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January 24, 2018

***Via Electronic Filing***

Public Utility Commission of Oregon  
Filing Center  
201 High St SE, Suite 100  
PO Box 1088  
Salem OR 97308-1088

**Re: UM 1877-UM 1882, UM 1884-UM 1886, UM 1888-UM 1890, Bottlenose Solar, LLC,  
et al., Complainants, vs. Portland General Electric Company, Defendant**

Attention Filing Center:

Enclosed for filing in the above-captioned dockets is Portland General Electric Company's Motion for Summary Judgment and Declaration of Rebecca Brown.

Also being filed simultaneously is PGE's Motion to Stay Discovery and Procedural Schedule pending the resolution of the Motion for Summary Judgment.

Thank you for your assistance.

Sincerely,

A handwritten signature in blue ink that reads "V. Denise Saunders". The signature is written in a cursive style with a large, stylized "V" and "S".

V. Denise Saunders  
Associate General Counsel

VDS:bop

Enclosures

BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON

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

BOTTLENOSE SOLAR, LLC (UM 1877);  
VALHALLA SOLAR, LLC (UM 1878);  
WHIPSNAKE SOLAR, LLC (UM 1879);  
SKYWARD SOLAR, LLC (UM 1880);  
LEATHERBACK SOLAR, LLC (UM 1881);  
PIKA SOLAR, LLC (UM 1882);  
COTTONTAIL SOLAR, LLC (UM 1884);  
OSPREY SOLAR, LLC (UM 1885);  
WAPITI SOLAR, LLC (UM 1886);  
BIGHORN SOLAR, LLC (UM 1888);  
MINKE SOLAR, LLC (UM 1889);  
HARRIER SOLAR, LLC (UM 1890),

Complainants,

vs.

PORTLAND GENERAL ELECTRIC  
COMPANY,

Defendant.

**PORTLAND GENERAL  
ELECTRIC COMPANY'S  
MOTION FOR SUMMARY  
JUDGMENT**

*Oral Argument Requested*

Pursuant to OAR 860-001-0420 and ORCP 47, Portland General Electric Company (“PGE”) moves for summary judgment against each claim for relief in the above-captioned complaint proceedings. PGE requests oral argument on this motion. PGE has filed a contemporaneous motion to stay discovery and the remainder of the procedural schedule in these cases until this dispositive motion for summary judgment is resolved.

**I. INTRODUCTION**

These cases are about whether twelve qualifying facilities representing 26.5 megawatts of combined nameplate capacity can bypass PGE’s Commission-approved qualifying facility (“QF”) contracting process and “lock-in” standard avoided cost rates that were in effect before June 1, 2017, and which exceed the rates that became effective on June 1 by approximately

12 percent.<sup>1</sup> Complainants do not have a contractual right to sell their output to PGE at the pre-June 1, 2017 rates. Rather, Complainants are improperly attempting to take advantage of a set of regulatory rights referred to as a legally enforceable obligation (“LEO”). Complainants assert they established a LEO on or before May 31, 2017, and that this entitles them to sell output to PGE at pre-June 1, 2017 rates. If Complainants succeed in bypassing the Commission’s established LEO requirements, PGE’s customers will be obligated to pay approximately \$5.9 million above the avoided cost rates that were in effect on June 1, 2017, for the output of Complainants’ projects over a 15-year period.<sup>2</sup>

The Commission has determined that a LEO is established when a QF signs a final draft of an executable contract provided by the utility. PGE has provided no such contracts to Complainants. The Commission has also determined that if a utility delays or obstructs progress toward an executable contract, the QF can file a complaint and the Commission will determine on a case-by-case basis if and when a LEO is established.

As this motion demonstrates, the undisputed facts in the pleadings, the documentary evidence submitted by PGE, and the disputed facts taken in the light most favorable to Complainants allow the Commission to conclude as a matter of law that the Complainants did not establish a LEO before PGE’s avoided cost rates changed on June 1, 2017. As a result, the Commission should grant summary judgment against all claims and dismiss the complaints with prejudice.

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<sup>1</sup> Docket No. UM 1878 (Valhalla), Declaration of Rebecca Brown in Support of PGE’s Motion for Summary Judgment (“Brown Declaration”) at ¶¶ 3 and 4 (Jan. 24, 2018).

<sup>2</sup> *Id.* at ¶ 5.

## II. SUMMARY OF THE ARGUMENT

Each complaint contains the same three claims for relief. Each claim should be denied as a matter of law.

In the first claim for relief, Complainants allege they established a LEO by signing an executable power purchase agreement (“PPA”) on May 31, 2017. The first prong of the Commission’s LEO rule requires that a QF sign an executable PPA *provided to the QF by the utility*. It is undisputed that PGE never provided Complainants with an executable PPA. Instead, each Complainant took the initial draft PPA provided by PGE, unilaterally revised the draft PPA to contain new terms and conditions preferred by the QF, and then signed this modified draft PPA on May 31, 2017. These actions do not satisfy the first prong of the Commission’s LEO test and the Commission should deny Complainants’ first claim for relief.

In the second claim for relief, Complainants allege that PGE has improperly delayed or obstructed progress toward Complainants’ receipt of executable contracts by May 31, 2017, and that as a result the Commission should find that a LEO was established on May 31, 2017. This is a claim for relief under the second prong of the Commission’s LEO rule. Complainants allege four forms of “obstruction.” First, they allege that by obtaining a June 1 effective date for its avoided cost rate change (rather than the June 28 effective date preferred by Complainants), PGE has obstructed the Complainants’ ability to obtain an executable contract before the avoided cost rate change. Second, they allege that PGE has improperly refused to execute the draft PPA that Complainants modified and signed on May 31, 2017. Third, they allege that PGE has delayed or obstructed progress toward executable contracts by missing certain Scheduled 201 deadlines. Fourth, Complainants have suggested that PGE engaged in various activities to improperly delay or obstruct progress toward their receipt of an executable PPA before June 1, 2017.

The first allegation of obstruction (June 1 effective date) should be denied for two reasons: (1) the Commission has determined that a June 1, 2017 effective date is appropriate and consistent with the policy established in Order No. 14-058 regarding when a May 1 update will become effective; and (2) under the Schedule 201 process and timelines, the Complainants would not have been entitled to an executable contract before the avoided cost rate change even if PGE had requested and obtained the June 28, 2017 effective date advocated by Complainants as the “normal” effective date.

The second allegation of obstruction (failure to sign the Complainants’ May 31 draft PPA) should be denied because neither Schedule 201 nor the Commission’s rules or policies allow for the QF to revise a draft PPA to create an executable PPA.

