# PGE v. Alfalfa Solar I LLC, et al.

Public Utility Commission of Oregon

UM 1931

March 14, 2019

**Overview**

The Commission should find that the NewSun PPAs require PGE to pay the QF the fixed-price On-Peak and Off-Peak rates in Tables 6a and 6b of Schedule 201 for fifteen years after the Commercial Operation Date.

Rule: Must construe contract *as a whole* in its context to determine the objective understanding of "'*a reasonably intelligent person acquainted with all operative usages and knowing all the circumstances* . . . other than oral statements by the parties of what they intended it to mean.'" [1]

Discussion: Every level of analysis supports NewSun Parties' interpretation, including:

(1) Intent of the Commission's policy established in Order No. 05-584 giving rise to the contracts;

(2) Text of the 2015 Standard Renewable Contract Form and Schedule 201, viewed as a whole and giving effect to all provisions;

(3) Common industry usage of the generalized language in PGE's Schedule 201; and

(4) Nothing in the NewSun PPAs states the fixed price option only "is available for a maximum period of fifteen years immediately following the effective date[,]"[2] because PGE withdrew such language from its initial drafts.

[1] *Harty v. Bye*, 258 Or 398, 404, 483 P2d 458 (1971) (quoting *Restatement of Contracts*, § 230)
[2] CREA -NIPPC-REC /204, Sanger/6

## II. DISCUSSION

PGE's application is denied. We find no grounds to either grant reconsideration under OAR 860-001-0720, or amend Order No. 17-465 under ORS 756.568.

We answered complainants' request in Order No. 17-256, where we affirmed and made explicit our policy adopted in Order No. 05-584: "Prices paid to a QF are only meaningful when a QF is operational and delivering power to a utility. Therefore, we believe that, to provide a QF the full benefit of the fixed price requirement, the 15-year term must commence on the date of power delivery."

We also reject PGE's characterization that our decision constituted the adoption of a

We also reject PGE's characterization that our decision constituted the adoption of a "new policy." Rather, as requested by complainants, our decision was simply to affirm the policy with respect to the commencement date for the 15-year period of fixed prices. This policy, which had been reflected explicitly in standard contract forms for PacifiCorp and Idaho Power Company, had been, up until the filing of PGE's most recent standard contracts, neither a source of controversy nor litigation by either a QF or a utility.

Pars. 1 & 2), the Commission possesses primary or concurrent jurisdiction over interpretation of such contracts.[9]

[6] Complaint at 3 (Dec 6, 2016).
[7] Order No. 17-256 at 4 (Jul 13, 2017).
[8] Order No. 17-465 at 4 (Nov 13, 2017).
[9] Complaint at 6 (Dec 6, 2016).



Order No. 18-079 / Page 3

**Verizon Northwest, Inc. v. Main St. Dev., Inc.**

United States District Court for the District of Oregon, Portland Division

February 25, 2010, Decided; February 25, 2010, Filed

09-CV-72-BR

**Reporter**

693 F. Supp. 2d 1265 *; 2010 U.S. Dist. LEXIS 17552 **

J. Vatheuer, and **GRANTS in part** and **DENIES in part**

As noted, although it is unclear whether Verizon's tariff should be considered merely a contract, Oregon courts have applied rules of contract interpretation to tariffs in the past. *See, e.g., Green Mountain Log Co. v. Columbia & Nehalem River R.R.,* 146 Or. 461, 471, 30 P.2d 1047 (1934). Under Oregon contract law, if a contract provision is ambiguous on its face, the court proceeds to examine the disputed provision “in the broader context of the [contract] as a whole. If—and only if—the ambiguity persists, [the court] construe[s] the [contract] against the drafter.” *Rick Franklin Corp. v. State ex rel. Dep't of Transp.,* 207 Or.App. 183, 195 n. 8, 140 P.3d 1136 (2006) (citations omitted). Here because the provision at issue is ambiguous and both interpretations suggested by the parties are problematic, the Court applies the rule of contract interpretation set out in *Rick Franklin* and interprets this provision against Verizon as the drafter of the tariff.

<u>Verizon Nw., Inc. v. Main St. Dev., Inc.</u>, 693 F. Supp. 2d 1265, 1274 (D. Or. 2010)

Street Development, Inc.'s Cross-Motion (# 54) for Summary Judgment.

For the reasons that follow, the Court **GRANTS in part** and **DENIES in part** Plaintiff Verizon's Motion for Partial Summary Judgment, **GRANTS in part** and **DENIES in part** the Cross-Motion for Summary Judgment of Defendants Main Street/Vatheuer Partnership and Hans

horizontal preparation of lots, infrastructure construction, and vertical construction of the townhomes; and

5. Vatheuer would loan [**3] funds to Main Street Development for development and construction costs of the project.

PGE Summary Judgment Reply, Page 11

**STANDARD RENEWABLE OFF-SYSTEM VARIABLE POWER PURCHASE**

**AGREEMENT**

THIS AGREEMENT, entered into this _______ day, ___________________

Seller intends to construct, own, operate and maintain a ______________________ facility for the generation of electric power located in ________________________________ County, _________________ with a Nameplate Capacity Rating of ________ kilowatt ("kW"), as further described in Exhibit A ("Facility"); and

defined in Section 1.21, below, from the Facility in accordance with the terms and

Seller shall sell and PGE shall purchase the entire Net Output, as such term is defined in Section 1.21, below, from the Facility in accordance with the terms and conditions of this Agreement.

1.1. "As-built Supplement" means the supplement to Exhibit A provided by Seller in accordance with Section 4.3 following completion of construction of the Facility, describing the Facility as actually built.

1.2. "Base Hours" is defined as the total number of hours in each Contract Year (8,760 or 8,784 for leap year)

1.3. "Billing Period" means from the start of the first day of each calendar month to the end of the last day of each calendar month.

