

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1931

PORTLAND GENERAL ELECTRIC)	
COMPANY,)	
)	DEFENDANTS’ AND INTERVENORS’
Complainant,)	JOINT STATEMENT OF ADDITIONAL
)	UNDISPUTED FACTS
v.)	
)	
ALFALFA SOLAR I LLC, et al.)	
)	
Defendants.)	

Defendants Alfalfa Solar I LLC (“Alfalfa”), Dayton Solar I LLC (“Dayton”), Fort Rock Solar I LLC (“Fort Rock I”), Fort Rock Solar II LLC (“Fort Rock II”), Fort Rock Solar IV LLC (“Fort Rock IV”), Harney Solar I LLC (“Harney”), Riley Solar I LLC (“Riley”), Starvation Solar I LLC (“Starvation”), Tygh Valley Solar I LLC (“Tygh Valley”), and Wasco Solar I LLC (“Wasco”) (collectively, the “Defendants” or “NewSun Parties”), and Intervenors Community Renewable Energy Association (“CREA”), Northwest and Intermountain Power Producers Coalition (“NIPPC”), and the Renewable Energy Coalition (“REC”) (collectively “Intervenors”) respectfully submit their Joint Additional Statement of Undisputed Facts to the Oregon Public Utility Commission (the “OPUC” or “Commission”).

This filing is being made concurrently with the Joint Statement of Undisputed Facts of all parties on this date, the substance of which is set forth at the beginning of the attached Defendants’ and Intervenors’ Joint Additional Statement of Undisputed Facts for the convenience of the Commission.

The Defendants' and Intervenors' Joint Statement of Additional Undisputed Facts is attached hereto as Attachment 1.

The Defendants' and Intervenors' Joint Statement of Additional Undisputed Facts does not attempt to include discussion of all OPUC orders, provisions of the power purchase agreements at issue, or provisions of all contract forms that might be relevant. As a practical matter, including portions of OPUC orders and contract forms that might be argued by one party or the other to be relevant, before seeing opposing parties' briefs and arguments, would require inclusion of too many excerpts from such orders and contracts to render this statement of undisputed facts useful to the Commission. Therefore, the Defendants and Intervenors reserve the right to discuss OPUC orders, provisions of the contracts, or provisions of all contract forms, to the extent they believe them relevant in briefing. Defendants and Intervenors further additionally reserve the right to supplement the record with additional documents that might be necessary to support summary judgment briefing and refer to other evidence in the record, as is normal practice under summary judgment rules.

DATED: January 25, 2019.

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ATTACHMENT 1

DEFENDANTS AND INTERVENORS' STATEMENT OF ADDITIONAL UNDISPUTED FACTS

Facts Included in All Parties' Joint Statement of Undisputed Facts

1. PGE is an investor-owned public utility regulated by the Commission under ORS Chapter 757. PGE is headquartered at 121 Southwest Salmon Street, Portland, Oregon 97204.¹
2. 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, the "NewSun Parties") are each single-member, Delaware limited liability companies, and each is the seller of the net output of a separate solar QF to PGE under the terms of the standard power purchase agreement (the "NewSun PPAs").²
3. On January 25, 2016, PGE entered into a standard renewable in-system variable power purchase agreement with Dayton Solar I LLC.³
4. On January 25, 2016, PGE entered into a standard renewable off-system variable power purchase agreement with Starvation Solar I LLC.⁴
5. On January 25, 2016, PGE entered into a standard renewable off-system variable power purchase agreement with Tygh Valley Solar I LLC.⁵
6. On January 25, 2016, PGE entered into a standard renewable off-system variable power purchase agreement with Wasco Solar I LLC.⁶
7. On April 27, 2016, PGE entered into a standard renewable off-system variable power purchase agreement with Fort Rock Solar I LLC.⁷
8. On April 27, 2016, PGE entered into a standard renewable off-system variable power purchase agreement with Fort Rock Solar II LLC.⁸

¹ Complaint ¶ 2.

² Complaint ¶ 1.

³ Complaint ¶ 16 and Ex. 2.

⁴ Complaint ¶ 16 and Ex. 8 at 1.

⁵ Complaint ¶ 16 and Ex. 9 at 1.

⁶ Complaint ¶ 16 and Ex. 10 at 1.

⁷ Complaint ¶ 16 and Ex. 3 at 1.

⁸ Complaint ¶ 16 and Ex. 4 at 1.

9. On June 26, 2016, PGE entered into a standard renewable off-system variable power purchase agreement with Alfalfa Solar I LLC.⁹
10. On June 26, 2016, PGE entered into a standard renewable off-system variable power purchase agreement with Fort Rock Solar IV LLC.¹⁰
11. On June 27, 2016, PGE entered into a standard renewable off-system variable power purchase agreement with Harney Solar I LLC.¹¹
12. On June 27, 2016, PGE entered into a standard renewable off-system variable power purchase agreement with Riley Solar I LLC.¹²
13. Each of the NewSun PPAs is based on PGE's Standard Renewable Off-System Variable Power Purchase Agreement or PGE's Renewable In-System Variable Power Purchase Agreement, which the Public Utility Commission of Oregon ("Commission" or "OPUC") approved for use by PGE in Order No 15-289 (hereafter collectively referred to as the "2015 Standard Renewable Contract Form").¹³ PGE filed those contract forms with the Commission on May 27, 2015, and the Commission approved them on September 22, 2015, in Order No. 15-289. Order No. 15-289 at 1; *see* PGE/100, Macfarlane/25; PGE/107, Macfarlane (PGE Compliance Filing dated May 27, 2015).
14. The Authorized Representative who signed the PPAs for each of the NewSun Parties is Jacob Stephens. Mr. Stephens negotiated and executed each of the NewSun PPAs at issue in this proceeding on behalf of each of the NewSun Parties as their manager.¹⁴
15. Mr. Stephens first contacted Bruce True in PGE's Wholesale Power Operation group, in October 2015, and requested via email on October 14, 2015, that Mr. True send him PGE's then-current standard variable PPA for both in-system and out-of-system qualifying facilities.¹⁵
16. The parties expressed disagreement to each other prior to execution of the NewSun PPAs as to whether the completed versions of the 2015 Standard Renewable Contract Form would require payment by PGE at the fixed renewable prices in Tables 6a and 6b of Schedule 201 for fifteen years after execution of the agreement or fifteen years after the Commercial Operation Date.¹⁶

⁹ Complaint ¶ 16 and Ex. 1 at 1.
¹⁰ Complaint ¶ 16 and Ex. 5 at 1.
¹¹ Complaint ¶ 16 and Ex. 6 at 1.
¹² Complaint ¶ 16 and Ex. 7 at 1.
¹³ Complaint ¶¶ 3, 17; Answer at ¶ 3.
¹⁴ NewSun Parties/100, Stephens/1.
¹⁵ NewSun Parties/100, Stephens/12.
¹⁶ *E.g.* NewSun Parties/100, Stephens/18.

17. After PGE representatives expressed their position that the 2015 Standard Renewable Contract Form only provided fixed prices for fifteen years after execution of the agreement, Mr. Stephens expressed his disagreement with that position to multiple PGE representatives and expressed his belief that PGE's 2015 Standard Renewable Contract Form entitles a QF to be paid at the fixed prices for fifteen years after the Commercial Operation Date.¹⁷

18. The Parties' refer the Commission to their individual statements of additional undisputed facts for each parties' view of which detailed facts at issue are undisputed and for each parties' characterization of those facts.