The third allegation of obstruction (missed Schedule 201 deadlines) should be denied because: (1) for five of the projects there are no allegations of missed deadlines; (2) for three of the projects the allegation that PGE missed the deadline to request additional information by one business day is incorrect, and even if it was correct the one day “delay” was not a cause of Complainants’ failure to obtain an executable PPA before June 1, 2017; and (3) for four projects, PGE admits that it was three to four days late providing a draft PPA but the three to four day delay was not a cause of Complainants’ failure to obtain an executable PPA before June 1, 2017. In short, all alleged failures to meet Schedule 201 deadlines were immaterial, harmless error because PGE’s strict adherence to the Schedule 201 deadlines alleged by Complainants would not have resulted in Complainants establishing LEOs by June 1, 2017.

The fourth allegation of obstruction (requiring Complainants to resubmit information and other alleged delaying behavior) should be denied because even if the specific behaviors alleged were true (and PGE disputes many of them) the alleged behaviors do not change the fact that

PGE complied with the applicable Schedule 201 timelines (or missed those timelines by a few days in a few instances without impacting whether Complainants' were entitled to an executable contract before the June 1 rate change). The alleged "delaying behavior" therefore did not delay the Schedule 201 process in any relevant way.

The Complainants' third claim for relief is that the Commission acted improperly in issuing Order No. 17-177 approving a June 1, 2017 effective date for the May 1 avoided cost rate update (rather than Complainants' preferred June 28, 2017 effective date). Complainants allege that the Commission's approval of a June 1 rate change somehow established a LEO at the pre-June 1 avoided cost rates. The Commission should deny this claim because: (1) there is no rule or statute that prevents the Commission from setting the effective date on June 1, 2017, and that date is consistent with the policy established in Order No. 14-058; (2) the claim against the Commission's actions constitute an impermissible collateral attack on Order No. 17-177; and (3) under the Schedule 201 process and timelines, the Complainants would not have been entitled to an executable contract before the avoided cost rate change even if the Commission had approved the June 28, 2017 effective date advocated by Complainants.

### **III. BACKGROUND**

#### **A. The June 1, 2017 Avoided Cost Rate Change.**

Pursuant to Order No. 14-058, each utility must update its standard avoided cost rates on May 1 of each year.<sup>3</sup> PGE filed its 2017 update on May 1, 2017, and requested a May 17, 2017, effective date.<sup>4</sup> PGE's updated avoided cost rates were from 6% to 12% lower than the existing

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<sup>3</sup> Docket No. UM 1610, Order No. 14-058 at 25-26 (Feb. 24, 2014) ("... we adopt a new requirement for an annual [avoided cost rate] update ... on May 1 every year.").

<sup>4</sup> Docket No. UM 1728, PGE's Application to Update Schedule 201 Qualifying Facility Information at 1 (May 1, 2017).

rates.<sup>5</sup> The QF community opposed a May 17 effective date; they argued that Commission policy required a June 28, 2017 effective date.<sup>6</sup> At a May 18, 2017 special public meeting the Commission disagreed that its policy required a June 28, 2017 effective date and the Commission adopted a June 1, 2017 effective date.<sup>7</sup>

**B. Summary of the Relevant Facts.**

Complainants in the 12 above-captioned cases are limited liability companies. They were formed by three large and sophisticated solar project developers for the purpose of selling the output of those projects to PGE.<sup>8</sup> Each Complainant first requested a Schedule 201 contract from PGE in March or April of 2017 on the dates indicated in Table A below.

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<sup>5</sup> Docket No. UM 1728, Staff Report for May 18, 2017 Special Public Meeting at 3 (May 16, 2017); Docket No. UM 1878, Declaration of Rebecca Brown at ¶¶ 3 and 4 (Jan. 24, 2018).

<sup>6</sup> See Docket No. UM 1728, Renewable Energy Coalition’s Comments at 1 (“The Coalition ... is ... urging the Commission not to allow the new rates to go into effect until at least June 28, 2017.”) and 12 (“The Commission has established a policy and reasonable expectation that the annual avoided cost rate changes, whether increases or decreases, will go into effect after the last regularly scheduled public meeting in June.”) (May 15, 2017).

<sup>7</sup> Docket No. UM 1728, Order No. 17-177 (May 19, 2017) (memorializing decision made at May 18, 2017 special public meeting to adopt a June 1, 2017 effective date for PGE’s May 1, 2017 rate update).

<sup>8</sup> The three developers are Cypress Creek Renewables, LLC (“Cypress Creek”), a Delaware limited liability company; Pine Gate Renewables, LLC (“Pine Gate”), a North Carolina limited liability company; and Sabal Solar Development (“Sabal”), a Florida limited liability company. Cypress Creek has proposed six projects: Valhalla, Skyward, Bottlenose, Whipsnake, Leatherback and Pika. Pine Gate has proposed three projects: Bighorn, Minke and Harrier. Sabal has proposed three projects: Cottontail, Osprey and Wapiti.

**TABLE A**

<b>Project</b>	<b>QF's Initial Submission of Project Information<sup>9</sup></b>
Valhalla	April 26, 2017
Skyward	April 26, 2017
Cottontail	March 22, 2017 (After 5:00 PM)
Osprey	March 22, 2017 (After 5:00 PM)
Wapiti	March 22, 2017 (After 5:00 PM)
Bighorn	April 4, 2017
Minke	April 4, 2017
Harrier	April 4, 2017
Bottlenose	March 22, 2017
Whipsnake	March 22, 2017
Leatherback	March 22, 2017
Pika	March 22, 2017

With regard to these submissions, PGE determined that two—Valhalla and Skyward—provided all of the information PGE required and PGE sent draft PPAs to those two Complainants 14 business days after receiving their initial project information.<sup>10</sup> With regard to

<sup>9</sup> Docket No. UM 1878 (Valhalla), Complaint at ¶ 10 (Aug. 7, 2017) and Answer at ¶ 10 (Oct. 11, 2017); Docket No. UM 1880 (Skyward), Complaint at ¶ 10 (Aug. 7, 2017) and Answer at ¶ 10 (Oct. 11, 2017); Docket No. UM 1884 (Cottontail), Complaint at ¶ 9 (Aug. 10, 2017) and Answer at ¶ 9 (Oct. 16, 2017); Docket No. UM 1885 (Osprey), Complaint at ¶ 9 (Aug. 10, 2017) and Answer at ¶ 9 (Oct. 16, 2017); Docket No. UM 1886 (Wapiti), Complaint at ¶ 9 (Aug. 10, 2017) and Answer at ¶ 9 (Oct. 16, 2017); Docket No. UM 1888 (Bighorn), Complaint at ¶ 9 (Aug. 14, 2017) and Answer at ¶ 9 (Oct. 18, 2017); Docket No. UM 1889 (Minke), Complaint at ¶ 9 (Aug. 14, 2017) and Answer at ¶ 9 (Oct. 18, 2017); Docket No. UM 1890 (Harrier), Complaint at ¶ 9 (Aug. 14, 2017) and Answer at ¶ 9 (Oct. 18, 2017); Docket No. UM 1877 (Bottlenose), Complaint at ¶ 9 (Aug. 7, 2017) and Answer at ¶ 9 (Oct. 11, 2017); Docket No. UM 1879 (Whipsnake), Complaint at ¶ 9 (Aug. 7, 2017) and Answer at ¶ 9 (Oct. 11, 2017); Docket No. UM 1881 (Leatherback), Complaint at ¶ 9 (Aug. 7, 2017) and Answer at ¶ 9 (Oct. 11, 2017); Docket No. UM 1882 (Pika), Complaint at ¶ 9 (Aug. 7, 2017) and Answer at ¶ 9 (Oct. 11, 2017); *see also* Brown Declaration at ¶ 6 and Exhibit A (Jan. 24, 2018) (copies of emails from Cottontail, Osprey and Wapiti submitting initial project information to PGE after 5:00 pm on March 22, 2017).