1.4. "Cash Escrow" means an agreement by two parties to place money into the custody of a third party for delivery to a grantee only after the fulfillment of the conditions specified.



PGE Contract Form
PGE Ex 107
Macfarlane / Page 28

Schedule 201
Standard Renewable Off-System Variable Power Purchase Agreement
Form Effective July 23, 2015

1.5. "Commercial Operation Date" means the date that the Facility is deemed by PGE to be fully operational and reliable. PGE may, at its discretion require, among other things, that all of the following events have occurred:

1.5.1. (facilities with nameplate under 500 kW exempt from following

1.5. "Commercial Operation Date" means the date that the Facility is deemed by PGE to be fully operational and reliable. PGE may, at its discretion require, among other things, that all of the following events have occurred:

1.6. "Contract Price" means the applicable price, including on-peak and off-peak prices, as specified in the Schedule.

1.7. "Contract Year" means each twelve (12) month period commencing upon the Commercial Operation Date or its anniversary during the Term, except the final Contract Year will be the period from the last anniversary of the Commercial Operation Date during the Term until the end of the Term.

1.6. "Contract Price" means the applicable price, including on-peak and off-peak prices, as specified in the Schedule.

1.7. "Contract Year" means each twelve (12) month period commencing upon the Commercial Operation Date or its anniversary during the Term, except the final Contract Year will be the period from the last anniversary of the Commercial Operation Date during the Term until the end of the Term.

1.8. "Effective Date" has the meaning set forth in Section 2.1.



PGE Contract Form
PGE Ex 107
Macfarlane / Page 29

1.42. "Transmission Curtailment Replacement Energy Cost" means the greater of zero or the amount calculated as: ((Mid-C Index Price – Contract Price) X curtailed

2.1. This Agreement shall become effective upon execution by both Parties ("Effective Date").

2.2.2. By ________ [*date to be determined by the Seller subject to Section 2.2.3 below*] Seller shall have completed all requirements under Section 1.5 and shall have established the Commercial Operation Date.

2.3. This Agreement shall terminate on __________, ____ [*date to be chosen by Seller*], or the date the Agreement is terminated in accordance with Section 8 or 11, whichever is earlier ("Termination Date").

is reasonable and necessary, the Commercial Operation Date shall be no more than three (3) years from the Effective Date. PGE will not unreasonably withhold agreement to a Commercial Operation Date that is more than three (3) years from the Effective date if the Seller has demonstrated that a later Commercial Operation Date is reasonable and necessary.

2.3. This Agreement shall terminate on _________, ____ [*date to be chosen by Seller*], or the date the Agreement is terminated in accordance with Section 8 or 11, whichever is earlier ("Termination Date").

SECTION 3: REPRESENTATIONS AND WARRANTIES

3.1. Seller and PGE represent, covenant, and warrant as follows:



PGE Contract Form
PGE Ex 107
Macfarlane / Page 34

UM 1931 / PGE / 107
Macfarlane / Page 37

Schedule 201
Standard Renewable Off-System Variable Power Purchase Agreement
Form Effective July 23, 2015

UM 1931 / PGE / 107
Macfarlane / Page 38

## SECTION 4: DELIVERY OF POWER, PRICE AND ENVIRONMENTAL ATTRIBUTES

4.2. PGE shall pay Seller the Contract Price for all delivered Net Output.

4.5. During the Renewable Resource Deficiency Period, Seller shall provide and PGE shall acquire the RPS Attributes for *the Contract Years* as specified in the Schedule and Seller shall retain ownership of all other Environmental Attributes (if any). During the Renewable Resource Sufficiency Period, and any period within the Term of this Agreement *after completion of the first fifteen (15) years after the Commercial Operation Date*, Seller shall retain all Environmental Attributes in accordance with the Schedule. *The Contract Price includes full payment for the Net Output and any RPS Attributes transferred to PGE under this Agreement*.

minimum of two years records of Net Output and shall agree to allow PGE to have access to such records and to imbalance information kept by the Transmission Provider.

4.5. During the Renewable Resource Deficiency Period, Seller shall provide and PGE shall acquire the RPS Attributes for the Contract Years as specified in the Schedule and Seller shall retain ownership of all other Environmental Attributes (if any). During the Renewable Resource Sufficiency Period, and any period within the Term of



PGE Contract Form
PGE Ex 107
Macfarlane / Page 37-38
*(Emphasis added)*

1.42. "Transmission Curtailment Replacement Energy Cost" means the greater of zero or the amount calculated as: ((Mid-C Index Price – Contract Price) X curtailed energy) for periods of Transmission Curtailment.

2.1. This Agreement shall become effective upon execution by both Parties ("Effective Date").

2.2.2. By thirty-six (36) month anniversary of the Effective Date Seller shall have completed all requirements under Section 1.5 and shall have established the Commercial Operation Date.

2.3. This Agreement shall terminate on the completion of the last day of the sixteenth (16th) Contract Year, or the date the Agreement is terminated in accordance with Section 8 or 11, whichever is earlier ("Termination Date").

three (3) years from the Effective Date. PGE will not unreasonably withhold agreement to a Commercial Operation Date that is more than three (3) years from the Effective date if the Seller has demonstrated that a later Commercial Operation Date is reasonable and necessary.

2.3. This Agreement shall terminate on the completion of the last day of the sixteenth (16th) Contract Year, or the date the Agreement is terminated in accordance with Section 8 or 11, whichever is earlier ("Termination Date").

