



**Portland General Electric Company**  
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**David F. White**  
*Associate General Counsel*

May 30, 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 1931 – Portland General Electric Company vs. Alfalfa Solar I LLC, et al.**

Attention Filing Center:

Enclosed for filing in Docket UM 1931 is Portland General Electric Company's Response to Defendants' Renewed Motion to Stay Proceeding and Extend Time to File an Answer.

Thank you in advance for your assistance.

Sincerely,

A handwritten signature in blue ink that reads "David F. White". The signature is written in a cursive, flowing style.

David F. White  
Associate General Counsel

DFW:jlh

Enclosure

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UM 1931**

PORTLAND GENERAL ELECTRIC  
COMPANY,

Complainant,

vs.

ALFALFA SOLAR I LLC, DAYTON  
SOLAR I LLC, FORT ROCK SOLAR I LLC,  
FORT ROCK SOLAR II LLC, FORT ROCK  
SOLAR IV LLC, HARNEY SOLAR I LLC,  
RILEY SOLAR I LLC, STARVATION  
SOLAR I LLC, TYGH VALLEY SOLAR I  
LLC, WASCO SOLAR I LLC,

Defendants.

**PORTLAND GENERAL  
ELECTRIC COMPANY'S  
RESPONSE TO DEFENDANTS'  
RENEWED MOTION TO STAY  
PROCEEDING AND EXTEND  
TIME TO FILE AN ANSWER**

Pursuant to OAR 860-001-0420(4), Portland General Electric Company (“PGE”) respectfully submits this response in opposition to Defendants’ renewed motion for a stay filed on May 25, 2018. Pursuant to stipulation between the parties, Defendants’ answer to PGE’s complaint is currently due on June 4, 2018.<sup>1</sup> While Defendants have had four months to prepare their answer, PGE is willing to agree to a one-week extension so that the answer is due on June 11, 2018. PGE opposes a stay or indefinite extension of the deadline to file an answer.

**I. BACKGROUND**

Defendants have entered into standard power purchase agreements (“Standard PPAs”) with PGE for the output of 10 proposed solar qualifying facilities (“QFs”). Under those Standard PPAs, the Seller may select a contract term up to a maximum of 20 years;<sup>2</sup> PGE is required to offer fixed prices for 15 years;<sup>3</sup> and Sellers with Standard PPAs exceeding 15 years then receive market prices for all years up to five after the expiration of

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<sup>1</sup> See PGE’s Response to Defendants’ Motion to Stay Proceedings and to Extend Time to Answer the Complaint at 10 (February 9, 2018) (noting that the parties stipulated that Defendants’ answer would be due 10 days after any Commission order denying Defendants’ motion to dismiss); see also Defendants’ Renewed Motion to Stay Proceedings and to Extend Time to Answer the Complaint at 4 (May 25, 2018) (stating it appears the current schedule for Defendants to file an answer is within 10 days of Order No. 18-174, that is by June 4, 2018).

<sup>2</sup> PGE’s Complaint, Exhibit 1 at 25 and 36.

<sup>3</sup> PGE’s Complaint, Exhibit 1 at 2, 6, 10 and 30.

the 15-year period of fixed prices.<sup>4</sup> The parties' dispute is about when, under the terms of the Standard PPAs, the 15-year fixed-price period begins. PGE believes the terms of the Standard PPAs provide that the 15-year fixed-price period begins when the contract term begins—at contract execution.<sup>5</sup> Defendants believe the 15-year fixed-price period does not begin until the Seller achieves commercial operation<sup>6</sup>—a date that can occur as many as four years after contract execution.<sup>7</sup>

On January 8, 2018, Defendants filed a complaint against PGE before the United States District Court for the District of Oregon seeking a declaration of when the 15-year fixed price period begins to run. On January 25, 2018, PGE filed a complaint with the Commission seeking its answer to the same question.

Defendants' answer was originally due February 15, 2018. On February 2, 2018, Defendants filed three procedural motions. First, Defendants moved the Commission to stay the complaint proceeding until after the federal court decided whether to grant or deny PGE's motion to dismiss or stay the federal case in favor of the Commission's primary jurisdiction.<sup>8</sup> Second, and in the alternative to a stay, Defendants moved the Commission to extend the deadline for an answer until after Defendants could file a motion to dismiss PGE's complaint and the Commission decided the motion to dismiss.<sup>9</sup> Third, Defendants moved for expedited consideration of the first two motions and a short-term extension of the deadline to file an answer or a motion to dismiss until February 22, 2018. In this third motion, Defendants stated:

The NewSun QFs note that they request as alternative relief in the Motion to Stay Proceeding that, if the commission does not stay this proceeding,

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<sup>4</sup> PGE's Complaint, Exhibit 1 at 30.

<sup>5</sup> PGE's Complaint ¶¶ 9-11.

<sup>6</sup> See Docket No. UM 1931, Defendants' Motion to Stay Proceedings at Exhibit A (NewSun QFs' Complaint in U.S. Dist. Court. Case No. 3:18-cv-00040) at ¶ 7 (Feb. 2, 2018).

<sup>7</sup> PGE's Complaint, Exhibit 1 at 7, 12 and 13.