Defendants' and Intervenors' Additional Undisputed Facts

I. PGE-NewSun Discussions

1. Mr. Stephens believed that PGE's statements regarding its interpretation of the fifteen-year fixed-price period were made to deter, discourage, and/or delay him from signing the standard QF contracts with PGE and to diminish the value of those contracts.¹⁸
2. Mr. Stephens possessed a belief prior to the executing the NewSun PPAs, that the Commission requires each of the utilities to offer standard contracts to QFs, including standard rates, for solar QFs up to 10 MW-AC in size, and that utilities were required to allow a QF to sell its entire net output to the utility for a power sale term of up to twenty years (with the duration chosen by the QF), and with the first fifteen years of that term having fixed prices based on the utility then-current standard, Commission-approved avoided-cost rate and the remaining five years priced at future variable market-rate prices.¹⁹ Mr. Stephens's understanding was based on his review of PGE's 2015 Standard Renewable Contract Form and Schedule 201, as well as OPUC Order No. 05-584, and his industry experience with terminology used in the industry and knowledge of the power generation financing topics discussed in Order No. 05-584.²⁰
3. A copy of Mr. Stephens' request via email on October 14, 2015 that Mr. True send him PGE's then-current standard variable PPA for both in-system and out-of-system qualifying facilities is contained in NewSun Exhibit 101.²¹
4. On October 15, 2015, Mr. True sent Mr. Stephens PGE's Commission-approved contract forms. A copy of the email is contained in NewSun Exhibit 102 and copies of two attachments to the email (the Standard Renewable In-System Variable Power Purchase

¹⁷ *E.g.* NewSun Parties/100, Stephens/17-18, 25-26, 33.

¹⁸ NewSun Parties/100, Stephens/20, 26-27.

¹⁹ NewSun Parties/100, Stephens/7-12.

²⁰ NewSun Parties/100, Stephens/7-12.

²¹ NewSun Parties/100, Stephens/12.

Agreement and the Standard Renewable Off-System Variable Power Purchase Agreement) are contained in NewSun Exhibits 103 and 104.

5. The 2015 Standard Renewable Contract Form contains only seventeen substantive blanks (plus signature blocks and contact information) to be filled in with information provided by the developer.²² These blanks include a mix of basic information (such as the county of the proposed facility, the interconnecting utility, energy production amounts, and nameplate capacity), as well as the Effective Date, the Termination Date, and the deadline for the seller to achieve commercial operation.²³
6. Mr. Stephens prepared PPAs for Wasco, Dayton, and Tygh Valley by completing the blanks in the contract forms with the pertinent seller-provided information.²⁴ For the Wasco and Tygh Valley PPAs, Mr. Stephens used the Standard Renewable Off-System Variable Power Purchase Agreement.²⁵ For the Dayton PPA, Mr. Stephens used the Standard Renewable On-System Variable Power Purchase Agreement.²⁶
7. Mr. Stephens did not understand there to be any language in the contract forms themselves to set a limit on the length of an agreement between PGE and a QF, and understood that Section 2.3 allowed the seller to choose the Termination Date of the agreement.²⁷ Mr. Stephens inserted into Section 2.3 as the Termination Date: “the completion of the last day of the twentieth contract year.”²⁸
8. Copies of the email submitting the Wasco PPA and the attached PPA are contained in NewSun Exhibits 105 and 106; copies of the email submitting the Dayton PPA and the attached PPA are contained in NewSun Exhibits 107 and 108; copies of the email submitting the Tygh Valley PPA and the attached PPA are contained in NewSun Exhibits 109 and 110.
9. Mr. Stephens intentionally used the word “Contract Years.”²⁹ He believed that the contract forms refer to “Contract Year” seventeen different times and all refer to matters related to the performance of the facility or Seller subsequent to the Commercial Operation Date because Contract Years are measured from the Commercial Operation Date.³⁰ Mr. Stephens also intended for the use of Contract Years to correspond with his understanding of the contract forms’ construct, per Schedule 201, and his understanding of Commission policy—that a QF could sell power for twenty full years, of which the first fifteen would have fixed pricing.³¹

²² NewSun Parties/100, Stephens/15.

²³ NewSun Parties/100, Stephens/15-16.

²⁴ NewSun Parties/100, Stephens/16.

²⁵ NewSun Parties/100, Stephens/13.

²⁶ NewSun Parties/100, Stephens/13.

²⁷ NewSun Parties/100, Stephens/14-16.

²⁸ NewSun Parties/100, Stephens/16.

²⁹ NewSun Parties/100, Stephens/16-17.

³⁰ NewSun Parties/100, Stephens/16-17.

³¹ NewSun Parties/100, Stephens/16-17.

In his view, this naturally corresponds with Contract Years, and with his belief the start of the core period of performance of the agreement, the period of power sales/purchase and regular energy delivery from a PGE-affirmed operational facility would begin at the beginning of the Contract Years.³²

10. Mr. True rejected Mr. Stephens' proposed Termination Date in Section 2.3 of the PPAs for Wasco, Dayton, and Tygh Valley, via emails sent on October 21, 2015 and October 28, 2015.³³ A copy of the emails are contained in NewSun Exhibit 111, 112, 113, and 114.
11. Mr. Stephens had a telephone call with Mr. True on November 12, 2015, to discuss the submitted draft PPAs.³⁴ For the first time, Mr. True told Mr. Stephens that PGE interprets its contract forms to not allow for payment of fixed prices for a period longer than fifteen years after the date of execution, as opposed to allowing for payment at fixed prices for fifteen years of power deliveries after the Commercial Operation Date.³⁵
12. On the telephone call on November 12, 2015, Mr. Stephens told Mr. True that he disagreed with Mr. True's assertions regarding the fixed-price term.³⁶ Mr. Stephens explained that the contract forms and Schedule 201 plainly contemplated that a QF would receive twenty-year terms starting on the Commercial Operation Date, including fixed prices for the first fifteen years.³⁷ This was one of several occasions where Mr. Stephens orally expressed this belief to Mr. True.³⁸
13. Later in the evening of November 12, 2015, Mr. Stephens sent Mr. True an email stating that PGE had entered into PPAs with other QFs that expressly stated PGE would pay the fixed prices for fifteen years after the Commercial Operation Date.³⁹ Mr. Stephens also stated that Commission policy required PGE to offer fifteen years of fixed prices after operations and that, in Mr. Stephens' view, the Commission plainly had concluded in Order 05-584 that QFs needed to be able to sell net output to a utility at a fixed price for fifteen years to obtain financing.⁴⁰ Mr. Stephens further noted that "[i]t would be burdensome to the QF to have only 12 years of energy sales to finance the project against."⁴¹ A copy of the email is contained in NewSun Exhibit 116.
14. Mr. Stephens belief was that the OPUC's policy in Order No. 05-584 was clear and PGE could not act contrary to it. Mr. Stephens sent Mr. True another email on November 19,

³² NewSun Parties/100, Stephens/16-17.

³³ NewSun Parties/100, Stephens/17.