SECTION 3: REPRESENTATIONS AND WARRANTIES

3.1. Seller and PGE represent, covenant, and warrant as follows:

Alfalfa PPA
PGE Ex 101
Macfarlane / Page 7

UM 1931 / PGE / 101
Macfarlane / Page 25

Portland General Electric Company Sheet No. 201-1

SCHEDULE 201
QUALIFYING FACILITY 10 MW or LESS

Portland General Electric Company Sheet No. 201-2

SCHEDULE 201 (Continued)

## PURPOSE

To provide information about Standard Avoided Costs and Renewable Avoided Costs, Standard Power Purchase Agreements (PPA) and Negotiated PPAs, power purchase prices and price options for power delivered by a Qualifying Facility (QF) to the Company with nameplate capacity of 10,000 kW (10 MW) or less.

deemed sufficient by the Company as set forth in the Standard PPA.

run of river hydro as the primary motive force.

## PPA

A Seller must execute a PPA with the Company prior to delivery of power to the Company. The agreement will have a term of up to 20 years as selected by the QF.

Effective for service
on and after September 23, 2015

Effective for service
on and after September 23, 2015

Portland General Electric Company Sheet No. 201-3

SCHEDULE 201 (Continued)

OFF-SYSTEM PPA

Portland General Electric Company Sheet No. 201-4

SCHEDULE 201 (Continued)

PRICING FOR STANDARD PPA

Renewable Avoided Costs are based on forward market price estimates through the Renewable Resource Sufficiency Period, the period of time during which the Company's Renewable Avoided Costs are associated with incremental purchases of energy and capacity from the market. For the Renewable Resource Deficiency Period, the Renewable Avoided Costs reflect the fully allocated costs of a wind plant including capital costs.

The Company will pay the Seller either the Off-Peak Standard Avoided Cost pursuant to Tables 1b, 2b, or 3b or the Off-Peak Renewable Avoided Costs pursuant to Tables 4b, 5b or 6b for: (a) all Net Output delivered prior to the Commercial Operation Date…

Renewable Avoided Costs are associated with incremental purchases of energy and capacity from the market. For the Renewable Resource Deficiency Period, the Renewable Avoided Costs reflect the fully allocated costs of a wind plant including capital costs.

the Wind QF is outside of PGE's Balancing Authority Area as contemplated in the Commission's Order No. 14-058, the Seller is paid the wind integration charges in Table 7, in addition to the prices listed in Tables 2a and 2b, for a net-zero effect.



Schedule 201
PGE Ex 101
Macfarlane / Page 26

Portland General Electric Company — Sheet No. 201-11

SCHEDULE 201 (Continued)

PRICING OPTIONS FOR STANDARD PPA (Continued)
Standard Fixed Price Option (Continued)

TABLE 3b
Avoided Costs
Standard Fixed Price Option for Solar QF
Off-Peak Forecast ($/MWH)

| Year | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug | Sep | Oct | Nov | Dec |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 2015 | 25.88 | 20.38 | 20.88 | 15.88 | 17.88 | 19.13 | 23.88 | 26.13 | 25.63 | 23.13 | 25.38 | 28.38 |
| 2016 | 27.06 | 25.99 | 23.32 | 18.84 | 16.65 | 13.43 | 23.13 | 27.74 | 25.51 | 27.30 | 27.97 | 30.11 |

Portland General Electric Company — Sheet No. 201-12

SCHEDULE 201 (Continued)

PRICING OPTIONS FOR STANDARD PPA (Continued)

2) **Renewable Fixed Price Option**

The Renewable Fixed Price Option is based on Renewable Avoided Costs. It is available only to Renewable QFs that generate electricity from a renewable energy source that may be used by the Company to comply with the Oregon Renewable Portfolio Standard as set forth in ORS 469A.005 to 469A.210.

This option is available for a maximum term of 15 years. Prices will be as

This option is available for a maximum term of 15 years.

Sellers with PPAs exceeding 15 years will receive pricing equal to the Mid-C Index Price and will retain all Environmental Attributes generated by the facility for all years up to five in excess of the initial 15.

(Tables 5a and 5b) include a reduction for the wind integration costs in Table 7, which cancels out wind integration costs included in the Renewable Avoided Costs during the Renewable Resource Deficiency Period. However, if the Wind QF is outside of PGE's Balancing Authority Area as contemplated in the Commission's Order No. 14-058, the Seller is paid the wind integration charges in Table 7, in addition to the prices listed in Tables 5a and 5b.

Sellers with PPAs exceeding 15 years will receive pricing equal to the Mid-C Index Price and will retain all Environmental Attributes generated by the facility for all years up to five in excess of the initial 15.





Schedule 201
PGE Ex 101
Macfarlane / Page 30

Portland General Electric Company Sheet No. 201-23

Portland General Electric Company Sheet No. 201-24

SCHEDULE 201 (Continued)

**Definition of Resource Sufficiency Period**

This is the period from the current year through 2020.

**Definition of Resource Deficiency Period**

This is the period from 2021 through 2034.

**TERM OF AGREEMENT**

Not less than one year and not to exceed 20 years.

**Definition of Renewable Resource Deficiency Period**

This is the period from 2020 through 2034.

Effective for service
on and after September 23, 2015

Effective for service
on and after September 23, 2015

Schedule 201
PGE Ex 101
Macfarlane / Page 36

power projects.

**Q. On whose behalf are you appearing in this proceeding?**

**A.** I am testifying on behalf of the Defendants in this proceeding, 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, and Wasco Solar I LLC (collectively referred to as the "NewSun Parties").