<sup>10</sup> The conclusion that PGE provided draft PPAs to Valhalla and Skyward 14 business days after those QFs submitted initial project information is based on the Complainants' allegations in their complaints that they submitted initial project information on April 26, 2017. *See* Docket No. UM 1878 (Valhalla), Complaint at ¶ 10 (Aug. 7, 2017); Docket No. UM 1880 (Skyward), Complaint at ¶ 10 (Aug. 7, 2017). PGE does not agree that Valhalla and Skyward submitted all necessary project information on April 26, 2017. The April 26 submissions were contained in zip files that PGE could not open. On April 27, 2017, the QFs submitted new zip files PGE was able to open. However, the April 27 information was not provided on PGE's then-effective initial information form; the QFs resubmitted the information on the then-effective form on April 28, 2017. While the parties disagree about whether the initial information for the projects was effectively submitted on April 26, April 27 or April 28, PGE has assumed for the sake of argument in this motion for summary judgment that the information was submitted April 26 (i.e., PGE has taken the disputed facts in the light most favorable to the Complainants). Even assuming an April 26, 2017 submission of initial project information, the record clearly reflects that PGE provided draft PPAs on May 15, 2017 (after 5:00 pm) or 14 business days after April 26, 2017, and that PGE did not miss any Schedule 201



the remaining ten projects, PGE determined that it required additional information and requested the required information from each Complainant on the dates noted in Table B below.

**TABLE B**

<b>Project</b>	<b>QF's Initial Submission of Project Information</b>	<b>PGE Requests Additional Information<sup>11</sup></b>	<b>Business Days Elapsed</b>
Valhalla	April 26, 2017	n/a	n/a
Skyward	April 26, 2017	n/a	n/a
Cottontail	March 22, 2017 (After 5:00 PM)	April 13, 2017	15 Business Days
Osprey	March 22, 2017 (After 5:00 PM)	April 13, 2017	15 Business Days
Wapiti	March 22, 2017 (After 5:00 PM)	April 13, 2017	15 Business Days
Bighorn	April 4, 2017	April 25, 2017	15 Business Days
Minke	April 4, 2017	April 25, 2017	15 Business Days
Harrier	April 4, 2017	April 25, 2017	15 Business Days
Bottlenose	March 22, 2017	April 13, 2017	16 Business Days
Whipsnake	March 22, 2017	April 13, 2017	16 Business Days
Leatherback	March 22, 2017	April 13, 2017	16 Business Days
Pika	March 22, 2017	April 13, 2017	16 Business Days

The projects from which PGE sought additional information then provided PGE with the requested additional information on the dates noted in Table C below.

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deadlines regarding the Valhalla or Skyward projects. *See* Brown Declaration at ¶ 7 and Exhibit B (Jan. 24, 2018) (copies of cover letters and transmittal emails associated with PGE's provision of draft PPAs to Valhalla and Skyward after 5:00 pm on May 15, 2017).

<sup>11</sup> Docket No. UM 1884 (Cottontail) Complaint and Answer at ¶ 16 (citation to the relevant paragraph in each complaint and answer provided as one common paragraph reference in the abbreviated cites for the other projects *infra*); UM 1885 (Osprey) ¶ 14; UM 1886 (Wapiti) ¶ 16; UM 1888 (Bighorn) ¶ 15; UM 1889 (Minke) ¶ 15; UM 1890 (Harrier) ¶ 15; UM 1877 (Bottlenose) ¶ 19; UM 1879 (Whipsnake) ¶ 19; UM 1881 (Leatherback) ¶ 19; UM 1882 (Pika) ¶ 19.

**TABLE C**

<b>Project</b>	<b>PGE Requested Additional Information</b>	<b>Complainant Provided Additional Info.</b> <sup>12</sup>
Valhalla	n/a	n/a
Skyward	n/a	n/a
Cottontail	April 13, 2017	April 26, 2017
Osprey	April 13, 2017	April 26, 2017
Wapiti	April 13, 2017	April 26, 2017
Bighorn	April 25, 2017	May 1, 2017
Minke	April 25, 2017	May 1, 2017
Harrier	April 25, 2017	May 1, 2017
Bottlenose	April 13, 2017	April 27, 2017
Whipsnake	April 13, 2017	April 27, 2017
Leatherback	April 13, 2017	April 27, 2017
Pika	April 13, 2017	April 27, 2017

Having received the necessary project information, PGE then prepared and sent draft PPAs to each Complainant on the dates noted in Table D below.

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<sup>12</sup> Docket No. UM 1884 (Cottontail), Complaint and Answer at ¶ 17; UM 1885 (Osprey) ¶ 16; UM 1886 (Wapiti) ¶ 17; UM 1888 (Bighorn) ¶ 16; UM 1889 (Minke) ¶ 16; UM 1890 (Harrier) ¶ 16; UM 1877 (Bottlenose) ¶ 22; UM 1879 (Whipsnake) ¶ 22; UM 1881 (Leatherback) ¶ 22; UM 1882 (Pika) ¶ 22.

