

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1877-UM 1882, UM 1884-UM 1886, UM 1888-UM 1890

In the Matters of

BOTTLENOSE SOLAR, LLC;
VALHALLA SOLAR, LLC;
WHIPSNAKE SOLAR, LLC;
SKYWARD SOLAR, LLC;
LEATHERBACK SOLAR, LLC; PIKA
SOLAR, LLC; COTTONTAIL SOLAR,
LLC; OSPREY SOLAR, LLC; WAPITI
SOLAR, LLC; BIGHORN SOLAR,
LLC; MINKE SOLAR, LLC; HARRIER
SOLAR, LLC,

Complainants,

v.

PORTLAND GENERAL ELECTRIC
COMPANY,

Defendant.

MOTION TO SUPPLEMENT
COMPLAINANTS' MOTION TO
COMPEL

I. INTRODUCTION

Complainants Bottlenose Solar, LLC; Valhalla Solar, LLC; Whipsnake Solar, LLC; Skyward Solar, LLC; Leatherback Solar, LLC; Pika Solar, LLC; Cottontail Solar, LLC; Osprey Solar, LLC; Wapiti Solar, LLC; Bighorn Solar, LLC; Minke Solar, LLC; and Harrier Solar, LLC hereby Move to Supplement Complainants' Motion to Compel. The Oregon Public Utility Commission (the "Commission") Administrative Law Judge ("ALJ") should be aware that Portland General Electric Company ("PGE") entered into at least two power purchase agreements ("PPAs") with qualifying facilities ("QFs") without following its alleged three-stage

process and executed those PPAs in less than thirty business days—rather than the at least forty-seven business days that PGE claims is required.¹ Complainants have reason to believe that there may be significantly more PPAs that PGE executed in a similar amount of time that may establish that PGE only recently invented its alleged three-stage process or at least regularly did not follow it. PGE may have established a pattern of working with QFs, including at least one of the project owners in these complaints (Cypress Creek Renewables), that provides them a reasonable expectation that PGE would process PPA requests more expeditiously. The only way that the Complainants can determine whether these facts are true and if PGE is discriminating against similarly situated QFs is if the ALJ compels PGE to provide information responsive to their data requests.

Finally, the Complainants repeat that they intend to file amended pleadings with these and other material facts, and request that the ALJ hold a scheduling conference to set a schedule to file amended complaints and other filings. Before resolving any legal or factual disputes, the Commission should be aware of PGE's past business practices and how they changed in order to prevent the Complainants and other QFs from entering into contracts. PGE's efforts to obtain a final order immediately are designed to ensure that the Commission resolves all issues without complete information.

¹ PGE's potentially newly minted three-stage process would result in PGE waiting 15 business days to provide the draft PPA, the QF requesting an executable PPA the next day, PGE waiting 15 business days before providing a final PPA, the QF requesting an executable PPA the next day, and then PGE waiting to provide an executable PPA for another 15 business days. Given that PGE is often late and few QFs can review drafts in one business day, the process would typically be much longer.

II. BACKGROUND

The parties have been unable to reach a resolution on two of Complainants' data requests to PGE. Complainants filed a Motion to Compel Discovery on December 21, 2017. PGE filed a response on January 11, 2018, and Complainants filed a Reply in support of its Motion on January 18, 2018. To date, there has been no order on the Motion to Compel because on January 24, 2018, before an order could be issued, PGE filed a Motion to Stay Discovery and the Procedural Schedule and a Motion for Summary Judgment. Complainants filed a Response to the Motion to Stay Discovery and the Procedural Schedule on February 2, 2018, and PGE filed a Reply on February 7, 2017. The data requests at issue in the Motion to Compel concern PGE's processing and execution of standard PPAs with PURPA QFs. PGE asserts that Complainants are required to go through a three-stage process of a draft, final, and executable contract with PGE being allowed 15 business days at each stage in the process to forward the next draft to the QF. Complainants assert that this process is not required, and that PGE has not uniformly followed this and other procedures.