**Q.**

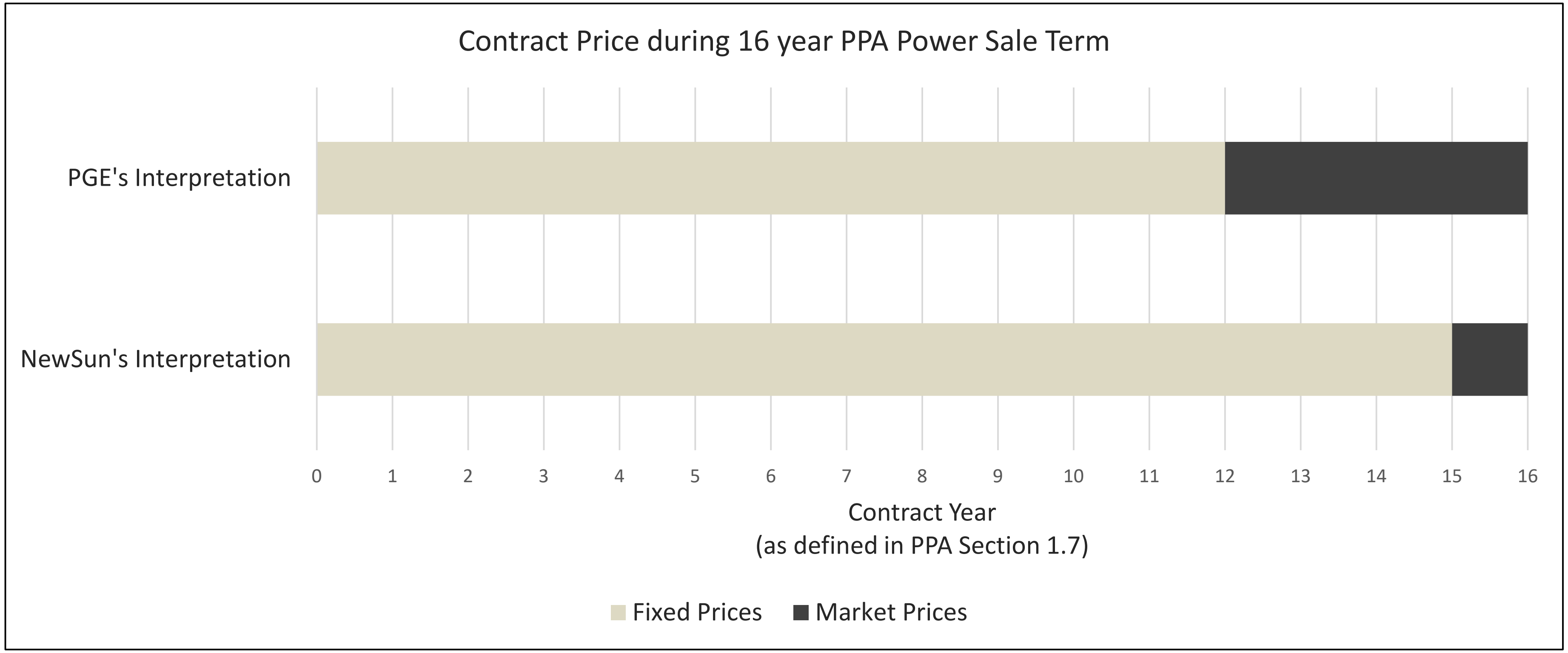
**A.**

based on my 30 years of experience of working with developers, investors and lenders in energy generation facilities and terminology used in the industry, the ordinary understanding of the words used in PGE's Schedule 201 is that PGE will pay the fixed prices for 15 years after operation of the facility; the position that PGE will only pay fixed prices for 15 years immediately following execution of the PPA *would be very surprising to most industry participants* from the words PGE used in the Schedule 201.

ordinary understanding of the words used in PGE's Schedule 201 is that PGE will pay the fixed prices for 15 years after operation of the facility; the position that PGE will only pay fixed prices for 15 years immediately following execution of the PPA would be very surprising to most industry participants from the words PGE used in the Schedule 201.

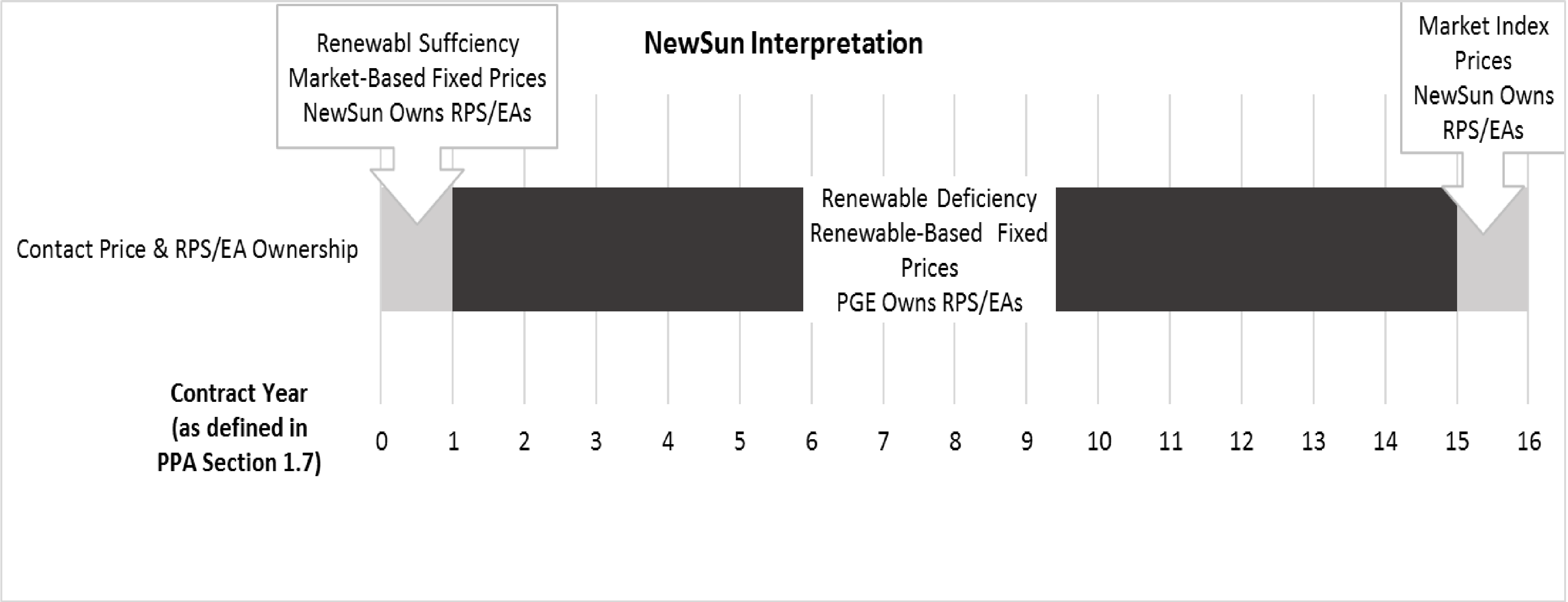
NewSun Parties Ex. 200
Harnsberger, Page 2
*(emphasis added)*

