal conclusions or legal arguments and do not require a response.

75. The allegations contained in Paragraph 75 are legal conclusions or legal arguments and do not require a response.

#### **PRAYER FOR RELIEF**

76. PGE denies all allegations contained in Paragraph 1 of Complainant's Prayer for Relief and requests that the Commission deny the relief requested in Paragraph 1 of Complainant's Prayer for Relief.

77. PGE denies all allegations contained in Paragraph 2 of Complainant's Prayer for Relief and requests that the Commission deny the relief requested in Paragraph 2 of Complainant's Prayer for Relief.

78. PGE denies all allegations contained in Paragraph 3 of Complainant's Prayer for Relief and requests that the Commission deny the relief requested in Paragraph 3 of Complainant's Prayer for Relief.

79. PGE denies that it has violated any of the statutes or orders listed in Paragraph 4 of Complainant's Prayer for Relief and requests that the Commission deny the relief requested in Paragraph 4 of Complainant's Prayer for Relief.

80. PGE requests that the Commission deny the relief requested in Paragraph 5 of Complainant's Prayer for Relief.

#### **IV. AFFIRMATIVE DEFENSES**

##### **FIRST AFFIRMATIVE DEFENSE**

81. The Complaint fails to state a claim upon which relief can be granted.

##### **SECOND AFFIRMATIVE DEFENSE**

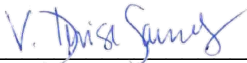
82. Under the terms of Commission Order No. 17-310, Complainant is not entitled to Schedule 201 standard prices because: (A) Complainant has proposed a solar QF project with nameplate capacity of 4 MW; and (B) Complainant alleges that on August 7, 2017, it executed the last draft PPA that PGE provided (Paragraph 44 of the Complaint) and that this established a legally enforceable obligation at the currently effective Schedule 201 rates, and all the terms and conditions in the partially executed final PPA (Paragraph 58 of the Complaint). Order No. 17-310 holds that solar QF projects with nameplate capacity in excess of 3 MW that fully execute a PPA or establish a legally enforceable obligation after July 14, 2017, are not entitled to standard prices and must instead negotiate the prices to be paid.

## V. CONCLUSION

For the foregoing reasons, the Commission should reject the legal claims in the Complaint and deny the relief sought by the Complainant.

Dated this 19th day of September 2017.

Respectfully submitted,



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