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Associate General Counsel

January 11, 2018

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 1877-UM 1882, UM 1884-UM 1886, UM 1888-UM 1890, Bottlenose Solar, LLC,
et al., Complainants, vs. Portland General Electric Company, Defendant**

Attention Filing Center:

Enclosed for filing in the above-captioned dockets are Portland General Electric Company's Response to Complainants' Motion to Compel Discovery and Declaration of Becki Bottemiller.

Thank you for your assistance.

Sincerely,

A handwritten signature in blue ink that reads "V. Denise Saunders".

V. Denise Saunders
Associate General Counsel

VDS:bop

Enclosure

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1877-UM 1882, UM 1884-UM 1886, UM 1888-UM 1890

BOTTLENOSE SOLAR, LLC (UM 1877);
VALHALLA SOLAR, LLC (UM 1878);
WHIPSNAKE SOLAR, LLC (UM 1879);
SKYWARD SOLAR, LLC (UM 1880);
LEATHERBACK SOLAR, LLC (UM 1881);
PIKA SOLAR, LLC (UM 1882);
COTTONTAIL SOLAR, LLC (UM 1884);
OSPREY SOLAR, LLC (UM 1885);
WAPITI SOLAR, LLC (UM 1886);
BIGHORN SOLAR, LLC (UM 1888);
MINKE SOLAR, LLC (UM 1889); and
HARRIER SOLAR, LLC (UM 1890),

Complainants,

vs.

PORTLAND GENERAL ELECTRIC
COMPANY,

Defendant.

**PORLAND GENERAL
ELECTRIC COMPANY'S
RESPONSE TO MOTION TO
COMPEL DISCOVERY**

I. INTRODUCTION

Complainants filed the above-captioned cases against Portland General Electric Company (“PGE”) in an attempt to circumvent PGE’s Commission-approved contracting process for qualifying facilities and bind PGE to terms of draft contracts. Complainants’ motion to compel should be denied, because Complainants seek material that is irrelevant to the merits even assuming that PGE is required to follow a two-stage instead of a three-stage process for contracting. Further, the Commission should deny the motion because the Complainants seek to compel PGE to undertake an unduly burdensome search of thousands of emails and letter communications, necessitating time-intensive privilege and confidentiality reviews, for the

purpose of advancing an argument that will not assist in proving Complainants' claims against PGE.

II. BACKGROUND

A. Overview.

Complainants' motion to compel seeks responses to Complainants' Data Requests Nos. 002 and 003. Those requests seek both a compilation of information relating to all power purchase agreements ("PPAs") that PGE has executed with nearly 90 qualifying facilities ("QFs"), and all the "supporting documents" behind those contracts.¹

The crux of the claims in the twelve above-captioned complaints is that Complainants believe they should be entitled to enforceable contracts with PGE at pre-June 1, 2017, rates, even though Complainants did not execute Standard PPAs with PGE prior to the June 1, 2017 rate change. In support of those claims, Complainants allege that PGE impermissibly delayed the contracting process with Complainants. Specifically, Complainants argue that PGE should have followed a two-stage, rather than a three-stage, process for drafting PPAs with Complainants. Complainants' Data Requests Nos. 002 and 003 demand PGE's communications with other QFs to discover whether the three-stage process is a deviation from PGE's historical practices.

PGE disputes both the legal underpinnings of Complainants' arguments and the factual assertion that PGE engaged in any delay. Based on the allegations in the complaints, none of the Complainants would have been entitled to receive from PGE an executable PPA prior to June 1, 2017, at the pre-June 1 rates, *even if* PGE had used the two-stage process advocated by Complainants. Whether Schedule 201 requires a two-stage, rather than a three-stage, process is therefore not relevant to these facts, and neither are PGE's historical contracting practices. Complainants are not entitled to discovery of irrelevant information, and therefore Complainants' motion to compel should be denied.