# Chart 1



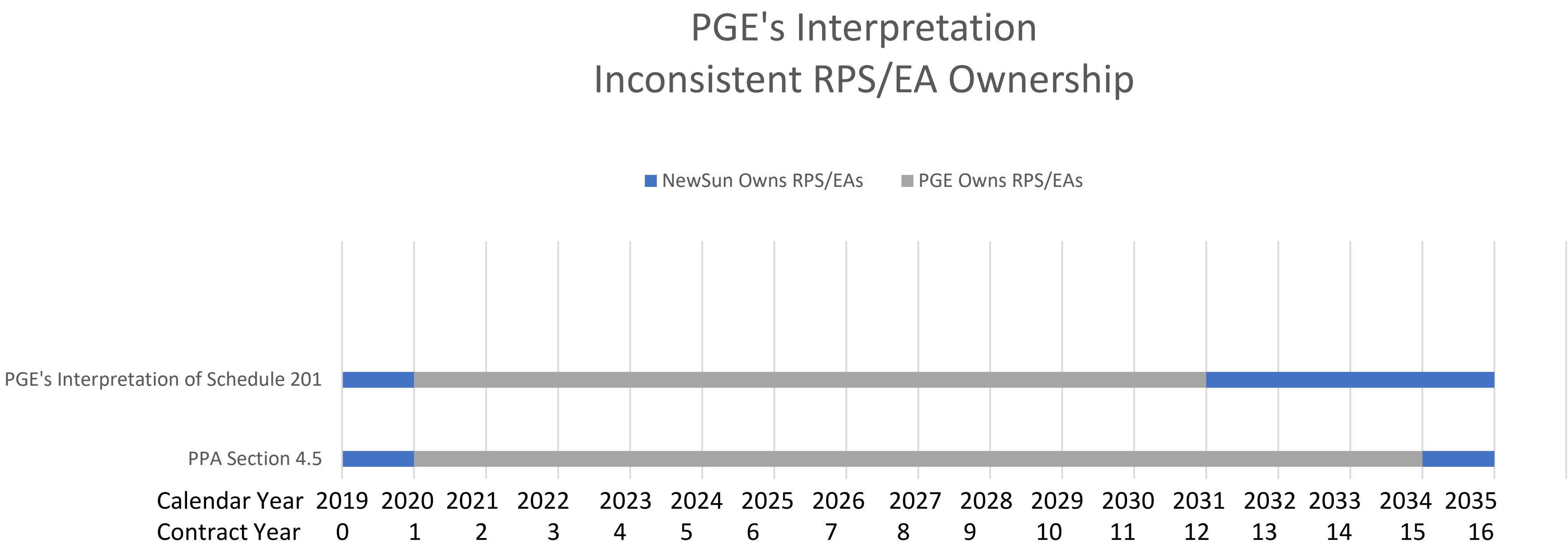

*For purpose of illustration, this chart assumes the QF achieved the Commercial Operation Date on January 1, 2019.

## Chart 2




*For purpose of illustration, this chart assumes the QF achieved the Commercial Operation Date on January 1, 2019.

# Chart 3




*For purpose of illustration, this chart assumes the QF achieved the Commercial Operation Date on January 1, 2019.

**PGE's interpretation reforms Section 4.5 as follows:**

**[A]fter completion of the first fifteen (15) years after the ~~Commercial Operation Date~~ <u>Effective Date</u>, Seller shall retain all Environmental Attributes in accordance with the Schedule.**

## Term/term: Schedule 201's description of a "term" of power sales does not have the same meaning as "Term" in Section 1.38 of the contract form

- "term" is not capitalized in Schedule 201's phrase "maximum term of 15 years"
  - Schedule 201 capitalizes defined words, including Environmental Attributes, Mid-C Index Price, RPS Attributes, Prudent Electrical Practices, Commercial Operation Date, Maximum Net Output, On-Peak, Off-Peak, Net Output, and Point of Delivery[1]
- Post-UM 1805 Schedule 201 still states the fixed price option "is available for a maximum *term* of 15 years"
- Order No. 05-584 used the word "term" to mean a period of power sales
- Normal industry usage of a "maximum term of 15 years" means a period of power sales
- PacifiCorp uses the word "term" in its Schedule 37 to mean a period of power sales
- PGE's interpretation creates a conflict with Section 4.5
- PGE conflates the 15-year and 20-year periods into the single word "term"[2]
  - Using the definition of "Term" results in "a maximum [period beginning on the Effective Date *and ending on the Termination Date*] of 15 years"
  - Term is over 15 years

[1] See NewSun's Parties' Motion for Summary Judgment at 45-47
[2] See PGE's Summary Judgment Reply Brief at 30-32

