

RESPONSE OPPOSING EXPEDITED BRIEFING SCHEDULE

The Commission should deny Defendants' request to expedite the briefing schedule. Defendants have not demonstrated good cause, or any cause, to expedite the schedule. Defendants suggest, without explanation or even a hypothetical example, that without an accelerated briefing schedule, Defendants' motion to strike will delay the overall procedural schedule for resolution of UM 1931 and will hinder Defendants' ability to finance and construct their proposed projects.¹ But Defendants have submitted no evidence that a one-week difference in PGE's response period will impact the procedural schedule for this proceeding or the viability of Defendants' projects.

In addition, there is no practical reason to grant the request for expedited briefing. Even under an expedited schedule, no decision on the motion to strike will be issued before Defendants' response testimony is due on December 28, 2018, and Defendants have indicated that they do not seek a stay of their obligation to file testimony pending resolution of their motion to strike.²

Just as importantly, any timing dilemma faced by the projects is a problem of Defendants' own making. Defendants could have filed a complaint with the Commission seeking resolution of the parties' dispute at any time after December 14, 2015 – the date PGE's in-house counsel informed Defendants in writing that the 15-year fixed price period runs from contract execution and refused Defendants' request to modify the standard contract to make the 15-years run from commercial operation.³ Defendants

¹ Defendants' Motion to Strike at 3 (Dec. 16, 2018).

² *Id.*

³ PGE/200, True/10-11 (describing December 14, 2015 letter from PGE attorney Denise Saunders to Defendants' attorney Greg Adams indicating that under the contract forms used for Defendants' power purchase agreements, the 15-year fixed price period begins at contract execution) and PGE/214 at 1 (copy of December 14, 2015 letter from Denise Saunders to Bruce True).

chose to sign the standard contracts without their requested change and not to file a complaint with the Commission. Instead, Defendants initially delayed the resolution of this Commission proceeding by five months by repeatedly moving to stay or dismiss the case.⁴ Administrative Law Judge Allan Arlow has previously rejected Defendants' attempt to rush selected aspects of this case while seeking to stay and delay other aspects of the case.⁵ Any timing dilemma Defendants now face is a problem of their own creation and does not justify reducing PGE's response period from 15 days to 7 days.

Finally, the request for an expedited briefing schedule should be denied as impractical because it ignores the impact of the Christmas holiday, which falls in the middle of the briefing period. Given the impact of the holiday on work schedules, the briefing period should not be compressed. However, PGE is able to respond within the

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⁴ PGE filed its complaint on January 25, 2018. Defendants moved to stay and dismiss the proceeding. The Commission issued an order denying the motion to dismiss on May 23, 2018. Defendants finally filed an answer on June 6, 2018.

⁵ ALJ Ruling at 4-5 (Aug. 23, 2018) (“The NewSun QFs’ motion seeking an expedited procedural schedule is denied. Defendants have consistently sought to stay this proceeding (February 2 and May 25, 2018) and dismiss this proceeding (February 22 and March 16, 2018) so that it might pursue its remedy in court. ... The proceedings shall move forward promptly, consistent with the demands placed upon the Commission and without abrogating due process to the parties herein.”).

regular 15-day period (by December 28, 2018) and requests that the Commission deny Defendants' motion for an expedited briefing schedule.

Dated this 17th day of December, 2018.

Respectfully submitted,



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