¹ Docket Nos. UM 1877-UM 1882, UM 1884-UM 1886, UM 1888-UM 1890, Motion to Compel, Attachment A (Dec. 21, 2017).

B. Three-stage vs. two-stage PPA negotiations.

PGE has adopted a three-stage process for drafting PPAs and implementing Commission Orders.² That process is reflected in PGE's Schedule 201 and was first approved by the Commission in February 2007.³ The process is summarized below:

- Stage One: Once PGE receives all information required in the Standard PPA in writing from the QF, PGE will respond within 15 business days with a draft Standard PPA. The draft Standard PPA is a discussion draft; it is not a binding offer.⁴
- Stage Two: Once the QF receives a draft Standard PPA from PGE, it can indicate that it agrees with all of the terms and conditions in the draft PPA or it can propose revisions. If the QF proposes revisions to the draft Standard PPA, then PGE treats the proposed revisions as a request for a final draft Standard PPA. If PGE requires additional or clarifying information from the QF in order to prepare the final draft Standard PPA, PGE will make its request in writing to the QF within 15 business days.⁵ Once PGE has any additional information that it requires, it will provide the QF with a final draft Standard PPA within 15 business days (if PGE did not require any additional information, it will provide the final draft Standard PPA within 15 business days of the QF's request for revisions).⁶ The final draft Standard PPA is also a discussion draft, which allows the QF to revise its project or propose modifications to the contract. It is not a binding offer.⁷

² See Docket No. UM 1610, Order No. 06-538 at 35-36 (Sep. 20, 2006) (ordering the electric utilities to modify their qualifying facility tariffs to reflect the multi-stage process for entering into standard contracts recommended by Staff).

³ PGE Supplemental Advice No. 06-26, *Schedule 201 Qualifying Facility Power Purchase Information* at First Revision of Sheet 201-2 (effective March 7, 2007); Docket No. UM 1610, Order No. 07-065 (Feb. 27, 2007) (approving PGE Supplemental Advice No. 06-26 as consistent with Order No. 06-538).

⁴ See Docket No. UM 1877, Answer, Exhibit A at 1 (Oct. 11, 2017).

⁵ *Id.* at 2.

⁶ PGE provides a revised draft PPA in response to a request for revisions to the initial draft PPA. If the requested revisions are deemed "substantive" by PGE, then PGE refers to the responsive draft in its communications with QFs as a "revised draft PPA" and if the requested revisions are deemed "non-substantive" by PGE, then PGE refers to the responsive draft in its communications with QFs as a "final draft PPA." In either case, the responsive draft is of the type referred to by Schedule 201 as a final draft Standard PPA. See e.g. Docket No. UM 1877, Answer, Exhibit A at 1 (Oct. 11, 2017).

⁷ Docket No. UM 1877, Answer, Exhibit D at 2 (Oct. 11, 2017.)

- Stage Three: Once the QF and PGE have reached full agreement on all terms and conditions of the draft PPA, PGE will provide the QF with an executable PPA within 15 business days.⁸ As a practical matter, if the QF proposed revisions to the draft standard PPA and received a final draft Standard PPA, then the QF needs to indicate to PGE that it agrees with all terms and conditions in the final draft Standard PPA and request in writing an *executable Standard PPA*, which PGE will provide in 15 business days.⁹ Once the QF receives the executable Standard PPA, the QF can execute it without alteration to establish a legally enforceable obligation with PGE.¹⁰ The power purchase prices QFs are entitled to receive are based on PGE's Standard Avoided Costs or Renewable Avoided Costs in effect at the time the QF executes the executable Standard PPA.¹¹ Once the QF returns the signed executable Standard PPA to PGE and PGE counter-signs the agreement, the parties have a contractual relationship.