**TABLE D**

<b>Project</b>	<b>Complainant Provided Required Info.</b>	<b>PGE Provided Draft PPA<sup>13</sup></b>	<b>Elapsed Business Days</b>
Valhalla	April 26, 2017	May 15, 2017 (after 5:00 PM)	14 Business Days
Skyward	April 26, 2017	May 15, 2017 (after 5:00 PM)	14 Business Days
Cottontail	April 26, 2017	May 16, 2017	14 Business Days
Osprey	April 26, 2017	May 15, 2017 (after 5:00 PM)	14 Business Days
Wapiti	April 26, 2017	May 15, 2017 (after 5:00 PM)	14 Business Days
Bighorn	May 1, 2017	May 18, 2017	13 Business Days
Minke	May 1, 2017	May 18, 2017	13 Business Days
Harrier	May 1, 2017	May 18, 2017	13 Business Days
Bottlenose	April 27, 2017	May 23, 2017	18 Business Days
Whipsnake	April 27, 2017	May 23, 2017	18 Business Days
Leatherback	April 27, 2017	May 23, 2017	18 Business Days
Pika	April 27, 2017	May 23, 2017	18 Business Days

Under Schedule 201 and related Commission orders, PGE must provide a QF with an executable PPA within 15 business days of the date the QF indicates that it agrees with all of the terms and conditions in a draft PPA provided by the utility.<sup>14</sup> Schedule 201 and related Commission orders involve several 15-business day deadlines. PGE does not always require 15 business days to provide responses under the Schedule 201 process.<sup>15</sup> However, PGE is entitled to take up to 15 business days and the Complainants therefore do not have a right to demand or expect a response from PGE in less than 15 business days. Given the extraordinary volume of

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<sup>13</sup> Docket No. UM 1878 (Valhalla), Complaint and Answer at ¶ 24 (Aug. 7, 2017); UM 1880 (Skyward) ¶ 24; UM 1884 (Cottontail) ¶ 28; UM 1885 (Osprey) ¶ 27; UM 1886 (Wapiti) ¶ 28; UM 1888 (Bighorn) ¶ 28; UM 1889 (Minke) ¶ 28; UM 1890 (Harrier) ¶ 28; UM 1877 (Bottlenose) ¶ 36; UM 1879 (Whipsnake) ¶ 36; UM 1881 (Leatherback) ¶ 36; UM 1882 (Pika) ¶ 36; *see also* Brown Declaration at ¶ 7 and Exhibit B (Jan. 24, 2018) (copies of transmittal emails and cover letters provided to each Complainant when PGE sent each Complainant a draft PPA).

<sup>14</sup> Docket No. UM 1610, Order No. 16-174 at 24 (May 13, 2016) (“... when the QF indicates that it agrees to all the terms in the draft contract, the utility has 15 days to forward a final executable contract to the QF.”); Docket No. UM 1728, PGE’s Revised Application to Update Schedule 201 Qualifying Facility Information, at Sheet 201-2 (Sep. 14, 2017) (“When both parties are in full agreement as to all terms and conditions of the draft Standard PPA, the Company will prepare and forward to the Seller a final executable version of the agreement within 15 business days.”).

<sup>15</sup> *See e.g.*, UM 1878 (Valhalla), Complaint at ¶¶ 10 and 24 (Aug. 7, 2017) (Complainant alleges Valhalla provided initial information on April 26, 2017, and PGE provided a draft PPA on May 15, 2017 [after 5:00PM]—14 business days later); UM 1888 (Bighorn), Complaint at ¶¶ 16 and 28 (Aug. 14, 2017) (Complainant alleges Bighorn provided additional information on May 1, 2017, and PGE provided a draft PPA on May 18, 2017—13 business days later).

QF requests for contract that PGE was processing between March and September of 2017 (at least 45 requests),<sup>16</sup> it is not surprising that PGE frequently required between 13 and 15 business days to complete most of the steps in the process.

If each of the 12 Complainants had accepted all of the terms and conditions in their draft PPAs and requested executable PPAs on the day they received the draft PPAs from PGE, then the *earliest* each QF would have been entitled to an executable PPA would have been after the June 1 rate change as detailed in Table E below.

**TABLE E**

<b>Project</b>	<b>PGE Provided Draft PPA</b>	<b>Earliest Date Executable PPA Due<sup>17</sup></b>
Valhalla	May 15, 2017 (after 5:00 PM)	June 7, 2017
Skyward	May 15, 2017 (after 5:00 PM)	June 7, 2017
Cottontail	May 16, 2017	June 7, 2017
Osprey	May 15, 2017 (after 5:00 PM)	June 7, 2017
Wapiti	May 15, 2017 (after 5:00 PM)	June 7, 2017
Bighorn	May 18, 2017	June 9, 2017
Minke	May 18, 2017	June 9, 2017
Harrier	May 18, 2017	June 9, 2017
Bottlenose	May 23, 2017	June 14, 2017
Whipsnake	May 23, 2017	June 14, 2017
Leatherback	May 23, 2017	June 14, 2017
Pika	May 23, 2017	June 14, 2017

However, none of the Complainants actually accepted all of the terms and conditions in their draft PPAs on the day PGE provided the draft PPAs. Instead, on the dates indicated in Table F below, each Complainant informed PGE that it sought changes to its draft PPA.<sup>18</sup>

<sup>16</sup> See UM 1728, PGE’s Application to Update Schedule 201 Qualifying Facility Information, at 1 (May 1, 2017) (PGE supports its request for a March 17, 2017 effective date for annual rate update with information regarding the volume of QF activity faced by PGE); see also UM 1854, PGE’s Application to Lower the Standard Price and Standard Contract Eligibility Cap for Solar Qualifying Facilities at 2 (June 30, 2017) (summarizing volume of QF activity being experienced by PGE; see also footnote 93 *infra*).

<sup>17</sup> Assuming each QF accepted all terms in its draft PPA and requested an executable PPA on the day PGE provided the draft PPA (no Complainant actually did so; they all requested changes to their draft PPAs).

**TABLE F**

<b>Project</b>	<b>PGE Provided Draft PPA</b>	<b>Changes Requested by Complainant<sup>19</sup></b>
Valhalla	May 15, 2017	May 23 & 26, 2017
Skyward	May 15, 2017	May 23 & 26, 2017
Cottontail	May 16, 2017	May 23, 2017
Osprey	May 16, 2017	May 23, 2017
Wapiti	May 16, 2017	May 23, 2017
Bighorn	May 18, 2017	May 23 & 26, 2017
Minke	May 18, 2017	May 23 & 26, 2017
Harrier	May 18, 2017	May 23 & 26, 2017
Bottlenose	May 23, 2017	May 23 & 24, 2017
Whipsnake	May 23, 2017	May 23 & 24, 2017
Leatherback	May 23, 2017	May 23 & 24, 2017
Pika	May 23, 2017	May 23 & 24, 2017

Under PGE’s Schedule 201 process, and the Commission’s related orders, PGE had 15 business days to provide a revised draft contract (e.g., a revised draft PPA or a final draft PPA) in response to Complainants’ requests for changes to the initial draft PPAs.<sup>20</sup> Moreover, if PGE needed any additional information before producing the revised draft contract, then the Complainant needed to provide that information before PGE’s 15 business days would begin to run.<sup>21</sup> This means that the *earliest* each Complainant would be entitled to a revised draft contract was June 14, 2017 (15 business days from each Complainant’s initial May 23, 2017 request for

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<sup>18</sup> For the Commission’s reference, the information contained in Table A through Table F above has been combined into one table which is provided as Exhibit A to this motion for summary judgment.