³⁴ NewSun Parties/100, Stephens/18.

³⁵ NewSun Parties/100, Stephens/18.

³⁶ NewSun Parties/100, Stephens/18.

³⁷ NewSun Parties/100, Stephens/18.

³⁸ PGE/200, True/5.

³⁹ NewSun Parties/100, Stephens/18.

⁴⁰ NewSun Parties/100, Stephens/18.

⁴¹ NewSun Parties/100, Stephens/18.

2015, wherein he stated: “Sorry about the contract length issue; but after reading the original OPUC decision on contract length, it was pretty clear that the whole logic was to provide [a] 15 year term of fixed pricing operations for financing purposes; too big of an impact for me to just ignore, especially with prior PGE 15 and 20-year precedent. But I appreciate your consideration and time on the matter.” A copy of the email is contained in NewSun Exhibit 117.

15. Mr. True sent Mr. Stephens an email on November 20, 2015, in which he stated that “under the current form contract, PGE provides a 15 year fixed price term starting on the Effective Date.” Mr. True pointed to the phrase in Schedule 201 stating that the fixed-price option is “available for a maximum term of 15 years” and stated that PGE believed its position was “consistent with Commission Order 05-584.” A copy of the email is contained in NewSun Exhibit 118.
16. Despite Mr. True’s statements, Mr. Stephens did not understand the word “term” in Schedule 201 to have the same meaning as the defined word “Term” in the PPA.⁴² Mr. Stephens believed that the term of effectiveness (the *commitment* to buy and sell power) commonly begins before the term of power sales.⁴³ Mr. Stephens’ belief was based on the fact that the defined word “Term” in the PPA was not capitalized in Schedule 201 as other defined words were in Schedule 201, and on Mr. Stephens’ experience in the industry that it is common for parties to refer to a “term” of pricing as the number of years of power sales even though the contract itself is effective prior to that time.⁴⁴ Mr. Stephens understood Schedule 201 to establish the maximum number of years during which a QF would receive the on-peak and off-peak renewable fixed prices for net output delivered to PGE.⁴⁵
17. On December 3, 2015, Greg Adams, acting as attorney on behalf of Tygh Valley, Dayton, and Wasco, called PGE’s assistant general counsel, Denise Saunders, to discuss the issue.⁴⁶ Later that day, Mr. Adams sent Ms. Saunders a letter in which he made the same points Mr. Stephens had previously made. A copy of Mr. Adams’ letter is contained in PGE Exhibit 212.
18. In addition to the points made by Mr. Stephens, Mr. Adams letter, dated December 3, 2015, further noted that the provision of PGE’s contract forms “regarding renewable portfolio standard (‘RPS’) attributes unambiguously demonstrates that the 15-year term of fixed renewable rates runs from the commercial operation date because it provides that the QF will convey the RPS attributes to PGE from the point of the beginning of the renewable deficiency period until a full 15 years *after commercial operation*.” Mr. Adams also explained that the corresponding provision of Schedule 201 provided that the date of change

⁴² NewSun Parties/100, Stephens/19-20, 34-35.

⁴³ NewSun Parties/100, Stephens/34-35.

⁴⁴ NewSun Parties/100, Stephens/34-35.

⁴⁵ NewSun Parties/100, Stephens/34-35.

⁴⁶ NewSun Parties/100, Stephens/20-21.

in ownership of the RPS Attributes is the same date that prices change from the renewable fixed prices to the Mid-C Index Prices.

19. On December 14, 2015, PGE’s attorney, Denise Saunders, sent a letter to Mr. Adams. Ms. Saunders’ letter asserted that Order No. 05-584 “makes clear that the Commission intended that the term of the standard contract not exceed 20 years.” She also asserted “[t]he Commission clearly did not intend to guarantee every project 15 years of fixed prices.” Ms. Saunders’ letter did not respond to Mr. Adams’ assertions that PGE’s 2015 Standard Renewable Contract Form unambiguously states that the date of change in ownership of the RPS Attributes is fifteen years after the Commercial Operation Date, and Schedule 201 indicates that is the same date that prices change from the renewable fixed prices to the Mid-C Index Prices. A copy of Ms. Saunders’ letter is contained in PGE Exhibit 214.
20. No other representative of PGE ever responded to Mr. Stephens or any representatives of the NewSun Parties to explain PGE’s position in response to Mr. Adams’ assertions that PGE’s 2015 Standard Renewable Contract Form unambiguously states that the date of change in ownership of the RPS Attributes is fifteen years after the Commercial Operation Date, and Schedule 201 indicates that is the same date that prices change from the renewable fixed prices to the Mid-C Index Prices.⁴⁷
21. On December 3, 2015, the same day Mr. Adams spoke to Ms. Saunders, and just hours after Mr. Adams sent his letter, PGE filed an out-of-cycle proposal to reduce its avoided cost rates. PGE’s filing and is contained in NewSun Exhibit 119.⁴⁸
22. This filing was out-of-cycle because the normal times for avoided cost rate changes in Oregon are: (i) on May 1 of each year to make annual updates to a limited set of rate inputs and (ii) after the Commission acknowledges PGE’s integrated resource plan. Neither circumstance existed on December 3, 2015.⁴⁹
23. Mr. Stephens did not anticipate that PGE’s avoided costs would be changing until its filing planned for May 1, 2016.⁵⁰ No representative of PGE that had been in contact with Mr. Stephens communicated the upcoming rate change to him.⁵¹ Nor did Ms. Saunders communicate the pending rate-change proposal to Mr. Adams when they spoke on December 3, 2015.⁵²

⁴⁷ NewSun Parties/100, Stephens/22-23.

⁴⁸ NewSun Parties/100, Stephens/23.

⁴⁹ NewSun Parties/100, Stephens/23; OPUC Order No. 14-058 at 25-26.

⁵⁰ NewSun Parties/100, Stephens/23.

⁵¹ NewSun Parties/100, Stephens/23-24; PGE/500, True/4.

⁵² NewSun Parties/100, Stephens/23-24.

24. PGE’s proposed rate change would have resulted in significantly lower fixed avoided-cost rates for renewable QFs—such as the NewSun Parties—who entered into a standard PURPA contract with PGE after the new rates took effect.⁵³
25. Because PGE proposed that the new rates take effect in January 13, 2016, Mr. Stephens believed it was imperative to conclude agreements with PGE before the new rates took effect, and he began preparing PPA applications for three additional projects under development.⁵⁴
26. The next PPA Mr. Stephens sent to PGE was for Starvation, which was based on the Standard Renewable Off-System Variable Power Purchase Agreement and was submitted to Mr. True via email dated December 4, 2015. Copies of the email and attached Starvation PPA are contained in NewSun Exhibits 120 and 121.
27. In preparing the Starvation draft PPA, Mr. Stephens chose as the termination date in Section 2.3 “the completion of the last day of the *sixteenth* contract year” (rather than the completion of the last day of the twentieth contract year, which he had chosen for three previous PPAs he submitted). In choosing this Termination Date, Mr. Stephens understood that because PGE’s contract forms provide that a QF has three years to achieve commercial operation, plus an additional year to cure if the QF misses the three-year deadline, a contract that terminated after sixteen Contract Years would not extend more than twenty years past the Effective Date (4 years + 16 years = 20 years).⁵⁵
28. In choosing the Termination Date for Starvation, Mr. Stephens also believed that if he was correct that the fixed-price period ran for fifteen years after the Commercial Operation Date, Starvation still would be able to sell its net output to PGE for a full fifteen years at fixed prices based on PGE’s avoid-cost rate, although only for one year at Mid-C prices.⁵⁶
29. Additionally, in choosing the Termination Date for Starvation, Mr. Stephens did not understand the fifteen-year fixed-price issue to be controlled by the words used to complete any of the blank spaces in the standard contract and believed that, despite PGE’s assertions, the Commission’s policy and the standard contract provided for the fixed prices for fifteen years after the Commercial Operation Date even if he agreed to sign a PPA.⁵⁷ He did not perceive any need to engage in any adjudication to resolve the issue to execute the standard contract.⁵⁸

⁵³ NewSun Parties/100, Stephens/24.