<sup>8</sup> Defendants' Motion to Stay Proceeding or, in the Alternative, to Extend Time to Answer the Complaint Until After Resolution of a Motion to Dismiss at 3-6 (February 2, 2018).

<sup>9</sup> *Id.* at 6-7 (February 2, 2018).

the NewSun QFs be allowed to file a motion to dismiss in lieu of an answer.<sup>10</sup>

PGE did not oppose the third motion for expedited consideration. PGE filed its response in opposition to the first two motions on February 9, 2018. In its response in opposition, PGE noted that the parties had stipulated that “in the event the stay motion is denied, NewSun can file a motion to dismiss before filing an answer, and will then file its answer, if at all, within 10 days of the Commission’s decision on NewSun’s motion to dismiss.”<sup>11</sup> The Commission did not take action on the first two motions before February 22, 2018, and on that date Defendants filed a motion to dismiss PGE’s complaint. Defendants argued that the Commission should dismiss under the “first to file” doctrine and because the Commission lacked subject matter jurisdiction.<sup>12</sup>

On May 23, 2018, the Commission issued Order No. 18-174 in which it denied Defendants’ motion to dismiss and made it clear the Commission believes it has concurrent jurisdiction with the federal court and that the Commission intends to exercise that concurrent jurisdiction and move forward with PGE’s complaint. As a result, there is no basis to stay PGE’s complaint proceeding or the deadline for Defendants to file an answer to PGE’s complaint. On February 2, 2018, Defendants filed a motion for stay, or in the alternative, for extension of time to file an answer until after Defendants filed and the Commission decided Defendants’ motion to dismiss. The Commission did not grant the requested stay but did allow Defendants to file a motion to dismiss and the Commission denied that motion. In effect, the Commission denied the February 2, 2018 request for a stay and granted the February 2, 2018 request to extend the deadline to file an answer. At a minimum, the Commission has not granted Defendants’ May 2 motion to stay this

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<sup>10</sup> Defendants’ Unopposed Motion for Expedited Consideration of Motion to Stay Proceedings and to Extend Time to Answer the Complaint at 3 (February 2, 2018).

<sup>11</sup> PGE’s Response to Defendants’ Motion to Stay Proceedings and to Extend Time to Answer the Complaint at 10 (February 9, 2018).

<sup>12</sup> Defendants’ Motion to Dismiss at 1-2 (Feb. 22, 2018).

proceeding so there is no basis to delay any further the deadline for filing Defendants' answer now that the Commission has denied Defendants' motion to dismiss. An answer is now due June 4, 2018, under the extended deadline stipulated by the parties.

## **II. RESPONSE OPPOSING A STAY**

There is no basis upon which to grant a stay of the Commission proceeding pending the outcome of PGE's motion to dismiss in the federal court. Indeed, a stay would delay Commission resolution of this matter which is inconsistent with Defendants' assertion in the federal case that the federal court should not wait for the Commission to issue a substantive ruling in this docket because of possible delays and Defendants' alleged need an immediate resolution of this matter in order to proceed with the financing and construction of their proposed projects. The Commission *de facto* provided Defendants with the alternative relief they requested on February 2, 2018 (an extension of the deadline to file an answer until after Defendants filed and the Commission ruled on Defendant's motion to dismiss). The Commission also *de facto* denied the other relief requested by defendants on February 2, 2018 (Defendants' request for stay pending the outcome of PGE's motion to dismiss in the federal court).

In any event, it is clear that Commission has not granted Defendants' request to stay this proceeding in light of the federal court litigation. Defendants have known since mid-February 2018 that they would be required to file an answer 10 days after any Commission order denying their motion to dismiss. And Defendants have had four months to prepare an answer responding to PGE's January 25, 2018 complaint. There is no basis upon which to grant a stay and doing so would needlessly delay the resolution of this case.

In their May 25, 2018 renewed motion for stay, Defendants assert that they need additional time to answer because they must prepare for and participate in oral argument

before the federal court on May 30, 2018.<sup>13</sup> If Defendants require additional time because of the oral argument in the federal court, then PGE is willing to agree to a one-week extension of the deadline for Defendants to file their answer such that the answer would be due June 11, 2018, rather than June 4, 2018. However, PGE opposes any additional stay or extension of the deadline to file an answer. Defendants have already delayed filing an answer by months and the Commission should require the Defendants to answer so that this case can proceed.

In addition to the reasons discussed above, the Commission should deny Defendants' renewed motion to stay the proceeding for the reasons briefed by PGE in its February 9, 2018 response in opposition to Defendant's original motion seeking a stay. Rather than reiterate those arguments here, PGE incorporates them by this reference.

### III. CONCLUSION

For the reasons discussed above, PGE respectfully requests that the Commission deny Defendants' May 25, 2018 renewed motion to stay these proceedings. As discussed above, PGE is willing to agree to a one-week extension—until June 11, 2018—of the current June 4, 2018 deadline for Defendants to file their answer.

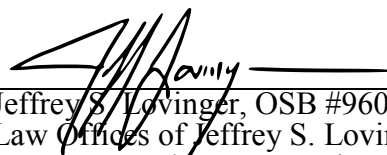
DATED this 30th day of May, 2018.

Respectfully submitted,



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<sup>13</sup> Defendants' Renewed Motion to Stay Proceeding and Extend Time to File an Answer at 5 (May 25, 2018).