Complainants are now aware of at least two other projects with which PGE executed a PPA and did not follow this three-stage process. Those projects are the Sheep Solar and Silverton Solar projects. The initial PPA request for these projects was submitted on December 15, 2015.² Twenty-seven business days later, PGE executed PPAs on both of them.³ In contrast,

² Affidavit of Chris Norqual in Support of Complainants' Motion to Supplement Complainants' Motion to Compel at 2.

³ See Re PGE – Qualifying Facility Contract, Docket No. RE 143, Informational Filing - Sheep Solar, LLC - Oregon Power Purchase Agreement - PGE - 1-25-16 (filed Feb. 22, 2016) and Informational Filing - Silverton Solar, LLC - Oregon Power Purchase Agreement - PGE - 1-25-16 (filed Feb. 9, 2016).

PGE and many of the Complainants had been negotiating at least some of the PPAs at issue in these proceedings for about six months. The Sheep Solar and Silverton Solar projects involved PGE and the same developer, Cypress Creek Renewables, that has been involved in whole or in part in some of the projects at issue in the above-captioned matters.

III. MOTION

The Commission can simply resolve the issues in these complaints by concluding that the Complainants' commitment to sell power is sufficient as the ultimate deciding factor for when a legally enforceable obligation ("LEO") is formed. In addition, or alternatively, the Commission may also conclude that PGE's unreasonable actions and delays obstructed progress toward a LEO, and that PGE should be required to enter into PPAs with the Complainants. PGE's past pattern and practice regarding its processing of standard PPA requests is relevant to the issue of whether PGE has only recently asserted this three-stage process as a way to obstruct Complainants' progress towards executable PPAs. This is particularly important where the contracting parties are the same entities.

The Sheep Solar and Silverton Solar projects illustrate that PGE has allowed projects to get from initial request to executed contract in only 27 business days. PGE's past practices of getting contracts completed in such a short amount of time may have established a pattern and practice of not following the three-stage process that PGE now asserts is required. If PGE later changed its policy asserting that this three-stage process is required, then it is directly relevant to and probative of the fact that PGE obstructed progress towards an executable contract.

The data requests at issue in the Motion to Compel would provide a more complete picture regarding whether and when the three-stage process was followed as well as whether PGE invented other policies to prevent QFs from obtaining executable PPAs. Complainants

have been able to acquire the dates on the Sheep Solar and Silverton Solar projects because they have access to that data. Complainants believe that there may be numerous other PPAs that also were executed in less than two months. However, PGE is in control of the dates on all PPAs that it has executed, and PGE should be compelled to provide those dates.

The Sheep Solar and Silverton Solar PPAs were both executed in January 2016, and were among a large number of PPAs entered into at that time.⁴ Complainants believe that these PPAs may not be the only ones during the end of 2015 and early 2016 that PGE processed in less than thirty business days. The reasonableness of PGE's actions in this proceeding is relevant if PGE was able to and had a history of processing large numbers of PPAs over a short period of time in the past. This is especially true considering that one of PGE's affirmative defenses in these matters is that any delay was "caused by the unprecedented volume of QF contract requests being processed by PGE."⁵ PGE's real reasons for executing PPAs in early 2016 and not executing the Complainants' PPAs may be that, in Complainants' cases, there was an impending rate reduction and PGE had engaged in an unprecedented series of contracting and regulatory practices to prevent the Complainants from entering into PPAs.

These facts need to be before the Commission before it rules on PGE's Motion for Summary Judgment. Complainants plan to request leave to file amended complaints so that these and other facts can be before the Commission. Therefore, the Administrative Law Judge

⁴ See Re PGE – Qualifying Facility Contract, Docket No. RE 143 (available at: <http://apps.puc.state.or.us/edockets/docket.asp?DocketID=19098>) (PGE executed a total of 14 PPAs on the same day as the Sheep Solar and Silverton Solar PPAs).

⁵ See, e.g., Bottlenose Solar, LLC v. PGE, Docket No. UM1877, PGE's Answer ¶ 109 (Oct. 11, 2017).