⁵⁴ NewSun Parties/100, Stephens/24.

⁵⁵ NewSun Parties/100, Stephens/25.

⁵⁶ NewSun Parties/100, Stephens/25.

⁵⁷ NewSun Parties/100, Stephens/28.

⁵⁸ NewSun Parties/100, Stephens/28.

30. Mr. Stephens further believed that if he delayed execution of the PPAs to first engage in adjudication with PGE, he could be tied up for unknown periods of time, at great cost and expense, and thus put the pricing and contracts at risk, particularly in light of the pending proposal to reduce the avoided costs.⁵⁹ Mr. Stephens was not interested in taking on the risk of litigation at the time because he believed that executed PPAs are a critical aspect of the development process that supports ongoing development efforts.⁶⁰
31. In other words, Mr. Stephens believed that Starvation was giving up four years of net output sales at Mid-C prices in order to avoid being forced to sell its net output at much lower fixed-price avoid cost rates if PGE's proposed rate change were approved, while preserving his right to sell at the fixed prices for fifteen years after the Commercial Operation Date at the then-effective rates.⁶¹
32. In his email to Mr. True dated December 4, 2015, Mr. Stephens stated he continued to disagree with PGE's position regarding the fifteen-year fixed price period but had changed the Termination Date to a date within twenty years of the Effective Date for the Starvation PPA.⁶²
33. On December 17, 2015, Mr. True sent Mr. Stephens an email, stating that PGE was prepared to move forward with the Starvation PPA, but not the other Tygh Valley, Dayton and Wasco PPAs, which he stated had "issues we have discussed." A copy of Mr. True's email is contained in NewSun Exhibit 124.
34. On December 18, 2015, Mr. Stephens sent Mr. True revised PPAs for the Tygh Valley, Wasco, and Dayton containing the same Termination Date that PGE approved in the Starvation PPA—namely, "the completion of the last day of the sixteenth contract year." The email to Mr. True and the attached revised PPAs are included in NewSun Exhibits 125, 126, 127, and 128.
35. Mr. Stephens' email, dated December 18, 2015, stated: "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." By so stating, Mr. Stephens believed he had expressly reserved his disagreement with PGE as to the meaning of the fifteen-year fixed-price period, which he did not understand to be controlled by any blank spaces in the contract forms.⁶³ Instead, Mr. Stephens understood that the other provisions of the standard contract form, Schedule 201, and surrounding Commission policy controlled that matter.

⁵⁹ NewSun Parties/100, Stephens/28-29.

⁶⁰ NewSun Parties/100, Stephens/28-29.

⁶¹ NewSun Parties/100, Stephens/25, 30.

⁶² NewSun Parties/100, Stephens/25-26.

⁶³ NewSun Parties/100, Stephens/30.

36. On December 18, 2015, Mr. Stephens emailed to Mr. True two new PPAs for Fort Rock I and Fort Rock II. The termination date for the Fort Rock I and Fort Rock II PPAs was the same as the termination date for the Starvation PPA and the revised Tygh Valley, Wasco, and Dayton PPAs—namely, “the completion of the last day of the sixteenth contract year.” Mr. Stephens’ email, dated December 18, 2015, sending the Fort Rock I and Fort Rock II PPAs to Mr. True again noted Mr. Stephens’ disagreement with PGE on the fifteen-year fixed-price term. Copies of this email and the attached PPAs are contained in NewSun Exhibits 129, 130, and 131.
37. Through contacts with Mr. True and other PGE representatives in 2015, Mr. Stephens believed PGE may have purported to believe the fifteen-year term ends fifteen years after the Effective Date to discourage QFs from executing the standard contract.⁶⁴ Mr. Stephens developed this belief based on: (i) statements by a PGE Structuring and Origination employees, including Mr. John Morton, to Mr. Stephens in October 2015 that Mr. Stephens understood to communicate that PGE prefers independent power producers to negotiate bilateral agreements instead of exercising their right to sell under QF contracts,⁶⁵ and (ii) statements Mr. Stephens understood Mr. True to make to him, on December 14, 2015, expressing that a high-level PGE executive had reprimanded Mr. True after a representative of a QF counterparty had expressed to the PGE executive that Mr. True had been “easy to work with” in connection with the QF contracting process, which Mr. Stephens understood Mr. True to state was clear direction not to be easy to work with for QF counterparties.⁶⁶
38. On January 3, 2016, Mr. Stephens filed a letter with the Commission responding to PGE’s proposed out-of-cycle rate change in which he explained some of the ways in which he felt at the time that PGE was attempting to make it difficult or impossible for the NewSun Parties and other QFs to contract with PGE. The letter was distributed by the Commission’s filing center to the service list in the docket, including to PGE’s representatives. A copy of this letter is contained in NewSun Exhibit 123.
39. Among other things, Mr. Stephens’ letter, dated January 3, 2016, stated: “Since December 3, the substantial threat of PGE’s actions has resulted in . . . pressure to make hasty actions and decisions against the context of total loss if these changes are approved.” The letter further stated that Mr. Stephens had been “prevented from considering proper challenges to PGE’s position due to this proceeding’s implications, the timeline imperatives to complete contracting before threatened project destroying price changes, and resulting existential threats to my projects if PGE’s request is approved”
40. Mr. Stephens’ letter, dated January 3, 2016, further discussed Mr. Stephens’ belief that PGE had taken an unreasonable position with respect to the twenty-year and fifteen-year term issues, stating: “Meanwhile I am forced to incur delays, stress, project risk, and legal costs in

⁶⁴ NewSun Parties/100, Stephens/3.

⁶⁵ NewSun Parties/100, Stephens/20

⁶⁶ NewSun Parties/100, Stephens/26-27.

order to debate how to address just simple basic reasonable issues, while simultaneously PGE attempts to pull the pricing out from under me, without telling me, and then cancels meetings for unrelated matters (effect on market competition?) because I had my lawyer send them a letter on a QF contract question (to discuss their odd interpretation of PPA ‘term’, which subverts an industry-wide interpretation of ‘term’ for PPAs).”