<sup>19</sup> Docket No. UM 1878 (Valhalla), Complaint at ¶¶ 27, 28; UM 1880 (Skyward) ¶¶ 27, 28; UM 1884 (Cottontail) ¶ 31; UM 1885 (Osprey) ¶ 30; UM 1886 (Wapiti) ¶ 31; UM 1877 (Bottlenose) ¶¶ 40-42; UM 1879 (Whipsnake) ¶¶ 40-42; UM 1881 (Leatherback) ¶¶ 40-42; UM 1882 (Pika) ¶¶ 40-42. For the Bighorn, Minke and Harrier projects, *see* Brown Declaration at ¶ 8 and Exhibit C (Jan. 24, 2018) (copies of May 23, 2017, and May 26, 2017 emails from Bighorn, Minke and Harrier requesting the same changes to their draft PPAs as those requested on the same date by Bottlenose, Whipsnake, Leatherback and Pika).

<sup>20</sup> Docket No. UM 1610, Order No. 16-174 at 24 (May 13, 2016) (“... the QF may agree to the terms of the draft contract and ask the utility to provide a final executable contract, or suggest changes ... [in which case] the utility provides iterations of the draft standard contract no later than 15 days after each round of comments by the negotiating QF ...”); Docket No. UM 1728, PGE’s Revised Application to Update Schedule 201 Qualifying Facility Information, at Sheet 201-2 (Sep. 14, 2017) (“The Seller may request in writing that the Company prepare a final draft Standard PPA. The Company will respond to this request within 15 business days.”).

<sup>21</sup> Docket No. UM 1728, PGE’s Revised Application to Update Schedule 201 Qualifying Facility Information, at Sheet 201-2 (Sep. 14, 2017).

changes to its draft PPA) and this assumes that PGE did not determine that it required additional information before producing the next version of the draft PPAs.

Assuming *arguendo* that each of the Complainants accepted all of the terms and conditions in the revised draft contracts provided by PGE on June 14, 2017, then the *earliest* that each Complainant would have been entitled to an executable PPA would have been 15 business days later on July 6, 2017. As a result, even if the Commission had set the effective date of the May 1 avoided cost rate update at June 28, 2017, as requested by Renewable Energy Coalition and other QF representatives and stakeholders, it would not have made any substantive difference. Having requested changes to their draft PPAs on May 23, 2017, none of the Complainants had a right to an executable PPA before July 6, 2017, at the earliest.

**C. Summary of the Key Facts.**

To summarize the key facts in these cases:

- (A) Each Complainant received a draft PPA between May 15 and May 23, 2017;
- (B) Each Complainant requested changes to those draft PPAs on May 23, 2017 (some modified their requests for changes on May 24 or May 26, 2017);
- (C) PGE was obligated to provide a revised draft contract or request additional information 15 business days later on June 14, 2017;<sup>22</sup> and,
- (D) If each Complainant had immediately accepted the June 14 revised draft contract without any changes, then PGE would have been obligated to provide an executable PPA within 15 business days, or by July 6, 2017.

As this recital of the facts makes clear, none of the Complainants was entitled to receive an executable PPA before the June 1 rate change, and furthermore, none would have been entitled to receive an executable PPA before a hypothetical June 28 rate change date.

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<sup>22</sup> For Complainants that modified their initial May 23 request for changes to a draft PPA, the 15-business day deadline should arguably run from the date of the revised request to modify the draft PPA (i.e., from May 24 or May 26); however, for simplicity, PGE has analyzed the issue as though the 15-business day deadlines all run from the May 23 initial request for changes to the draft PPAs.

#### IV. LEGAL STANDARDS

##### A. Standard of review.

A defendant may move for summary judgment in defendant's favor against all or any part of the claims asserted against it.<sup>23</sup> The Commission should grant the motion for summary judgment "if the pleadings, depositions, affidavits, declarations and admissions on file show that there is no genuine issue as to any material fact and that the moving party is entitled to prevail as a matter of law."<sup>24</sup> The Commission should conclude that "[n]o genuine issue as to a material fact exists if, based upon the record before the court viewed in the manner most favorable to the adverse party, no objectively reasonable juror could return a verdict for the adverse party on the matter that is the subject of the motion for summary judgment."<sup>25</sup>

For purposes of summary judgment, "[a] material fact is one that, under applicable law, might affect the outcome of a case."<sup>26</sup> The interpretation of a statute, rule, or Commission order is a question of law, and a dispute between the parties regarding the meaning of a rule or law does not prevent the Commission from deciding the proper interpretation in response to a motion for summary judgment.<sup>27</sup>

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<sup>23</sup> ORCP 47 B ("A party against whom any claim ... is asserted ... may, at any time, move, with or without supporting affidavits or declarations, for summary judgment in that party's favor as to all or any part thereof.").

<sup>24</sup> ORCP 47 C.

<sup>25</sup> *Id.*

<sup>26</sup> *Zygar v. Johnson*, 169 Or App 638, 646, 10 P3d 326 (2000).

<sup>27</sup> *See e.g., City of Portland v. PGE*, UM 1262, Order No. 06-636 (Nov. 17, 2006) (Commission granted defendant PGE's motion for summary judgment and dismissed complaint after interpreting statute as a matter of law).

## **B. Burden of proof.**

The party moving for summary judgment has the initial burden of showing that there is no genuine issue as to any material fact and that the party is entitled to judgment as a matter of law.<sup>28</sup> The nonmoving party has the burden of producing evidence on any issue raised in the motion as to which the nonmoving party would have the burden of persuasion at trial.<sup>29</sup>

## **IV. ARGUMENT**

This motion addresses 12 complaints. Each complaint contains the same three claims. Each of these claims asserts that the Complainants established a LEO before the June 1, 2017 rate change.

The Commission has determined that a LEO exists when a QF signs a final draft of an executable contract provided by a utility.<sup>30</sup> If the utility delays or obstructs progress toward an executable contract, the QF may file a complaint and the Commission will determine on a case-by-case basis if a LEO was established.<sup>31</sup>

For the reasons discussed below, none of the Complainants established a LEO before the June 1 rate change (or before the June 28 date Complainants would have preferred as an effective date for the rate change).

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<sup>28</sup> *Thompson v. Estate of Adrian L. Pannell*, 176 Or App 90, 100, 29 P3d 1184 (2001), *rev. denied*, 333 Or 655 (2002) (“As the party moving for summary judgment ... defendant had the initial burden to establish that there was no genuine issue as to ... material fact.”).

<sup>29</sup> ORCP 47 C.

<sup>30</sup> Docket No. UM 1610, Order No. 16-174 at 3 (May 13, 2016) (“A LEO will be considered established once a QF signs *the final draft of an executable contract provided by the utility ...*”) (emphasis added); what the Commission refers to in Order No. 16-174 as “a final draft of an executable contract provided by the utility” is frequently referred to by PGE and its QF counter-parties as “an executable contract” an “executable Standard PPA” or an “executable PPA”, and by any label refers to an executable document provided to the QF by PGE and intended by PGE as the final document to be signed by both parties without alteration.