PACIFIC POWER
A DIVISION OF PACIFICORP

AVOIDED COST PURCHASES FROM
QUALIFYING FACILITIES OF 10,000 KW OR LESS



**Dispute Resolution (continued)**

Any dispute concerning a QF's entitlement to the standard rates and standard contract shall be presented to the Commission for resolution. (M) from Page 2

**Self Supply Option**

Owner shall elect to sell all Net Output to PacifiCorp and purchase its full electric requirements from PacifiCorp or sell Net Output surplus to its needs at the Facility site to PacifiCorp and purchase partial electric requirements service from PacifiCorp, in accordance with the terms

2. Prices are fixed *at the time that the contract is signed* by both the Renewable Qualifying Facility and the Company and will not change during the *term of the contract.* Renewable Fixed Avoided Cost Prices are available for *a contract term of up to 15 years* and prices under *a longer term contract (up to 20 years)* will thereafter be under the Firm Market Indexed Avoided Cost Price…. A Renewable Qualifying Facility choosing the Renewable Fixed Avoided Cost pricing option must cede all Green Tags generated by the facility, as defined in the standard contract, to the Company during the Renewable Resource Deficiency Period identified on page 6, except that a *Renewable Qualifying Facility retains ownership of all Environmental Attributes* generated by the facility, as defined in the standard contract, during the Renewable Resource Sufficiency Period identified on page 6 and *during any period after the first 15 years of a longer term contract (up to 20 years).*

prices paid are 93 percent of a blending of ICE Day Ahead Power Price Report at market hubs for on-peak and off-peak firm index prices. The monthly blending matrix is available upon request. The Non-Firm Market Index Avoided Cost pricing option is available to all Qualifying Facilities. The Non-Firm Market Index Avoided Cost Price for Wind Qualifying Facilities will reflect integration costs. (N)

(continued)



PacifiCorp Schedule 37
Adams Decl., Ex. E, Page 19
*(emphasis added)*

Section 2: **TERM; COMMERCIAL OPERATION DATE**

2.1 This Agreement shall become effective after execution by both Parties ("**Effective Date**").

Section 2: **TERM; COMMERCIAL OPERATION DATE**

2.1 This Agreement shall become effective after execution by both Parties ("**Effective Date**").

2.4 Except as otherwise provided herein, this Agreement shall terminate on ______________ [enter Date that is no later than 20 years after the Scheduled Initial Delivery Date] ("**Termination Date**").

Section 3: **REPRESENTATIONS AND WARRANTIES**

3.1 PacifiCorp represents, covenants, and warrants to Seller that:

3.1.1 PacifiCorp is duly organized and validly existing under the laws of the State of Oregon.

3.1.2 PacifiCorp has the requisite corporate power and authority to enter into this Agreement and to perform according to the terms of this Agreement.

3.1.3 PacifiCorp has taken all corporate actions required to be taken by it to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.

3.1.4 The execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on PacifiCorp or any valid order of any



PacifiCorp Standard Contract
Adams Decl., Ex. E, Page 39
*(emphasis added)*

Off-Peak periods. PacifiCorp shall document its calculation of the blended rate, upon request, to Seller. Such payment will be accomplished by adjustments pursuant to Section 9.2

5.5 Environmental Attributes

5.5.1 (Fixed Price Standard Seller Only): PacifiCorp waives any claim to Seller's ownership of Environmental Attributes under this Agreement throughout the Term.

Section 5.5.2 (Fixed Price Seller Only): PacifiCorp waives any claim to Seller's ownership of Environmental Attributes during the Renewable Resource Sufficiency Period, and any period within the Term of this Agreement *after completion of the first fifteen (15) years after* the Scheduled Initial Delivery Date.

6.2 Incremental Utility Upgrades. At start-up (and at any other time upon at least six months' prior written notice), Seller may increase Net Output, if such increase is due to normal variances in estimated versus actual performance, changed Facility operations, or improvements in Facility efficiency. Seller may not increase Net Output under this Agreement by installing additional generating units. In the case of substantial upgrades, PacifiCorp may require Seller to comply with Section 3.2.8(e) (in the event that the Facility upgrade causes the Facility Capacity Rating to exceed 3,000 kW) and increase its Average Annual Generation in Section 4.2 (if appropriate). PacifiCorp may also update Seller's security obligation (if applicable). So long as the Facility Capacity Rating after the upgrade is 10,000 kW or less, Seller will continue to receive the Contract Price for the Net Output, as set forth in Sections 5.1, 5.2, and 5.3 of this Agreement. If Seller increases the Facility Capacity Rating above 10,000 kW, then (on a going forward basis) PacifiCorp shall pay Seller the Contract Price for the fraction of total Net Output equal to 10,000 kW divided by the Facility Capacity Rating of the upgraded Facility. For the remaining fraction of Net Output, PacifiCorp and Seller shall agree to a new negotiated rate. Seller shall be responsible for ensuring that any planned increase in the Facility Capacity Rating or the maximum instantaneous capacity of the Facility complies with Seller's Generation Interconnection Agreement and any other agreements with PacifiCorp.