41. In late January 2016, at a lunch meeting, Mr. Stephens expressed to PGE representative Brett Sims that he disagreed with PGE’s stated position regarding the commencement of the fifteen-year fixed-price period in contract forms and Schedule 201, including that PGE’s position was absurd and contrary to standard industry practice as well as OPUC policy.⁶⁷ Mr. Sims shrugged and did not respond verbally or otherwise express disagreement.⁶⁸ At this time, Mr. Sims was employed as Director of Origination, Structuring, and Resource Strategy at PGE.
42. The PPAs for each of Dayton, Tygh Valley, Wasco, and Starvation, were executed on January 25, 2016, which was the day before the date the Commission had set to decide whether to allow PGE’s proposed out-of-cycle avoided cost rate change at the regular public meeting on that date.⁶⁹
43. The other two PPAs submitted in December 2015, Fort Rock I and Fort Rock II, were signed on April 27, 2016.⁷⁰
44. Mr. Stephens submitted the four additional NewSun Parties’ PPAs for Alfalfa, Fort Rock IV, Harney, and Riley in the second quarter of 2016.⁷¹ Mr. Stephens proposed the same termination date for each of those PPAs as the termination dates for all the other PPAs: “the completion of the last day of the sixteenth (16th) Contract Year.”⁷² These four PPAs were all executed in late June 2016 on the dates set forth in the table in All Parties’ Joint Statement of Undisputed Facts above.
45. In this timeframe, PGE made an avoided cost rate change proposal due to its May 1 annual rate update. Mr. Stephens feared that PGE would refuse to execute those four PPAs at all prior to the rate change, even with the language proposed to limit the Seller’s right to sell for sixteen Contract Years instead of twenty Contract Years.⁷³
46. No representative from PGE ever stated to Mr. Stephens prior to execution of any of the NewSun PPAs that PGE’s contract forms that were offered before approval of the first

⁶⁷ NewSun Parties/100, Stephens/33.

⁶⁸ NewSun Parties/100, Stephens/33.

⁶⁹ NewSun Parties/100, Stephens/31.

⁷⁰ NewSun Parties/100, Stephens/31-32.

⁷¹ NewSun Parties/100, Stephens/32.

⁷² NewSun Parties/100, Stephens/32.

⁷³ NewSun Parties/100, Stephens/32-33.

renewable contract form in 2014 would somehow control the interpretation of the 2015 Standard Renewable Contract Form or would control interpretation of the NewSun PPAs.⁷⁴

47. Mr. Stephens continues to believe to this day that the NewSun PPAs and OPUC policy require payment by PGE at the fixed renewable prices in Tables 6a and 6b of Schedule 201 for fifteen years after the Commercial Operation Date.⁷⁵
48. The NewSun Parties' facilities were not constructed at the time of execution of the NewSun PPAs, and the scheduled commercial operation dates are each three years after the execution date of the agreements.⁷⁶ Thus, if the fifteen-year fixed-price period ends fifteen years after execution of the agreements, the NewSun Parties will be paid fixed prices for 12 years or less, whereas if the fifteen-year fixed-price period begins on Commercial Operation Date, the NewSun Party will be paid fixed prices for fifteen years.⁷⁷

II. Industry Usage and Understanding

49. PGE's Schedule 201 in effect at the time of execution of the NewSun PPAs provides at page 12:

This option is available for a *maximum term of 15 years*. Prices will be as established at the time the Standard PPA is executed and will be equal to the Renewable Avoided Costs in Tables 4a and 4b, 5a and 5b, or 6a and 6b, depending on the type of QF, effective at execution.

* * * *

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*.⁷⁸

With respect to the overall contract length, it states:

The agreement will have a *term of up to 20 years* as selected by the QF.⁷⁹

And:

TERM OF AGREEMENT

⁷⁴ NewSun Parties/100, Stephens/34.

⁷⁵ NewSun Parties/100, Stephens/23

⁷⁶ NewSun Parties/100, Stephens/4-6.

⁷⁷ NewSun Parties/100, Stephens/4-6.

⁷⁸ PGE/101, Macfarlane/30 (emphasis added).

⁷⁹ PGE/101, Macfarlane/25 (emphasis added).

Not less than one year and *not to exceed 20 years*.⁸⁰

50. It is normal in the context of a power purchase agreement that the contract is in effect upon execution and therefore the term has commenced technically upon execution.⁸¹ However, in the independent power industry, it is common to use the words “term” or “contract length” and similar phrases to describe the period during which the facility is operating and expected to be delivering and selling power under the PPA even though the PPA itself would be effective before operation of the facility.⁸²
51. An industry participant would ordinarily understand that the phrases that PGE used in its Schedule 201 to describe the fifteen-year fixed-price period and the twenty-year contract term, set forth in paragraph 49, are typical language used in the industry to describe the period during which the facility is operating and expected to be delivering and selling power to the purchasing utility.⁸³
52. The ordinary industry understanding of the words used in PGE’s Schedule 201, set forth in paragraph 49, is that PGE’s fixed prices apply for a period of fifteen years after operation with an additional five years of market-based pricing, for an overall term of twenty years after operation and power sales begin.⁸⁴
53. The Idaho Power Company and PacifiCorp PURPA tariffs approved by the OPUC subsequent to Order No. 05-584 through the present time have consistently used the words “term” and “contract length” or “years” in describing the fifteen-year fixed-price period and the twenty-year power purchase period.⁸⁵ Idaho Power and PacifiCorp have used those words in their PURPA tariffs in a manner that is consistent with industry norms and that refers to a period of time after the facility is either operational or expected to be operational, not the period beginning at execution of the PPA.⁸⁶
54. PGE’s position that PGE will only pay fixed prices for fifteen years immediately following execution of the NewSun PPAs would be very surprising to most industry participants based on the words PGE used in the Schedule 201.⁸⁷

⁸⁰ PGE/101, Macfarlane/36 (emphasis added).

⁸¹ NewSun Parties/200, Harnsberger/6; NewSun Parties/100, Stephens/8-12, 34-38.

⁸² NewSun Parties/200, Harnsberger/4; CREA-NIPPC-REC/100, Lowe/3; NewSun Parties/100, Stephens/8-12, 34-38.

⁸³ NewSun Parties/200, Harnsberger/6; CREA-NIPPC-REC/100, Lowe/3; NewSun Parties/100, Stephens/8-12.

⁸⁴ CREA-NIPPC-REC/100, Lowe/3; NewSun Parties/100, Stephens/8-12, 34-38.

⁸⁵ CREA-NIPPC-REC/100, Lowe/8-13.

⁸⁶ CREA-NIPPC-REC/100, Lowe/8-13.

⁸⁷ NewSun Parties/200, Harnsberger/2.