To summarize, the three-stage process involves (1) a draft Standard PPA; (2) a final draft Standard PPA; and (3) an executable Standard PPA. If the QF responds immediately to PGE to initiate each subsequent stage, PGE has 45 business days to provide the QF with an executable standard PPA, commencing when the QF submits all required information to PGE. This process can be extended if PGE requires additional or clarifying information necessary to complete the draft and executable contracts, or if the QF requests substantive changes to the contract terms.

In their Motion to Compel, Complainants instead argue that PGE was required to follow a two-stage process, which moves immediately from the draft Standard PPA to the executable Standard PPA, once the terms in a draft PPA are agreed upon.¹² Complainants' proposed two-stage process has the potential to cut the drafting process down by 15 business days. However, upon receiving a draft Standard PPA under a two-stage process, the QF must still indicate to

⁸ See Docket UM 1728, *Revised Application to Update Schedule 201 Qualifying Facility Information*, Schedule 201 at Sheet 201-2 (Sep. 14, 2017) (“When both parties are in full agreement as to all terms and conditions of the draft Standard PPA, the Company will prepare and forward to the Seller a final executable version of the agreement within 15 business days.”).

⁹ *Id.* at 2-3.

¹⁰ *Id.* at 3.

¹¹ *Id.*

¹² Docket Nos. UM 1877-UM 1882, UM 1884-UM 1886, UM 1888-UM 1890, Motion to Compel at 4 (Dec. 21, 2017); see, e.g., Docket No. UM 1877, Complaint at ¶¶ 73, 82-86 (August 7, 2017).

PGE that it is in full agreement as to all terms and conditions of the draft Standard PPA and request an executable Standard PPA. And, even under Complainants' version of the process (which PGE disputes), PGE then has 15 business days from receiving the QF's indication that it is in full agreement with the draft Standard PPA before PGE is required to provide the QF with an executable Standard PPA.¹³

Complainants' formulation of a two-stage process does not address what should occur if a QF responds to a draft Standard PPA by requesting changes to the terms of the draft Standard PPA. In each of the above-captioned cases, the QF requested changes to the draft Standard PPA. PGE first provided a draft Standard PPA; the QF took a few days to consider the draft Standard PPA; then, the QF proposed revisions to the draft Standard PPA *and* simultaneously demanded that PGE provide an executable PPA containing the proposed revisions.¹⁴ But the QF cannot have it both ways. It cannot declare that there is full agreement on all terms and conditions in the draft Standard PPA and at the same time request changes to the draft Standard PPA. When a QF responds to a draft Standard PPA with a request for revised terms, the parties must necessarily engage in an interim process to evaluate those proposed changes before PGE is required to provide any binding, immediately executable Standard PPA.

C. Complainants' contract discussions as alleged in the complaints are admissions that even in a two-stage process, the contracts would not have been signed before June 1, 2017.

Based on the allegations in the complaints, none of the Complainants would have benefited from the 15 business-day reduction in the contracting process, because none of the draft contracts would have been executable before June 1, 2017, under either the two-stage or three-stage process. The timeline for each contract is summarized in the table below, with corresponding cites to each complaint:

¹³ See, e.g., Docket No. UM 1877, Complaint at ¶¶ 73, 82-86 (August 7, 2017).

¹⁴ See e.g. Docket No. UM 1878, Valhalla Complaint at ¶ 24 ("On May 15, 2017, PGE provided Valhalla Solar with a draft PPA.") and at ¶ 27 ("On May 23, 2017, Valhalla Solar sent an email to PGE requesting execution copies of the draft PPA with five changes ..."). The complaints in each of the other above-captioned cases include similar allegations making it clear that PGE provided a draft PPA and the QF then proposed revisions and demanded an executable PPA before the parties reached full agreement on the proposed revisions to the draft PPA.