<sup>31</sup> *Id.*



**A. First Claim for Relief.**

**1. Background.**

Each Complainant has alleged as its first claim for relief that it signed an executable final PPA on May 31, 2017, and thereby established a LEO at the pre-June 1 rates.<sup>32</sup> The first claim for relief does not include any allegation of delay or obstruction by PGE. The first claim for relief is an assertion that each Complainant satisfied the first part of the Commission’s LEO rule which states: “A LEO will be considered established once a QF signs the final draft of an executable contract provided by the utility ....”<sup>33</sup>

PGE has not provided any of the Complainants with an executable PPA. This is an undisputed fact; it is alleged in each complaint<sup>34</sup> and admitted in each answer.<sup>35</sup>

PGE provided each Complainant with an initial draft PPA between May 15 and May 23, 2017.<sup>36</sup> In response, each Complainant requested changes to its draft PPA on May 23, 2017, and

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<sup>32</sup> See e.g., Docket No. UM 1878 (Valhalla), Complaint at ¶ 69 (Dec. 7, 2017) (“Valhalla Solar’s execution of the executable final PPA ... establish[ed] a legally enforceable obligation at the Schedule 201 rates in effect on May 31, 2017, and all the terms and conditions in the partially executed PPA.”); see also Docket No. UM 1880 (Skyward), Complaint at ¶ 63 (Aug. 7, 2017) (the following citations are compressed references to the relevant paragraph in the complaint in each docket); UM 1884 (Cottontail) at ¶ 58; UM 1885 (Osprey) at ¶ 57; UM 1886 (Wapiti) at ¶ 58; UM 1888 (Bighorn) at ¶ 54; UM 1889 (Minke) at ¶ 54; UM 1890 (Harrier) at ¶ 54; UM 1877 (Bottlenose) at ¶ 80; UM 1879 (Whipsnake) at ¶ 80; UM 1881 (Leatherback) at ¶ 80; UM 1882 (Pika) at ¶ 80.

<sup>33</sup> Docket No. UM 1610, Order No. 16-174 at 3 (May 13, 2016).

<sup>34</sup> See e.g., Docket No. UM 1878 (Valhalla), Complaint at ¶ 82 (Dec. 7, 2017) (“PGE has not provided an executable version [of] the PPA.”); see also Docket No. UM 1880 (Skyward), Complaint at ¶ 75 (Aug. 7, 2017) (the following citations are compressed references to the relevant paragraph in the complaint in each docket); UM 1884 (Cottontail) at ¶ 70; UM 1885 (Osprey) at ¶ 69; UM 1886 (Wapiti) at ¶ 70; UM 1888 (Bighorn) at ¶ 66; UM 1889 (Minke) at ¶ 66; UM 1890 (Harrier) at ¶ 66; UM 1877 (Bottlenose) at ¶ 93; UM 1879 (Whipsnake) at ¶ 93; UM 1881 (Leatherback) at ¶ 92; UM 1882 (Pika) at ¶ 98.

<sup>35</sup> See e.g., Docket No. UM 1878 (Valhalla), Answer at ¶ 82 (Dec. 7, 2017) (“PGE admits the allegations in Paragraph 82 [that PGE has not provided an executable version of the PPA to the Complainant].”); see also Docket No. UM 1880 (Skyward), Answer at ¶ 75 (Aug. 7, 2017) (the following citations are compressed references to the relevant paragraph in the answer in each docket); UM 1884 (Cottontail) at ¶ 70; UM 1885 (Osprey) at ¶ 69; UM 1886 (Wapiti) at ¶ 70; UM 1888 (Bighorn) at ¶ 66; UM 1889 (Minke) at ¶ 66; UM 1890 (Harrier) at ¶ 66; UM 1877 (Bottlenose) at ¶ 93; UM 1879 (Whipsnake) at ¶ 93; UM 1881 (Leatherback) at ¶ 92; UM 1882 (Pika) at ¶ 98.

<sup>36</sup> See Table D and footnote 13 *supra*.

some of the Complainants modified their request for changes on May 24 or May 26, 2017.<sup>37</sup> Under Schedule 201 and the Commission’s orders, the next step was then for PGE to produce a revised draft contract or request additional information within 15 business days of the request for changes to the initial draft PPA.<sup>38</sup> However, rather than wait for this next step as required by Schedule 201 and the Commission’s orders, each Complainant took the draft PPA it had received from PGE, unilaterally modified the PPA by removing certain provisions and replacing them with the Complainant’s preferred language, signed the modified draft PPA on May 31, 2017, and emailed the document to PGE on May 31, 2017.<sup>39</sup>

In their first claim for relief, Complainants are alleging that these draft PPAs which they modified without the agreement of PGE and then signed on May 31, 2017, function as the final draft of an executable contract provided by the utility and that signing the document established a LEO. The Commission should reject this argument as a matter of law.

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<sup>37</sup> See footnotes 19 *supra*; PGE typically sent the Complainant a form email acknowledging receipt of the request for changes to the draft PPA and indicating that PGE would provide a revised draft contract or request additional information within 15 business days; see Brown Declaration at ¶ 9 and Exhibit D (Jan. 24, 2018) (copies of May 25, 2017 and May 30, 2017 emails sent by PGE to Complainants acknowledging receipt of Complainants’ request for changes to their draft PPAs and indicating that PGE will provide a revised draft contract or request additional information within 15 business days); when PGE sent a draft PPA to each Complainant, the cover letter explained in detail the process that would apply if the Complainant sought any changes to the draft PPA, see e.g., Docket No. UM 1877 (Bottlenose), Answer at Exhibit A (Oct. 11, 2017), see also Brown Declaration at ¶ 7 and Exhibit B (Jan. 24, 2018) (copies of cover letters sent to each Complainant with draft PPAs and explaining that if the Complainant seeks changes to the draft PPA, PGE will respond with a revised draft contract—i.e., new draft PPA or final draft PPA—or request for additional information within 15 business days).

<sup>38</sup> See footnote 20 *supra*.

<sup>39</sup> See e.g., Docket No. UM 1878 (Valhalla), Complaint at ¶ 37 (Aug. 7, 2017) (“On May 31, 2017, Valhalla Solar executed the draft PPA with the two minor alterations previously requested on May 26” [note that PGE disputes the alterations were minor and notes that there were three distinct changes to the draft PPA]); see also Docket No. UM 1880 (Skyward), Complaint at ¶ 37 (Aug. 7, 2017) (the following citations are compressed references to the relevant paragraph in the complaint in each docket); UM 1884 (Cottontail) at ¶ 35; UM 1885 (Osprey) at ¶ 34; UM 1886 (Wapiti) at ¶ 35; UM 1888 (Bighorn) at ¶ 34; UM 1889 (Minke) at ¶ 34; UM 1890 (Harrier) at ¶ 34; UM 1877 (Bottlenose) at ¶ 53; UM 1879 (Whipsnake) at ¶ 53; UM 1881 (Leatherback) at ¶ 53; UM 1882 (Pika) at ¶ 53; see also footnote 19 *supra*.