6.3 Seller shall operate and maintain the Facility in a safe manner in accordance with the Generation Interconnection Agreement (if applicable), Prudent Electrical Practices and in accordance with the requirements of all applicable federal, state and local laws and the National Electric Safety Code as such laws and code may be amended from time to time. PacifiCorp shall have no obligation to purchase Net Output from the Facility to the extent the interconnection between the Facility and PacifiCorp's electric system is disconnected, suspended or interrupted,



PacifiCorp Standard Contract
Adams Decl., Ex. E, Page 45
*(emphasis added)*

IDAHO POWER COMPANY FIRST REVISED SHEET NO. 85-11
CANCELS
P.U.C. ORE. NO. E-27 ORIGINAL SHEET NO. 85-11

SCHEDULE 85
COGENERATION AND SMALL POWER
PRODUCTION STANDARD
CONTRACT RATES
(Continued)

GUIDELINES FOR NEGOTIATION OF POWER PURCHASE AGREEMENTS
FOR QFS WITH A NAMEPLATE CAPACITY OF 10 MW OR LARGER (Continued) (M)

c. Within 30 days of receiving the required information, the Company will provide a draft power purchase agreement containing a comprehensive set of proposed terms and conditions.

d. The QF must submit in writing a statement of its intention to begin negotiations with the Company and may include written comments and proposals. The Company is not obligated to begin negotiations until it receives written notification from the QF. The Company will not unreasonably delay negotiations and will respond in good faith to all proposals by the QF.

e. When the parties have agreed, the Company will prepare a final version of the contract within 15 business days. A contract is not final and binding until signed by both parties.

f. At any time after 60 days from the date the QF has provided its written notification pursuant to paragraph d., the QF may file a complaint with the Oregon Public Utility Commission asking the Commission to adjudicate any unresolved contract terms and conditions.

3. QFs have the unilateral right to select a contract length of up to 20 years for a PURPA contract. The contract length selected by the QF may impact other contractual issues including, but not limited to, the avoided cost determination with respect to that QF.

**QFs have the unilateral right to select a contract length of up to 20 years for a PURPA contract.**

For a QF providing firm energy or capacity:

a. The Company and the QF should negotiate the time periods when the QF may schedule outages and the advance notification requirement for such outages, using provisions in the Company's partial requirements tariffs as guidance.

b. The QF should be required to make best efforts to meet its capacity obligations during Company system emergencies.

c. The Company and the QF should negotiate security, default, damage and termination provisions that keep the Company and its ratepayers whole in the event the QF fails to meet obligations under the contract.

d. Delay of commercial operation should not be a cause of termination if the Company determines at the time of contract execution that it will be resource-sufficient as of the QF on-line date specified in the contract; however, damages may be appropriate.

e. Lack of natural motive force for testing to prove commercial operation should not be a cause of termination.

f. The Company should include a provision in the contract that states the Company may require a QF terminated due to its default and wishing to resume selling to the Company be subject to the terms of the original contract until its end date. (M)



Idaho Power Schedule 85
Adams Decl., Ex. F, Page 21
*(emphasis added)*

CREA-NIPPC-REC/204
Sanger/1

**From:** BLESS Adam <adam.bless@state.or.us>
**Sent:** Thursday, January 31, 2013 4:18 PM
**To:** BLESS Adam; bob@oregoncub.org; ANDRUS Brittany; catriona@oregoncub.org; da@thenescogroup.com; David White; dlokting@stollberne.com; dockets@idahopower.com; dockets@mcd-law.com; dwalker@idahopower.com; dws@r-c-s-inc.com; elaine.prause@energytrust.org; glenn@oseia.org; Greg Adams; ias@dvclaw.com; john.volkman@energytrust.org; jravenesanmarcos@yahoo.com; mary.wiencke@pacificorp.com; KRUMENAUER Matt; GALBRAITH Maury; nelson@thnelson.com; oregondockets@pacificorp.com; Peter Richardson; pge.opuc.filings@pgn.com; renee.m.france@state.or.us; richard.george@pgn.com; Rob Macfarlane; ANDRUS Stephanie; SATYAL Vijay A; wcarey@hoodriverattorneys.com
**Attachments:** Staffedits on PGE InSystem Firm PPA for 1396.docx; Staff edits- PGE 202 for UM 1396.docx; Staff edits -PGE_Off-systemNonVariable PPA for um 1396.DOCX; Staff edits to -PGE_Schedule201_for 1396 stipulation.DOC; Staff edits-PGE InSystemVariable PPA for 1396.docx; Staff edits-PGE OffSystem Int Var PPA for um 1396.docx; Staff -UM_1396_Stipulation_Edits.DOCX

1. HOUSEKEEPING: language changes that are substantively consistent with the currently approved schedules or make changes that are so minor that they are not substantive changes from the currently approved schedule.

2. SUBSTANTIVE CHANGES: changes that are inconsistent with the currently approved schedule and outside the scope of the July 10, 2012 settlement meeting. Staff recommends that PGE retract these changes.

assure consistency with the new renewable price schedules. In particular, we agreed that PacifiCorp could change its forward looking market price to a Mid-C price.

We also agreed that PGE should remove integration costs from the avoided cost calculation in its renewable price schedules and account for those costs somewhere else.

PGE agreed to do this but stated that it should be allowed to make the same change in its Standard avoided costs, for consistency. No one objected at the time.

Below you will the proposed stipulation with CREA's edits and staff's comments.

You will also find the schedule 201, 202 and associated PPA's submitted by PGE, with staff comments.

We see that PGE proposed a number of language changes that it states are not substantive but rather are clarifications of its current language.

Staff reviewed the changes proposed by PGE and placed them in three categories:

1. HOUSEKEEPING: language changes that are substantively consistent with the currently approved schedules or make changes that are so minor that they are not substantive changes from the currently approved schedule.

1

CREA-NIPPC-REC/204
Sanger/2

urrently approved schedule and outside the scope
tract these changes.

the current schedules but are consistent with the
hat these be allowed.

p everyone's time, including ours. For that
ay February 8, with either comments or an

hen we can bring this to the Commission at a

n meeting to go over the changes and finalize the

Adam Bless E-Mail
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Sanger, Pages 1-2

This option is available for a maximum period of 15 years immediately following the effective date of the Standard PPA. Sellers with a PPA term exceeding 15 years will make a one time election at execution to select a Market-Based Option for all years up to five after of the initial 15 years immediately following the effective date of the Standard PPA. Under the Fixed Price Option, prices will be as established at the time the Standard PPA is executed and will be equal to the Avoided Costs in Tables 1 and 2 effective at execution for a period of up to 15 years immediately following the effective date of the Standard PPA.