TABLE A

Project	Docket No. / Developer	QF Provides Initial Info.	PGE Requests Add'l Info.	QF Provides Add'l Info.	PGE Provides Draft Standard PPA (stage 1)	Bus. Days Before June 1, 2017
<u>Bottlenose</u>	UM 1877 Cypress	3/22/17 (Compl. ¶ 10)	4/13/17 (Compl. ¶ 19)	4/27/17 (Compl. ¶ 22)	5/23/17 (Compl. ¶ 36)	6
<u>Whipsnake</u>	UM 1879 Cypress	3/22/17 (Compl. ¶ 9)	4/13/17 (Compl. ¶ 19)	4/27/17 (Compl. ¶ 22)	5/23/17 (Compl. ¶ 36)	6
<u>Leatherback</u>	UM 1881 Cypress	3/22/17 (Compl. ¶ 9)	4/13/17 (Compl. ¶ 19)	4/27/17 (Compl. ¶ 22)	5/23/17 (Compl. ¶ 36)	6
<u>Pika</u>	UM 1882 Cypress	3/22/17 (Compl. ¶ 9)	4/13/17 (Compl. ¶ 19)	4/27/17 (Compl. ¶ 22)	5/23/17 (Compl. ¶ 36)	6
<u>Cottontail</u>	UM 1884 Sabal	3/22/17 (Compl. ¶ 9)	4/13/17 (Compl. ¶ 16)	4/26/17 (Compl. ¶ 17)	5/16/17 (Compl. ¶ 28)	11
<u>Osprey</u>	UM 1885 Sabal	3/22/17 (Compl. ¶ 9)	4/13/17 (Compl. ¶ 14)	4/26/17 (Compl. ¶ 16)	5/16/17 (Compl. ¶ 27)	11
<u>Wapiti</u>	UM 1886 Sabal	3/22/17 (Compl. ¶ 9)	4/13/17 (Compl. ¶ 16)	4/26/17 (Compl. ¶ 17)	5/16/17 (Compl. ¶ 28)	11
<u>Bighorn</u>	UM 1888 Pine Gate	4/4/17 (Compl. ¶ 9)	4/25/17 (Compl. ¶ 15)	5/1/17 (Compl. ¶ 16)	5/18/17 (Compl. ¶ 28)	9
<u>Minke</u>	UM 1889 Pine Gate	4/4/17 (Compl. ¶ 9)	4/25/17 (Compl. ¶ 15)	5/1/17 (Compl. ¶ 16)	5/18/17 (Compl. ¶ 28)	9
<u>Harrier</u>	UM 1890 Pine Gate	4/4/17 (Compl. ¶ 9)	4/25/17 (Compl. ¶ 15)	5/1/17 (Compl. ¶ 16)	5/18/17 (Compl. ¶ 28)	9
<u>Valhalla</u>	UM 1878 Cypress	4/26/17 (Compl. ¶ 10)	N/A	N/A	5/15/17 (Compl. ¶ 24)	12
<u>Skyward</u>	UM 1880 Cypress	4/26/17 (Compl. ¶ 10)	N/A	N/A	5/15/17 (Compl. ¶ 24)	12

In every case, even if the QF had immediately requested an executable Standard PPA, in writing, upon receiving the Stage One draft Standard PPA from PGE, PGE would not have been obligated to provide any executable contract to the QF prior to June 1, 2017. Therefore, the question of a two-stage versus a three-stage process is irrelevant.

D. The parties' discussions regarding discovery.

To date, Complainants have not acknowledged the legal effect of the above timelines. Instead, Complainants have requested broad discovery from PGE to support their flawed theory that PGE should be bound to the two-stage process.

Complainants' Data Request No. 002 requests:

For the last ten years, please provide for each QF contract that PGE executed:

- a. The date that PGE provided the draft PPA;
- b. The date that PGE provided the final PPA; and
- c. The date that PGE provided the executable PPA.