## 2. The QF Must Sign an Executable Contract Provided by the Utility.

In Order No. 16-174, the Commission considered LEO proposals from an array of stakeholders including the utilities, QF developers, QF trade organizations, customer organizations, and Commission Staff. The Commission decided to adopt Staff's proposal.<sup>40</sup> In describing Staff's proposal, the Commission noted:

Staff explains, all three utilities have similar process for developing and executing a standard contract: (1) a QF initiates the process by submitting certain information, the utilities then have 15 [business] days to provide a draft standard contract; (2) *the QF may agree to the terms of the draft contract and ask the utility to provide a final executable contract, or suggest changes*; (3) the utility provides iterations of the draft standard contract no later than 15 [business] days after each round of comments by the negotiating QF; and (4) when the QF indicates that it agrees to all the terms in the draft contract, the utility has 15 [business] days to forward a final executable contract to the QF.<sup>41</sup>

The Commission noted that under Staff's proposal a LEO is deemed to exist when a QF signs a final draft of an executable standard contract, finding that "[a] LEO will be considered established once a QF signs the final draft of an executable contract *provided by a utility* ...."<sup>42</sup> From this discussion, it is apparent that both Staff and the Commission recognized that: (1) the utility provides an initial draft contract; (2) a QF may request changes and the utility must respond with revised drafts of the contract; and (3) once the QF has indicated that it agrees with all the terms of a draft contract proposed by the utility, then the utility has 15 business days to provide the QF with an executable PPA. It is further apparent that both Staff and the Commission intended that a LEO is established when the QF signs the executable contract that the utility must provide to the QF after the QF indicates it accepts all the terms and conditions in a draft contract that was provided by the utility.

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<sup>40</sup> Docket No. UM 1610, Order No. 16-174 at 27 (May 13, 2017) ("We adopt Staff's proposal that a LEO exists when a QF signs a final draft of an executable standard contract ....").

<sup>41</sup> *Id.* at 24 (emphasis added).

<sup>42</sup> *Id.* at 3, 24 (emphasis added).

There are no relevant facts in dispute. All parties acknowledge that PGE did not provide any of the Complainants with an executable contract.<sup>43</sup> The only issue for the Commission to decide is whether, under Order No. 16-174, a QF can take a draft PPA provided by the utility, unilaterally modify that draft to reflect the terms preferred by the QF, and then by signing that modified draft PPA establish a LEO. PGE believes the answer is clear and that Order No. 16-174 does not provide for the establishment of a LEO under such circumstances.<sup>44</sup>

### **3. The Commission Should Not Modify its LEO Rule.**

The Commission adopted its LEO rule in May of 2016 as part of the culmination of Phase II of its intensive investigation of QF policy matters in Docket No. UM 1610. The Commission adopted its LEO rule after extensive briefing by stakeholders, including QF developers and their trade organizations.<sup>45</sup> Incredibly, Complainants appear to be arguing that the Commission's 2016 LEO rule is not controlling and that they can and did form LEOs even if they did not satisfy either of the prongs of the Commission's LEO rule.<sup>46</sup> The Commission should reject Complainants' argument that the LEO rule adopted as recently as 2016 after extensive policy deliberation does not control the question of whether and when a LEO is

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<sup>43</sup> See footnotes 34 and 35 *supra*.

<sup>44</sup> It makes sense that a QF should not be allowed to establish a LEO based on terms and conditions unilaterally selected by the QF. Under the Schedule 201 process, when a QF proposes changes to a draft PPA, the utility then considers the proposed changes and includes them in a revised draft contract if the proposed changes are acceptable to the utility. This ensures that QFs cannot select variable terms that cannot be achieved by the project or dates that exceed what is allowed by the Commission's orders (e.g., a scheduled Commercial Operation Date that is more than three years after contract execution). Moreover, PGE uses the variable terms contained in an executed contract for resource planning and power costs calculations, and PGE and the QF must mutually agree to such terms.

<sup>45</sup> The interests of QF developers were vigorously represented in Docket No. UM 1610 by QF trade associations Northwest and Intermountain Power Producers Coalition, Community Renewable Energy Association, and Renewable Energy Coalition. Complainants' counsel represented at least one of these associations during Docket No. UM 1610.

<sup>46</sup> See Docket No. UM 1878 (Valhalla), Complainants' Reply in Support of Motion to Compel Discovery at 2 (Jan. 18, 2017) ("Complainants' fundamental legal argument is that a qualifying facility's commitment to sell power is the ultimate deciding factor for when a legally enforceable obligation ('LEO') is formed (that the utility or even the Commission cannot prevent a qualifying facility from determining when a LEO is formed). Any Commission or utility process that ultimately keeps a qualifying facility from reasonably committing itself to sell its net output to a utility is invalid, and there is no prescribed administrative contracting process that can block a LEO.").

established with regard to the standard avoided cost rates and the standard contracts established by the Commission.

To the extent the first claim for relief is a request to change the standard for a LEO established by Order No. 16-174, the Commission should refuse to do so in these cases. The LEO rule was established as part of a general investigation docket (UM 1610) involving a wide array of stakeholders including all three utilities and customer representatives such as the Industrial Customers of Northwest Utilities. If the Commission concludes that the LEO rule should be revisited, the Commission should do so in the context of a general investigation or rulemaking proceeding that involves all interested stakeholders, and only after notice to stakeholders and an opportunity to be heard.

**4. A Specific Ruling is Necessary and Desirable.**

PGE urges the Commission to make a specific finding that a QF does not establish a LEO when it takes a draft PPA provided by a utility, unilaterally modifies the draft PPA, and then signs the PPA. By making such a finding in these 12 cases and dismissing the first claim for relief, the Commission will provide the parties in the remaining QF complaints filed against PGE in August 2017<sup>47</sup> with helpful information for evaluating settlement of similar claims.

