BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1931

PORTLAND GENERAL ELECTRIC COMPANY, Complainant, v. ALFALFA SOLAR I LLC, et al. Defendants.	)	COMMUNITY RENEWABLE ENERGY ASSOCIATION'S COMMENTS ON SCHEDULE

I. INTRODUCTION

Pursuant to ORS § 756.525 and OAR § 860-001-0300(2), the Community Renewable Energy Association ("CREA") submit comments regarding the scope of the proceeding to the Oregon Public Utility Commission (the "Commission").

II. COMMENTS

CREA urges the Commission to adopt a schedule that expeditiously resolves the issues raised in this proceeding. The norm throughout the country, and as been the standard course for decades in Oregon, is that executed PURPA contracts have been interpreted by courts. The Commission, however, surprised independent power producers by asserting jurisdiction over certain disputes in executed contracts between QFs and utilities. This shocked the development community confirming legitimate concerns that the Commission is biased in favor of utilities, may fail to interpret contracts consistent with their objectively plain meaning and industry practice. Furthermore, the industry is deeply anxious fearing the Commission, will ultimately support the utilities'

aggressive efforts to put their independent power producer competition out of business by punishing QF developers when they dare to dispute PGE's positions. A QF developer should be able to rely upon its executed contract and have confidence that a fair and impartial decision maker will expeditiously resolve its disputes. These basic legal principles that ordinary American businesses take for granted are now in question as they apply to QF and utility contract disputes in Oregon.

QFs should not be forced into time consuming and expensive litigation simply to obtain a Commission resolution of an important contract dispute. The vast majority of QFs continue to be smaller developers without the resources to engage in complex and expensive litigation – especially before completion of financing of a greenfield facility. Even the larger and more sophisticated developers cannot match the utilities' resources as their expenses come directly out their own pockets and every day of delay and distraction increases their costs and odds their projects fail. The Commission should not let PGE spend ratepayer dollars to use discovery, motions practice or other litigation tactics to wear down opposing parties by forcing delays, increasing costs, and pushing off the ultimate resolution of disputes.

PGE's tactics in UM 1805 in which the Commission interpreted its fifteen-year fixed price term on a going forward basis are illustrative. In that proceeding, the Administrative Law Judge explained that the issue was "a straightforward question" of whether the fixed prices "term begin on the date that the contract is executed or upon the date that the QF begins to deliver its net output to the utility?" The case was resolved through motions for summary judgment, and it had no discovery, no testimony, no hearing, no pre-hearing and no post-hearing briefs. Yet, PGE drug the case out for over a

year and half, requiring three separate Commission orders. Absent pro bono support, a typical small QF developer, especially one with time sensitive development needs, cannot afford to have its dispute resolved in such a manner. No one knows this better than PGE.

The current case (Docket No. UM 1931) is egregious because the Commission has already provided clarity regarding its policy on the fixed prices and PGE promised a federal district judge that it would not oppose expedited resolution. What procedural hurdles and delay tactics can QFs expect when PGE has not agreed to promptly resolve a case or when there is a genuine ambiguity?

So far, the message is clear to the development community: it will be time-consuming, expensive and difficult to obtain even the simplest QF contract interpretations before the Commission. This means that PGE wins most of its contract disputes well before any litigation could be pursued because it is simply not worth (or the developer does not have) the time or money to engage in such never-ending regulatory proceedings. In the end, the risk of delay alone can often be too great to justify litigation of an issue, regardless of how unreasonable or egregious PGE's actions may be.

Every time PGE makes an unreasonable, incorrect or unsupportable assertion about a contract meaning—even when in direct contradiction to clearly understandable Commission policy or rules—it becomes a decision point for the developer. The power relationship between the QF and PGE is patently unequal, and the QF must decide whether the cost and risk of such a dispute is worth simply cowing to PGE or finding some other method to avoid the dispute. Docket Nos. UM 1931 and UM 1805, among other proceedings, have demonstrated the costs of such a dispute, even on an essentially indisputable matter.

CREA supports the defendants' proposed schedule and effort to resolve this dispute expeditiously through their Motion for Summary Disposition. The core issue is one of contract interpretation. Without discovery and through a motion for summary judgment, the Commission can decide that the plain meaning of the power purchase agreements—which are nothing more than completed standard form contracts—require that the QF be paid for fifteen years of fixed prices after power deliveries, rather than 12 or 13 years of payments that would be the case if the fixed price "payment" ran from contract execution.

The Commission, moreover, has already clarified its policy that the fifteen-year period for fixed prices begins at power deliveries, so this should be an exceedingly simple dispute to resolve. This is a simple and straightforward issue, and the Commission should provide the QF defendants a simple and straightforward manner of resolving this dispute expeditiously and without unnecessarily expending resources to litigate procedural and discovery matters.

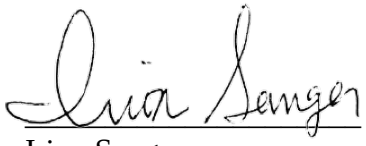
The Commission's actions in these first cases in which it has asserted its jurisdiction will set the tone regarding whether it will provide QFs with access to reliable rule of law in Oregon. Acting with swiftness will be as important for overall market stability and the financeablility of QFs, as well as to avoid wasting Commission resources on matters which do not merit undue complication to resolve. Ultimately, the Commission should send a message to PGE that its strategy of petty and abusive behavior towards QFs will not be tolerated.

III. CONCLUSION

CREA respectfully requests that the Commission set a schedule that expeditiously allows the QF defendants an opportunity to resolve the disputed issues without needing to conduct discovery or engage in expensive and complex litigation. Specifically, the dispute should be resolved through the recently-filed Motion for Summary Disposition without any discovery.

Dated this 20th day of July 2018.

Respectfully submitted,



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