Complainants Data Request No. 003 requests:

Please confirm that it is PGE's position that PGE follows a three-stage process with all requests for standard QF contracts that involves: 1) a draft Standard power purchase agreement ("PPA"); 2) a final draft Standard PPF; and 3) an executable PPA. If that is not PGE's position, please explain when PGE uses this kind of three-stage process and when it does not. Please also:

- a. Provide PGE's policy regarding the three-stage process described above, and any internal communications developing PGE's policy and/or process for negotiating QF PPAs.
- b. Provide any internal communications developing or implementing the process utilized during the PPA negotiations with Complainants.
- c. Explain when PGE adopted this policy regarding the three-stage process described above, or otherwise began implementing the process for standard contract QFs. Please explain how and when PGE adopted this policy.
- d. Please identify each QF that PGE has entered into a PPA with since PGE adopted the three-stage process described above, and indicate whether PGE followed the three-stage process, and confirm whether PGE required each of the QFs to be provided a draft PPA, a final PPA and then an executable PPA.
- e. Please identify each QF requesting a PPA, that PGE provided an executable PPA, since PGE adopted the three-stage process described above, and indicate whether PGE followed the three-stage process, and confirm whether PGE required each of the QFs to be provided a draft PPA, a final PPA and then an executable PPA.
- f. For the responses to data requests 3d and 3e, please provide supporting documents supporting whether PGE followed the three-stage process described above.

PGE responded to the data requests by first objecting on the basis that the requests are vague, ambiguous, overly broad, unduly burdensome, may seek irrelevant, confidential, or privileged information, and that the requests require PGE to develop or prepare a study for Complainants. PGE further responded and explained that:

(1) PGE began tracking the processing of standard QF PPAs in May 2017. PGE provided Complainants with the three monthly compliance reports that PGE has filed to date. Those reports document PGE's implementation of the three-stage process.¹⁵

(2) PGE confirmed it follows the three-stage process articulated above, adopted in compliance with Commission Order No. 06-538 in October 2006.¹⁶

(3) PGE does not negotiate standard QF contracts and therefore has no internal communications developing PGE's policy and/or process for negotiating standard QF contracts.¹⁷

(4) PGE provided a list of currently effective PPAs that had been executed since October 2006.¹⁸

Counsel for PGE discussed with counsel for Complainants the burden on PGE associated with preparing the analysis requested in Data Request Nos. 002, 003d, and 003e. Counsel for Complainants was unwilling to restrict the scope of the request unless PGE stipulated that it did not consistently follow the three-stage process prior to September 2016.

III. DISCUSSION

A. Applicable legal standards.

Parties in a proceeding before the Commission must conduct discovery pursuant to the Commission's rules and the Oregon Rules of Civil Procedure, which the Commission follows except where the Commission's rules differ.¹⁹ When assessing the merits of a motion to compel filed pursuant to OAR 860-001-0500(7), the Commission evaluates, first, whether the data request seeks relevant information. If the information is not relevant, it is not discoverable.²⁰ Relevant evidence is evidence "tending to make the existence of any fact at issue in the proceedings more or less probable than it would be without the evidence" and "is admissible if it

¹⁵ PGE Response to DR No. 002 (Nov. 21, 2017).

¹⁶ PGE Response to DR No. 003 (Nov. 21, 2017).

¹⁷ *Id.*

¹⁸ PGE Response to DR No. 002 (Nov. 21, 2017).

¹⁹ *In re PGE*, Order No. 98-294 at 3.

²⁰ ORCP 36 B(1); see also *In re Pacific Power & Light, dba PacifiCorp*, Docket No. UE 177, Order No. 08-003 (2008).

is of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs.”²¹

Even if the information requested is arguably relevant, the Commission must next assess whether the data request is unreasonably cumulative, duplicative, burdensome, or overly broad.²² Reasonableness is determined by the needs of the case, the resources available to the parties, and the importance of the issues to which the discovery relates.²³

The Commission should therefore deny the motion to compel if the information requested is not relevant to the claims or defenses at issue, or if the data request is unreasonable, as determined by the considerations in OAR 0860-001-0500(1).