III. Background on Renewable Contract Form

55. As summarized below, after the Commission issued Order No. 11-505, PGE proposed changes to standard contracts as follows:

a) PGE proposed language to the contract forms and Schedule 201 that would state that fixed prices would be paid only for “fifteen years immediately following the effective date” and “[f]or the period prior to the 15th anniversary of the Effective Date”;

b) PGE’s proposal was opposed by some of the parties, including OPUC Staff representatives who stated this was a substantive change to PGE’s Schedule 201;

c) PGE withdrew its proposed language to the contract forms and Schedule 201 on this point;

d) the Oregon Department of Energy (“ODOE”) and the Community Renewable Energy Association (“CREA”) collectively proposed revisions to PGE’s UM 1610 compliance filing Schedule 201 and renewable standard contract form that altered PGE’s proposal for the ownership of RPS Attributes and the fifteen-year renewable fixed-price period, where the intent of the revision expressed to PGE by ODOE was that the RPS Attributes are not ceded by the QF to PGE after the PGE stops paying fixed renewable rates and where the subsequent edit by CREA included an express statement in Section 4.6 of the PPA that the QF stops ceding the RPS Attributes to PGE fifteen years after the Commercial Operation Date; and

e) PGE agreed to ODOE’s and CREA’s edits on this point, and thereafter no parties objected to approval of PGE’s revisions to its Schedule 201 and renewable standard contract form filed in December 2014.⁸⁸

56. After the Commission issued Order No. 11-505 on December 13, 2011, regarding renewable avoided cost rates, PGE filed its compliance filing in Docket No. UM 1396 on March 16, 2012. PGE’s March 16, 2012 Schedule 211 as filed in Docket No. UM 1396 is contained in CREA-NIPPC-REC Exhibit 201.

57. PGE proposed the following language on page 4 and page 7 of the proposed Schedule 211, filed on March 16, 2012, in describing the renewable fixed price option:

This option is available for a maximum period of 15 years *immediately following the effective date* of the Standard Renewable PPA. Sellers with a PPA term exceeding 15 years will make a one time election at execution to select a Market-Based Option from Schedule 201 for all

⁸⁸ CREA-NIPPC-REC/200, Sanger/2

years up to five after the initial 15 years *immediately following the effective date* of the Standard Renewable PPA. Under the Renewable Fixed Price for a Variable Resource without Integration, prices will be as established at the time the Standard Renewable PPA is executed and will be equal to the Renewable 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 Renewable PPA.⁸⁹

The italicized language was not contained in prior or subsequent PGE Schedule 201 tariffs approved by the OPUC.⁹⁰

58. PGE’s proposed Schedule 201, filed on March 16, 2012, in Docket No. UM 1396, also proposed to change the language of its Schedule 201, adding the phrase “immediately following the effective date” in describing the fifteen-year fixed price term.⁹¹

59. PGE’s proposed a Standard Renewable PPA included with the March 16, 2012 filing in Docket No. UM 1396, is contained in CREA-NIPPC-REC Exhibit 202. It provided in Section 5.1:

PGE shall pay Seller for the price options 5.1, 5.2, 5.3 or 5.4, as selected below, pursuant to the Schedule. Seller shall indicate which price option it chooses by marking its choice below with an X. *If Seller chooses the option in Section 5.1, it must mark below with a second X, a single second option from Section 5.2, 5.3, or 5.4 for all Contract Years in excess of 15 until the end of the Term.*

- 5.1 ___ Renewable Fixed Price Option for Renewable Resources
- 5.2 ___ Deadband Index Gas Price
- 5.3 ___ Index Gas Price
- 5.4 ___ Mid-C Index Rate Price⁹²

This proposed PPA further provided in section 1.6:

“Contract Year” means each twelve (12) month period during the Term 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.⁹³

⁸⁹ CREA-NIPPC-REC/200, Sanger/4 (emphasis in testimony).

⁹⁰ CREA-NIPPC-REC/200, Sanger/5.

⁹¹ CREA-NIPPC-REC/200, Sanger/6.

⁹² CREA-NIPPC-REC/200, Sanger/5; CREA-NIPPC-REC/202, Sanger/9 (emphasis in testimony).

⁹³ CREA-NIPPC-REC/200, Sanger/5 (citing CREA-NIPPC-REC/202, Sanger/2).

60. On December 17, 2012, PGE’s attorney, David White, circulated an email to all parties to UM 1396, which provided PGE’s proposed revisions to a settlement agreement and the tariffs and standard form PPAs.⁹⁴ This email and the attachment of PGE’s proposed Standard Renewable PPA form is contained in CREA-NIPPC-REC Exhibit 203.

61. Among the changes proposed by Mr. White, on behalf of PGE, to the Standard Renewable PPA was the following language proposed for Section 5:

PGE shall pay Seller the Contract Price for the Net Output delivered to PGE under this Agreement. *For the period prior to the 15th anniversary of the Effective Date, the Contract Price is equal to the Fixed Price Non Variable or Integrated Resource as set forth in Schedule 211* and as adjusted pursuant to Section 5.2 below. *For the period (if any) from the 15th anniversary of the Effective Date until the end of the Term, Seller has the price options listed below* as adjusted pursuant to the terms of Section 5.2 below. The price for the price options listed below shall be established pursuant to the terms of Schedule 201.

- 1. Deadband Index Gas Price _____
- 2. Index Gas Price _____
- 3. Mid-C Index Rate Price _____⁹⁵

62. On January 31, 2013, OPUC Staff representative, Adam Bless, responded to David White’s email, dated December 17, 2012, with an email to all parties to UM 1396. This email is contained with a portion of its attachments as CREA-NIPPC-REC Exhibit 204.

63. Mr. Bless’s email, dated January 31, 2013, stated that Staff identified issues in the non-renewable PPAs and Schedule 201 that it considered to be substantive changes from existing Commission-approved tariffs.⁹⁶ Mr. Bless’s email described changes marked as substantive as follows: “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.”⁹⁷

64. One of the substantive changes Mr. Bless, on behalf of OPUC Staff, marked was the newly proposed language regarding the fifteen-year period of fixed prices PGE had proposed to Schedule 201, which stated (with PGE’s proposed changes to the then-effective Schedule 201 in underline and strikethrough):

⁹⁴ CREA-NIPPC-REC/200, Sanger/6.

⁹⁵ CREA-NIPPC-REC/203, Sanger/10-11; CREA-NIPPC-REC/200, Sanger/7 (emphasis in testimony).

⁹⁶ CREA-NIPPC-REC/200, Sanger/8.

⁹⁷ CREA-NIPPC-REC/204, Sanger/2.

This option is available for a maximum ~~term~~ period of 15 years immediately following the effective date of the Standard PPA. Sellers with ~~contracts~~ 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 ~~in excess~~ 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 ~~Contract~~ PPA is executed and will be equal to the Avoided Costs in Tables 1 and 2 effective at execution for a ~~term~~ period of up to 15 years immediately following the effective date of the Standard PPA.⁹⁸

65. In a comment bubble in response to this proposed change to Schedule 201, Staff explained: “SUBSTANTIVE. The topic of contract term and when the 15 year period starts is a UM 1610 issue, and was not part of Order No. 11-505 or the July settlement discussion meeting. Should be removed.”⁹⁹
66. Parties did not agree on language to propose to the OPUC for the PGE renewable rate tariff and Standard Renewable PPAs or PGE’s proposed revisions to Schedule 201 and its Standard Non-Renewable PPAs, and the filings and drafts in UM 1396 never went into effect.¹⁰⁰ The resolution of unresolved issues were rolled into a larger list of potential issues for Phase I of Docket No. UM 1610.
67. After the Commission issued Order No. 14-058 in Phase I of Docket No. UM 1610 on February 24, 2014, PGE made its initial UM 1610 compliance filing on May 30, 2014. In this filing, PGE had eliminated Schedule 211 and proposed to use Schedule 201 for both the renewable and the non-renewable rates, and included newly proposed Standard Renewable PPAs.¹⁰¹
68. During workshops to discuss PGE’s proposed compliance filing, PGE’s attorney, Richard George, stated in an email dated July 22, 2014, that with respect to PGE’s proposed Standard Renewable PPA forms, PGE had “used the 1396 filing as a base, which started with the non-renewable agreement and added terms to make it renewable.” This email is contained in CREA-NIPPC-REC Exhibit 205.
69. PGE’s proposed Standard Renewable PPA and Schedule 201 was filed by PGE on May 30, 2014, and redistributed to via email workshop participants by Robert Macfarlane in word version on July 29, 2014, are included in Exhibit CREA-NIPPC-REC Exhibit 206.