**Commented [AS7]:** SUBSTANTIVE. The topic of contract term and when the 15 year period starts is a UM 1610 issue, and was not part of Order 11-505 or the July settlement meeting. Should be removed.



Adam Bless E-Mail
CREA-NIPPC-REC Ex. 204
Sanger, Page 6

1 Q. **Did the NewSun Parties indicate that they accepted the Schedule 201?**

2 A. Yes. In the email that attached the Schedule 201, Mr. Stephens, concerning the

Yes. I recall telling Mr. Stephens several times by phone and once in person that the 15-years of fixed prices starts at execution of the PPAs.

**Did he agree?**

Not that I know of. He even called me once on my personal cell phone, when I was driving with my daughter, to discuss his position that the 15-years of fixed prices starts at the commercial operation date.

prices starts at the commercial operation date.

[1] PGE Exhibit 204.

PGE Ex 200
True, Page 5

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Message

**From:** Jake Stephens [jake@jakestephens.com]
**Sent:** 12/18/2015 4:20:36 PM
**To:** Bruce True [bruce.true@pgn.com]
**Subject:** PPAs for Tygh Valley, Wasco, and Dayton Solar I projects
**Attachments:** Schedule 201 RENEWABLE Off System Variable PPA_Effective_09.23.15 - TYGH VALLEY SOLAR I v2 - REDLINE vs Blank Orig PPA form.docx; Schedule 201 RENEWABLE Off System Variable PPA_Effective_09.23.15 - TYGH VALLEY SOLAR I v2 - REDLINE vs Starvation v1.docx; Schedule 201 RENEWABLE Off System Variable PPA_Effective_09.23.15 - TYGH VALLEY SOLAR I v2 CLEAN (submitted to PGE 2015.12.18) SIGNED by SELLER.pdf; Schedule 201 RENEWABLE Off System Variable PPA_Effective_09.23.15 - TYGH VALLEY SOLAR I v2 CLEAN (submitted to PGE 2015.12.18).docx; Schedule 201 RENEWABLE Off System Variable PPA_Effective_09.23.15 - WASCO SOLAR I v2 - REDLINE vs blank 2015.09.23 Sched 201 Renewable Off System PPA.docx; Schedule 201 RENEWABLE Off System Variable PPA_Effective_09.23.15 - WASCO SOLAR I v2 - REDLINE vs Starvation v1.docx; Schedule 201 RENEWABLE Off System Variable PPA_Effective_09.23.15 - WASCO SOLAR I v2 CLEAN (submitted to PGE 2015.12.18) SIGNED by Seller.pdf; Schedule 201 RENEWABLE Off System Variable PPA_Effective_09.23.15 - WASCO SOLAR I v2 CLEAN (submitted to PGE 2015.12.18).docx; RENEWABLE In System Variable PPA_Effective_09.23.15 - Dayton Solar I v2 CLEAN.doc; RENEWABLE In System Variable PPA_Effective_09.23.15 - Dayton Solar I v2 Redline vs blank orig Sched 201 in system renewable variable PPA.docx; RENEWABLE In System Variable PPA_Effective_09.23.15 - Dayton Solar I v2 Redline vs v1.docx; Schedule 201 RENEWABLE Off System Variable PPA_Effective_09.23.15 - DAYTON SOLAR I v2 CLEAN (submitted to PGE 2015.12.18) SIGNED by Seller.pdf

While we don't agree with PGE's position and interpretation on the matters of the outside allowable COD and termination date and the length of fixed pricing, changes acceptable to PGE have been made to COD and termination date to allow the process of finishing these contracts to move forward, as the development needs to move forward.

- Tygh Valley Solar I (Tygh Valley Solar I LLC)
- Wasco Solar I (Wasco Solar I LLC)
- Dayton Solar I (Dayton Solar I LLC)

Per PGE's preference, a) the COD has been set for 3 years from Effective Date; and, b) termination date has be defined as after 16th Contract Year -- both exactly as in the Starvation Solar I submission which PGE approved.

For your convenience, I've attached four (4) versions of the PPA standard contract, as follows, for each project:

- **Clean** word doc
- **PPA redline vs Starvation Solar I v1 (off system) or last submission (Dayton)**, so you can compare against the PPA and language already approved by PGE for that project. Other project info and the contract remains the same as previously submitted and I'm happy to provide a redline against each project's last submission as well.
- **PPA redline vs the original Schedule 201** renewable PPA (in system or off system, as applicable)
- **Signed Copy**. As the Sellers each remain committed to selling their full output to PGE per the original submissions under the Sept 23, 2015 Schedule 201 renewable variable PPA standard contracts, as they have been since their original submission, a signed copy is attached here, in honor of that Seller's agreement to this.

Other Notes:

- COD: Set to 3 years from Effective Date (same as Starvation Solar I), despite our belief that we reasonably demonstrated, per correspondence from the account executive at transmission provider BPA, and section 2.2 language, that more than 3 years was necessary.
- Termination Date: Set to end of 16th Contract Year (same as Starvation Solar I)
- Tygh Valley Solar I GIA updated to be with BPA, not Wasco Coop, as PGE preferred this.
- Other corresponding project information and language from the original PPA submissions for each remains the same as per the prior PPA drafts submitted, so should be the same as your last review per project: Seller, location, energy forecasts, facility size and description and energy production levels.

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tside allowable COD and termination date and the
mination date to allow the process of finishing these

the PGE resource portfolio. I appreciate your
if the document that the Effective Date will be updated

NEWSUN_0000888

Jake Stephens' E-Mail
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