B. Complainants’ motion to compel should be denied because complainants seek information irrelevant to these proceedings.

As demonstrated in Table A, above, the facts alleged in the complaints demonstrate that *even if* PGE were held to a two-stage process in negotiations with Complainants, Complainants still would not have had executable PPAs prior to June 1, 2017. Consequently, any inquiry into the three-stage versus two-stage process, and PGE’s historical practices relating thereto, is irrelevant and therefore not discoverable.

Complainants’ motion and data requests do not take issue with PGE’s 15 business-day turnaround. Nor do Complainants attack PGE’s policy that the power purchase prices established in the PPA are based on PGE’s Standard Avoided Costs or Renewable Avoided Costs in effect at the time the QF executes the executable Standard PPA. Instead, Complainants focus solely on whether PGE is entitled to provide the QF with a final draft Standard PPA before providing the QF with an executable Standard PPA.

Table A, above, demonstrates that none of the Complainants were entitled to an executable Standard PPA prior to June 1, 2017. In every case, there were less than 15 business days from when the complainant received a draft Standard PPA and June 1. Table B, below, illustrates the earliest possible date that each Complainant would have received an executable

²¹ OAR 860-001-0450(1).

²² OAR 860-001-0500(2); *see also* ORCP 36 C.

²³ OAR 0860-001-0500(1).

Standard PPA under both the two-stage and three-stage process. Even under a two-stage process, no Complainant would have received an executable PPA with pre-June 1, 2017 rates.

TABLE B

Project	Docket No. / Developer	PGE Provides Draft Standard PPA	Bus. Days Before June 1, 2017	Two-Stage Process: Earliest Date for Executable PPA	Three-Stage Process: Earliest Date for Executable PPA
<u>Bottlenose</u>	UM 1877 Cypress	5/23/17	6	6/13/2017	7/5/2017
<u>Whipsnake</u>	UM 1879 Cypress	5/23/17	6	6/13/2017	7/5/2017
<u>Leatherback</u>	UM 1881 Cypress	5/23/17	6	6/13/2017	7/5/2017
<u>Pika</u>	UM 1882 Cypress	5/23/17	6	6/13/2017	7/5/2017
<u>Cottontail</u>	UM 1884 Sabal	5/16/17	11	6/6/2017	6/27/2017
<u>Osprey</u>	UM 1885 Sabal	5/16/17	11	6/6/2017	6/27/2017
<u>Wapiti</u>	UM 1886 Sabal	5/16/17	11	6/6/2017	6/27/2017
<u>Bighorn</u>	UM 1888 Pine Gate	5/18/17	9	6/8/2017	6/29/2017
<u>Minke</u>	UM 1889 Pine Gate	5/18/17	9	6/8/2017	6/29/2017
<u>Harrier</u>	UM 1890 Pine Gate	5/18/17	9	6/8/2017	6/29/2017
<u>Valhalla</u>	UM 1878 Cypress	5/15/17	12	6/5/2017	6/26/2017
<u>Skyward</u>	UM 1880 Cypress	5/15/17	12	6/5/2017	6/26/2017

The two-stage versus three-stage inquiry is therefore irrelevant to these proceedings, and Complainants' motion to compel information about whether PGE has historically followed a three-stage process should be denied.