⁹⁸ CREA-NIPPC-REC/204, Sanger/6.

⁹⁹ CREA-NIPPC-REC/204, Sanger/6.

¹⁰⁰ CREA-NIPPC-REC/200, Sanger/8.

¹⁰¹ CREA-NIPPC-REC/200, Sanger/9.

70. In its UM 1610 compliance filing made on May 30, 2014, PGE had withdrawn its proposal, made in UM 1396 compliance filing, to use the new language in Schedule 201 stating that the fixed rate period began 15 years “immediately following the effective date.”¹⁰² Instead, PGE used the language it had previously used in Schedule 201 (at page 10) which provided: “This option is available for a maximum term of 15 years.”¹⁰³ Additionally, PGE had removed from the proposed provisions of the Standard Renewable PPA distributed previously by David White, which would have stated: “*For the period prior to the 15th anniversary of the Effective Date, the Contract Price is equal to the Fixed Price Non Variable or Integrated Resource as set forth in Schedule 211.*”¹⁰⁴
71. PGE’s proposed UM 1610 Standard Renewable PPA, filed on May 30, 2014, provided in Section 4.5, in pertinent part, that: “Commencing on the Effective Date and continuing through the Term of the Agreement, Seller shall provide and PGE shall acquire the Environmental Attributes for the Contract Years specified in the Schedule.”¹⁰⁵ In turn, PGE’s proposed Schedule 201 stated, at page 10:

A Renewable QF choosing the Renewable Fixed Price Option must cede all Renewable Energy Certificates and all other Environmental Attributes generated by the facility to the Company during the deficiency period starting in 2020. . . . Sellers with contracts exceeding 15 years will receive pricing equal to the Mid-C Index Price for all years up to five in excess of the initial 15.¹⁰⁶

72. In parallel UM 1610 workshops at the time regarding PacifiCorp’s renewable rates and contracts, parties had reached an agreement in a PacifiCorp stipulation executed on August 11, 2014, which stated: “The Stipulating Parties agree that renewable PPAs signed during Phase II [of UM 1610] will include language assigning ownership of all Environmental Attributes to the QF during the last five years of a 20-year contract when prices are at market”.¹⁰⁷ During workshops PGE agreed it would use the same policy as agreed to by PacifiCorp on this point for contracts executed pending the outcome of Phase II of UM 1610.¹⁰⁸

¹⁰² CREA-NIPPC-REC/200, Sanger/10 (quoting UM 1396, PGE/105, Macfarlane/4, 6).

¹⁰³ CREA-NIPPC-REC/200, Sanger/10 (quoting CREA-NIPPC-REC/206, Sanger/11).

¹⁰⁴ CREA-NIPPC-REC/200, Sanger/10-11 (quoting CREA-NIPPC-REC/203, Sanger/10) (emphasis in testimony).

¹⁰⁵ CREA-NIPPC-REC/200, Sanger/12 (quoting CREA-NIPPC-REC/206, Sanger/30).

¹⁰⁶ CREA-NIPPC-REC/200, Sanger/12 (quoting CREA-NIPPC-REC/206, Sanger/11).

¹⁰⁷ CREA-NIPPC-REC/200, Sanger/12 (citing Adams Declaration In Support Of the NewSun Parties’ Motion for Summary Disposition, Exhibit E (July 2, 2018)).

¹⁰⁸ CREA-NIPPC-REC/200, Sanger/12-13; *see also* PGE/400, Macfarlane/6-7 (not disputing this agreement).

73. PGE’s proposed Schedule 201 was first edited to make it consistent with the PacifiCorp stipulation by ODOE representative, Kacia Brockman, via email dated July 31, 2014.¹⁰⁹ This email and the attached revised Schedule 201 is contained in CREA-NIPPC-REC Exhibit 206.
74. Ms. Brockman’s email to PGE and other parties, dated July 31, 2014, states: “Attached is a redline version of PGE’s filed Schedule 201 with the comments and suggested edits that I described in our meeting on July 29.”¹¹⁰ Among other edits, the attached Schedule 201 contained the following edit at page 10, with ODOE’s edit in underline: “Sellers with contracts exceeding 15 years will receive pricing equal to the Mid-C Index Price and will retain Environmental Attributes generated by the facility for all years up to five in excess of the initial 15.”¹¹¹ In a comment bubble on the revised draft, Ms. Brockman of ODOE explained: “This clarifies that RECs [i.e., renewable energy certificates or “RPS Attributes”] are not ceded after the Seller stops receiving deficiency period avoided cost rates.”¹¹²
75. PGE indicated it agreed to accept this edit to Schedule 201 in its next exchanged drafts via email on August 20, 2014. This email is contained in CREA-NIPPC-REC Exhibit 208.
76. On September 2, 2014, CREA’s attorney in the workshops, Greg Adams, distributed an email to PGE and other parties that proposed additional edits to further clarify the precise time when the fifteen-year period ended in the Standard Renewable PPA.¹¹³ This email and one of the representative Standard Renewable PPA drafts is included in CREA-NIPPC-REC Exhibit 209.
77. CREA’s proposed edit to Section 4.6 of the Standard Renewable PPA, with proposed edits in underline and strikethrough, included the following:

During the Renewable Resource Deficiency Period as specified in the Schedule Commencing on the Effective Date and continuing through the Term of this Agreement, Seller shall provide and PGE shall acquire the RPS Attributes for the Contract Years as specified in the Schedule and Seller retains ownership of all other Environmental Attributes (if any). Seller retains ownership of all Environmental Attributes during the Renewable Resource Sufficiency Period as specified in the Schedule and any period within the Term of this Agreement after completion of the first fifteen (15) years after the Commercial Operation Date.¹¹⁴

¹⁰⁹ CREA-NIPPC-REC/200, Sanger/13.

¹¹⁰ CREA-NIPPC-REC/207, Sanger/1.

¹¹¹ CREA-NIPPC-REC/207, Sanger/13.

¹¹² CREA-NIPPC-REC/207, Sanger/14.

¹¹³ CREA-NIPPC-REC/200, Sanger/15.

¹¹⁴ CREA-NIPPC-REC/209, Sanger/45.