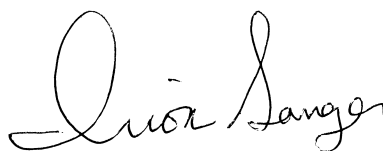
should also set a new schedule so that all of the relevant facts can be presented before issuing a ruling on the Motion for Summary Judgement.

IV. CONCLUSION

Complainants are aware of two other projects that would tend to show that PGE only recently instituted its asserted three-stage process in an attempt to obstruct progress towards executable PPAs. The data requests at issue in Complainants' Motion to Compel would show the Commission whether PGE's practices in the Sheep Solar and Silverton Solar projects extended to the rest of the QFs establishing a practice a procedure of not following that three-stage process. As such, the Motion to Compel should be granted.

Dated this 9th day of February, 2018.

Respectfully submitted,



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Of Attorneys for Complainants

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SOLAR, LLC,

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PORTLAND GENERAL ELECTRIC
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Defendant.

AFFIDAVIT OF CHRIS NORQUAL IN
SUPPORT OF COMPLAINANTS'
MOTION TO SUPPLEMENT
COMPLAINANTS' MOTION TO
COMPEL

STATE OF CALIFORNIA)
) ss.
County of Nevada)

I, Chris Norqual, being first duly sworn, say:

1. I am the Vice President, Utilities, of Cypress Creek Renewables.
2. I make this affidavit in support of Complainants' Motion to Supplement Complainants'

Motion to Compel. All facts and statements contained in this affidavit are within my own personal knowledge. If called as a witness at trial, I could testify to all matters referred to here.

3. On December 15, 2015, I sent an email to Bruce True at Portland General Electric Company ("PGE"), providing project specific information and formally requesting Power Purchase Agreements ("PPAs") for three projects, including Downs Solar, LLC; Sheep Solar, LLC; and Silverton Solar, LLC. This email is attached as Attachment A to this Affidavit.

/s/  _____

SUBSCRIBED AND SWORN TO before me on ____ day of _____, 2018.

see attached
/s/ _____
Notary Public for _____
My commission expires: _____

CALIFORNIA JURAT WITH AFFIANT STATEMENT

GOVERNMENT CODE § 8202

- See Attached Document (Notary to cross out lines 1-6 below)
- See Statement Below (Lines 1-6 to be completed only by document signer[s], *not* Notary)

1 _____

2 _____

3 _____

4 _____

5 _____

6 _____

Signature of Document Signer No. 1

Signature of Document Signer No. 2 (if any)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
 County of Placer

Subscribed and sworn to (or affirmed) before me
 on this 8th day of February, 2018,
 by _____
Date Month Year

(1) Chris Norqual

(and (2) _____),
Name(s) of Signer(s)

proved to me on the basis of satisfactory evidence
 to be the person(s) who appeared before me.

Signature [Handwritten Signature]
Signature of Notary Public



Seal
 Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

ATTACHMENT A

From: Chris Norqual [<mailto:norqual@ccrenew.com>]
Sent: Tuesday, December 15, 2015 5:52 PM
To: Bruce True
Cc: David Bunge; utility@ccrenew.com; Garrett Hollingsworth
Subject: PGE PPA Requests - Sheep, Downs, Silverton

Hi Bruce,

We are formally requesting PPA's for these three projects that are in the interconnection queue. I know you had some trouble finding the FERC dockets online, so I have included the forms, acceptances and listed numbers here:

- Downs Solar, LLC: QF16-242-000
- Sheep Solar, LLC: QF16-243-000
- Silverton Solar, LLC: QF15-846-000

Also included are word and pdf versions of the PPA applications, 8760 data, and copies of the LEO letters for all three projects. Please take a look and let us know if you have everything necessary to proceed with offering executable drafts. We really appreciate all of your help and look forward to finalizing these as soon as possible.

Best regards,
Chris Norqual
[310-746-7067](tel:310-746-7067)