The Commission's opinion and order *In the Matter of Pacific Power & Light, dba PacifiCorp*, Docket No. UE 177, Order No. 08-003 (2008), is instructive. The Industrial Customers of Northwest Utilities ("ICNU") moved to compel PacifiCorp to disclose the net operating loss deductions and special deductions on an affiliate-by-affiliate basis for approximately 600 entities.²⁴ The Commission denied ICNU's motion because the requested

²⁴ *In the Matter of Pacific Power & Light, dba PacifiCorp*, Docket No. UE 177, Order No. 08-003 at 1 (Jan. 4, 2008).

information would not assist IGNU in determining whether the information contained in PacifiCorp’s tax report was accurate.²⁵ The affiliate information was not necessary to answer the questions at issue in the proceeding, would not lead to the discovery of admissible evidence, and therefore was not discoverable.²⁶

Similarly, an inquiry into PGE’s historic contracting practices in order to determine whether PGE routinely implements a three-stage process for Standard PPA contracting will not assist Complainants in establishing any of their claims. Complainants would not be in any better position if PGE had used a two-stage process rather than a three-stage process. Complainants’ Data Requests Nos. 002 and 003 are irrelevant, and Complainants’ motion should be denied.

C. Complainants’ motion to compel should be denied because complainants’ data requests are unreasonably burdensome and overbroad.

Complainants’ motion should also be denied because the data requests impose an undue burden on PGE that is unreasonable given the needs of the case and the issues to which the discovery relates.²⁷ As discussed above, the information requested has no importance because the claims fail even if PGE is held to a two-stage process. Further, even if the information sought was relevant, the significant burden imposed on PGE in complying with the requests is unreasonable.

1. Complainants’ requests are unduly burdensome and overbroad because they would require PGE to examine every communication it has had with any QF in connection with a standard PPA.

The data requests demand that PGE create a summary of each PPA that PGE executed for the last ten years, as well as the “supporting documents supporting whether PGE followed the three-stage process . . .”²⁸ As PGE explained in its response to the data requests, PGE does not have any internal policies regarding the negotiation of standard QF PPAs.²⁹ Nor did PGE track its implementation of the three-stage process until May 2017.³⁰ Consequently, the only way for

²⁵ *Id.* at 3.

²⁶ See *id.* at 2-3.

²⁷ See OAR 0860-001-0500(1).

²⁸ DR No. 002; DR No. 003d, 003e, 003f.

²⁹ PGE Resp. to DR No. 003.

³⁰ *Id.*

PGE to compile the requested information and provide “supporting documents” is to examine every communication it has had with any QF in connection with a standard PPA. That review is extremely time-consuming and requires multiple layers of content and privilege review, which imposes significant costs on PGE.

PGE has undertaken an initial assessment of how it might go about obtaining and reviewing the universe of documents supporting its PPA contracting processes, and that assessment demonstrates that the Complainants’ request creates an undue burden on PGE. First, PGE is constrained by its own corporate document retention policy and by which email archives are accessible. The requested communications for each executed PPA exist in the emails of PGE’s employees tasked with preparing PPAs. PGE does not retain emails that were sent prior to 2013.³¹ Consequently, PGE cannot produce any communications with QFs relating to executed PPAs prior to 2013.

Second, communications with QFs that signed a Standard PPA may include information and documents other than simply the three transmittal communications identified by Complainants. For example, PGE may communicate with the QFs to answer questions, or to acquire additional or clarifying information necessary to prepare the standard PPA. The QF may also request changes to the terms of the draft Standard PPA. If those changes are substantive, the requested changes trigger an entirely new draft Standard PPA and restart the process. In order to identify the dates that each stage occurred for each PPA, PGE must review each and every communication with a QF to prepare the complete picture of that specific PPA.

Third, PGE has had different employees communicating with QFs and drafting Standard PPAs over the past five years.³² PGE ran a list of potential search terms against four custodians from September 1, 2016, to the present, and the search resulted in approximately 4,515 potentially responsive emails.³³ Extrapolating to a five-year time span, the requested universe of potentially responsive documents may total over 20,000.

³¹ Decl. Becki Bottemiller in support of Resp. to Mot. to Compel (Bottemiller Decl.) ¶ 2.

³² See Bottemiller Decl. ¶ 3.