78. In the comment bubble for these changes, CREA explained: “These edits are consistent with the PacifiCorp contract. QFs will need this clarity in the contract if they are going to be able to use the attributes that they retain.”¹¹⁵
79. PGE expressed its agreement to CREA’s edit to Section 4.6 via email from PGE’s attorney, Rich George, dated October 3, 2014. That email is contained in CREA-REC-NIPPC Exhibit 210.
80. The final Section 4.6 of the Standard Renewable PPA distributed by Mr. George, on behalf of PGE, on October 3, 2014, included the following (with edits in strikethrough and underline shown on PGE’s document to its initially filed version from May 30, 2014):

During the Renewable Resource Deficiency Period ~~Commencing on the Effective Date and continuing through the Term of this Agreement~~, Seller shall provide and PGE shall acquire the ~~Environmental 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.¹¹⁶

In the comment bubble, PGE stated: “Incorporates CREA’s suggested changes.”¹¹⁷

81. In sum, PGE agreed to revisions where the intent of those revisions expressed to PGE by ODOE was that the RPS Attributes are not ceded by the QF to PGE after the PGE stops paying fixed renewable rates and agreed to a subsequent edit by CREA that included an express statement in Section 4.6 of the PPA that the QF stops ceding the RPS Attributes to PGE fifteen years after the Commercial Operation Date.¹¹⁸
82. After PGE’s agreement to the ODOE and CREA revisions, CREA, ODOE, OPUC Staff, Renewable Energy Coalition, and the other stakeholders in the PGE-specific workshops agreed not object to PGE’s revised compliance filing, and PGE filed the revised compliance filing containing Schedule 201 and the Standard Renewable PPA on November 10, 2014.¹¹⁹ The filing contained the final revisions discussed above related to the date of change of ownership of the RPS Attributes and the change from payment at renewable fixed prices to

¹¹⁵ CREA-NIPPC-REC/209, Sanger/45.

¹¹⁶ CREA-NIPPC-REC/210, Sanger/45.

¹¹⁷ CREA-NIPPC-REC/210, Sanger/45.

¹¹⁸ CREA-NIPPC-REC/200, Sanger/16, 18.

¹¹⁹ CREA-NIPPC-REC/200, Sanger/18; *see also* Adams Declaration In Support Of the NewSun Parties’ Motion for Summary Disposition, Exhibit B (July 2, 2018) (containing excerpt of PGE’s revised compliance filing).

market index prices, which were later contained in the 2015 Renewable Standard Contract Form executed by the NewSun Parties.¹²⁰

IV. Witness Qualifications

83. Witness Jacob Stephens is a serial entrepreneur and power industry professional with over a decade of experience starting companies focused on the development of utility-scale solar photovoltaic and thermal power generation and energy storage, particularly in the western U.S. He started his first solar company when the U.S. utility-scale solar industry began in earnest around 2006-2007. He co-founded US Solar Holdings LLC in 2008 which resulted in the world's 13th largest solar PV facility, Campo Verde Solar (139 MW), constructed in 2013. He founded NewSun Energy LLC in 2015. During this time, he has worked on thousands of megawatts of power generation and storage, as an executive and boots-on-the-ground, including greenfield projects, power contracts, capital formation, finance, construction, financial modeling, deal origination, M&A (corporate and project), land use and acquisition, interconnection and transmission, technology, supply, and regulatory affairs and policy. He secured and executed on a multi-university U.S. Department of Energy R&D grant to develop new energy storage technology resulting in operational prototypes and publication of peer-reviewed engineering journal articles. He have worked in several countries and with domestic and international counterparties including throughout the Americas, Asia, Middle East, and Europe, ranging from multi-billion-dollar, multi-national corporations and major private equity funds to small investors, mom-and-pop developers, and closely-held companies, as well as with many investor-owned utilities, electric cooperatives, independent power producers, and landowners of various types and sizes. He has worked on contracts and negotiations and with a wide variety of professionals related to all of these matters.¹²¹

84. Mr. Stephens has a B.S. in Mathematics from Virginia Tech, cum laude, with minors in History, Urban Planning, with significant coursework in physics and computer science. Following several years as a software engineer focused on developing auditing algorithm software for major telecommunications companys' mutual billing, he pursued my M.B.A. with concentrations in Finance and Entrepreneurship as a full scholarship student at University of Arizona's Eller College of Management where he graduated cum laude in 2007.

85. Witness Thomas Harnsberger graduated from the University of California San Diego in 1971 with honors and attended University of Michigan Law School where he graduated magna cum laude in 1974. He was admitted to the practice of law in California in 1974. His legal practice has focused on corporate real estate with a specialization in independent electric power projects. He first worked as a lawyer at Latham & Watkins in Los Angeles where he

¹²⁰ CREA-NIPPC-REC/200, Sanger/18.

¹²¹ NewSun Parties/100, Stephens/1-2.

became a partner in 1982. After several years as a real estate investor, he became a partner at Milbank Tweed in Los Angeles in 1987 where he began working on independent energy projects utilizing geothermal, solar, wind, biomass, natural gas and coal resources on behalf of project developers (both independents and utility affiliates) and financiers. He moved my practice to Riordan & McKinzie in 1993 and then to Reed Smith in 2003 and his practice has continued to revolve around independent energy. For the past 10 years he has been a solo practitioner. He has worked on projects located throughout the United States as well as Canada and Indonesia, ranging from huge utility scale projects to QFs, from a few megawatts or smaller to over 1,000. He has reviewed and/or drafted dozens of power purchase agreements in his career and negotiated financing documents on behalf of both providers and recipients of financing in numerous independent power projects.¹²²

86. Witness Irion Sanger graduated from Lewis and Clark Law School in Portland, Oregon in 2000 with cum laude honors and an Environmental Law Certificate, and from World College Institute of New College of California in 1995 with a bachelor's degree in the Humanities with an emphasis in International Environmental Studies. Mr. Sanger provides legal and consulting advice and advocacy to on energy, administrative, transactional, and public utility law. Mr. Sanger represents energy trade associations, municipalities, electric cooperatives, irrigation districts, end-use industrial and commercial consumers, investor owned water utilities, and renewable and cogeneration electricity producers in state and federal courts as well as before energy related administrative agencies, including the Oregon Public Utility Commission, the Idaho Public Utilities Commission, the Utah Public Service Commission, the Washington Utilities and Transportation Commission, the Wyoming Public Service Commission, and the Federal Energy Regulatory Commission. Mr. Sanger is also an adjunct instructor at Lewis and Clark Law School (Northwest Energy Law), and in Portland Community College's Paralegal Program (Administrative Law, Environmental Law, Introduction to Law, and Law Practice Management).¹²³

87. Witness John Lowe graduated from Oregon State University with a Bachelor of Science degree in 1975. From 1975 to 2006, Mr. Lowe was employed by PacifiCorp. Over most of that thirty-year period, his responsibilities were primarily related to PacifiCorp's contracting and policies under the Public Utility Regulatory Policies Act of 1978 ("PURPA") throughout the utility's multi-state service territory, which includes Washington, Oregon, California, Idaho, Wyoming, and Utah. His responsibilities included all contractual matters arising under PURPA and supervision of other matters related to both power purchases and interconnections. In that capacity, he was involved in scores of contract negotiations, helped develop new contract concepts, terms and language, and became familiar with terminology commonly used in the electric utility industry in utility tariffs and written power purchase agreements for purchases from qualifying facilities. Since 2009, he has been directing and

¹²² NewSun Parties/200, Harnsberger/1-2

¹²³ CREA-NIPPC-REC/200, Sanger/1.

managing the activities of the Coalition as well as providing consulting services to individual members of the Coalition related to both power purchases and interconnections.¹²⁴

¹²⁴ CREA-NIPPC-REC/100, Lowe/1