³³ *Id.*

Fourth, once PGE has identified all the potentially responsive documents, PGE's employees and lawyers must review the documents to ensure they relate to the Schedule 201 Standard PPA contracting process, do not include confidential information of either PGE or the QF relating to other contracts or matters, and do not involve attorney-client privileged information. This potentially requires three separate layers of review, all of which would require significant employee and attorney time. The foregoing assessment is based on an initial assessment of the potentially responsive documents. The review could increase significantly if PGE discovers additional hurdles to its review, analysis, and production of the requested documents, or additional custodians. Regardless of the limited utility (if any) of the requested information, the projected burden on PGE to comply with the data requests is unreasonable, and the motion should be denied.

2. Complainants do not alleviate this burden by requesting only the underlying documents.

Even if Complainants withdraw their request for PGE to compile the information into a summary, PGE will still be required to undertake the steps articulated above. PGE cannot be compelled to blindly turn over its contract discussions with nonparties without first determining if those discussions are responsive, if they contain confidential information, or if they involve attorney-client communications.³⁴ Further, a cursory glance at Complainants' data requests and motion to compel shows that Complainants' requests are not limited to only 258 documents. Complainants' motion requests the "underlying" documents "supporting whether PGE followed the three-stage process."³⁵ The breadth of the request and the way the information is saved by PGE necessitates a thorough review of the universe of potentially responsive email communications.

Consequently, PGE will still have to review each document before producing anything to Complainants. Complainants' offer to assume the burden of compiling the information therefore does not alleviate any burden imposed on PGE. In the event the Commission is inclined to

³⁴ See ORCP 36 C(7); ORS 40.225(2).

³⁵ Motion to Compel at 5, 10-11.

permit any discovery into these issues, PGE requests a scheduling conference to discuss the scope of document collection, review, analysis, and production, and to determine an appropriate schedule for PGE's response.

IV. CONCLUSION

None of the Complainants would have been entitled to execute an enforceable PPA before June 1, 2017, even if PGE had been bound to follow a two-stage, rather than a three-stage, process. Consequently, a historical inquiry into PGE's implementation of the three-stage contracting process for Standard PPAs with nonparty QFs will not assist the Commission in determining any issue relevant to the allegations in the complaints. Furthermore, the significant burden imposed on PGE in complying with the data requests only to produce and compile irrelevant information is unreasonable. PGE therefore respectfully requests the Commission deny Complainants' Motion to Compel.

DATED this 11th day of January, 2018.

Respectfully submitted,



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BIGHORN SOLAR, LLC (UM 1888);
MINKE SOLAR, LLC (UM 1889); and
HARRIER SOLAR, LLC (UM 1890),

Complainants,

vs.

PORTLAND GENERAL ELECTRIC
COMPANY,

Defendant.

**DECLARATION OF BECKI
BOTTEMILLER IN SUPPORT OF
PORTLAND GENERAL ELECTRIC
COMPANY'S RESPONSE TO
MOTION TO COMPEL
DISCOVERY**

I, Becki Bottemiller, declare under penalty of perjury under the laws of the State of Oregon:

1. My name is Becki Bottemiller. I have been employed by Portland General Electric Company (“PGE”) as a Specialist—Paralegal since June 2015. Previously, I was employed as a legal assistant at PGE since 2008. My current job duties include assisting with litigation matters; performing and managing document hold order processes and document productions; assisting with internal investigations; assisting with electronic discovery

(“eDiscovery”); representing PGE in all small claims cases; gathering, reviewing and preparing personnel file requests; and answering subpoenas on behalf of PGE.

2. I am familiar with PGE’s email and document retention policies. PGE does not retain emails sent prior to 2013.

3. I conducted an initial search of potential search terms against the email inboxes of four custodians identified as employees who may have emails responsive to Complainants’ Data Requests Nos. 002 and 003. My search only looked for emails sent and received from September 1, 2016, through late December 2017. The search resulted in approximately 4,515 responsive emails for those custodians.

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

DATED this 11th day of January, 2018.



Becki Bottemiller