**B. Second Claim for Relief.**

Complainants' second claim for relief alleges that PGE delayed or obstructed progress toward an executable contract. Complainants allege this occurred in three ways. First, Complainants allege that by requesting a May 17, 2017 effective date and obtaining a June 1, 2017 effective date for the annual rate update, PGE delayed or obstructed progress toward an

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<sup>47</sup> See Docket Nos. UM 1859, UM 1863, UM 1865, UM 1866, UM 1867, UM 1868, UM 1869, UM 1872, UM 1873, UM 1874, UM 1875, UM 1876, and UM 1883.

executable PPA.<sup>48</sup> Second, Complainants allege PGE obstructed progress because it refused to execute or respond to the May 31 draft contracts created by Complainants.<sup>49</sup> Third, Complainants allege that PGE obstructed progress by missing Schedule 201 deadlines.<sup>50</sup> Fourth, in their reply in support of their motion to compel discovery, Complainants assert that PGE engaged in a variety of activities to improperly delay or obstruct progress toward an executable contract.<sup>51</sup>

**1. PGE Did Not Obstruct Progress By Seeking a May 17, 2017 Effective Date for Its May 1 Annual Rate Update.**

In the second claim for relief in each complaint, the Complainants argue that PGE deviated from PGE's past practice<sup>52</sup> and from established Commission policy when PGE requested a May 17, 2017 effective date for the May 1 rate update. Complainants assert that this alleged "deviation" upset their expectations and effectively obstructed their ability to obtain an executable PPA at the rate in effect before the annual update took effect. Complainants allege that the Commission's rules and policies were to consider the utilities' May 1 rate update at the

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<sup>48</sup> Docket No. UM 1878 (Valhalla), Complaint at ¶ 80 (Aug. 7, 2017) (the following citations are compressed references to the relevant paragraph in the complaint in each docket); UM 1880 (Skyward) at ¶ 74; UM 1884 (Cottontail) at ¶ 69; UM 1885 (Osprey) at ¶ 68; UM 1886 (Wapiti) at ¶ 69; UM 1888 (Bighorn) at ¶ 65; UM 1889 (Minke) at ¶ 65; UM 1890 (Harrier) at ¶ 65; UM 1877 (Bottlenose) at ¶ 91; UM 1879 (Whipsnake) at ¶ 91; UM 1881 (Leatherback) at ¶ 91; UM 1882 (Pika) at ¶ 91.

<sup>49</sup> Docket No. UM 1878 (Valhalla), Complaint at ¶ 83 (Aug. 7, 2017) (the following citations are compressed references to the relevant paragraph in the complaint in each docket); UM 1880 (Skyward) at ¶ 76; UM 1884 (Cottontail) at ¶ 71; UM 1885 (Osprey) at ¶ 70; UM 1886 (Wapiti) at ¶ 71; UM 1888 (Bighorn) at ¶ 67; UM 1889 (Minke) at ¶ 67; UM 1890 (Harrier) at ¶ 67; UM 1877 (Bottlenose) at ¶ 94; UM 1879 (Whipsnake) at ¶ 94; UM 1881 (Leatherback) at ¶ 93; UM 1882 (Pika) at ¶ 99.

<sup>50</sup> Docket No. UM 1878 (Valhalla), Complaint at ¶ 85 (Aug. 7, 2017) (the following citations are compressed references to the relevant paragraph in the complaint in each docket); UM 1880 (Skyward) at ¶ 78; UM 1884 (Cottontail) at ¶ 73; UM 1885 (Osprey) at ¶ 70; UM 1886 (Wapiti) at ¶ 73; UM 1888 (Bighorn) at ¶ 69; UM 1889 (Minke) at ¶ 69; UM 1890 (Harrier) at ¶ 69; UM 1877 (Bottlenose) at ¶ 96; UM 1879 (Whipsnake) at ¶ 96; UM 1881 (Leatherback) at ¶ 95; UM 1882 (Pika) at ¶ 101.

<sup>51</sup> Docket No. UM 1878 (Valhalla), Complainants' Reply in Support of Motion to Compel Discovery at 2-3.

<sup>52</sup> Docket No. UM 1878 (Valhalla), Complaint at ¶ 16 (Aug. 7, 2017) (the following citations are compressed references to the relevant paragraph in the complaint in each docket); UM 1880 (Skyward) at ¶ 16; UM 1884 (Cottontail) at ¶ 20; UM 1885 (Osprey) at ¶ 19; UM 1886 (Wapiti) at ¶ 20; UM 1888 (Bighorn) at ¶ 20; UM 1889 (Minke) at ¶ 20; UM 1890 (Harrier) at ¶ 20; UM 1877 (Bottlenose) at ¶ 25; UM 1879 (Whipsnake) at ¶ 25; UM 1881 (Leatherback) at ¶ 25; UM 1882 (Pika) at ¶ 25.

last public meeting in June.<sup>53</sup> Complainants point out that PGE’s 2016 and 2015 annual updates became effective on June 22, 2016, and June 30, 2015, respectively.<sup>54</sup> Complainants allege that based on the Commission’s rules and policies and PGE’s practice in 2015 and 2016, Complainants had a reasonable expectation that the May 1 update would take effect in late June.<sup>55</sup> Complainants also allege that they would have proceeded through the Schedule 201 process more quickly, and they may not have requested any changes, if they had been aware that PGE intended to request a May 17, 2017 effective date for their May 1 rate update.<sup>56</sup>

In short, Complainants’ claim that PGE’s request for a May 17, 2017 effective date for its annual rate change effectively obstructed Complainants’ ability to obtain an executable PPA at prices significantly higher than market and establish a LEO before the annual rate change could take effect. Complainants assert that the “normal” effective date for the annual rate change was June 28, 2017, and that by requesting an effective date before June 28 PGE effectively “moved the goal post” and obstructed Complainants’ ability to obtain an executable PPA before the date of the rate change.

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<sup>53</sup> Docket No. UM 1878 (Valhalla), Complaint at ¶ 77 (Aug. 7, 2017) (the following citations are compressed references to the relevant paragraph in the complaint in each docket); UM 1880 (Skyward) at ¶ 71; UM 1884 (Cottontail) at ¶ 66; UM 1885 (Osprey) at ¶ 65; UM 1886 (Wapiti) at ¶ 66; UM 1888 (Bighorn) at ¶ 62; UM 1889 (Minke) at ¶ 62; UM 1890 (Harrier) at ¶ 62; UM 1877 (Bottlenose) at ¶ 88; UM 1879 (Whipsnake) at ¶ 88; UM 1881 (Leatherback) at ¶ 88; UM 1882 (Pika) at ¶ 88.

<sup>54</sup> Docket No. UM 1878 (Valhalla), Complaint at ¶ 78 (Aug. 7, 2017) (the following citations are compressed references to the relevant paragraph in the complaint in each docket); UM 1880 (Skyward) at ¶ 72; UM 1884 (Cottontail) at ¶ 67; UM 1885 (Osprey) at ¶ 66; UM 1886 (Wapiti) at ¶ 67; UM 1888 (Bighorn) at ¶ 63; UM 1889 (Minke) at ¶ 63; UM 1890 (Harrier) at ¶ 63; UM 1877 (Bottlenose) at ¶ 89; UM 1879 (Whipsnake) at ¶ 89; UM 1881 (Leatherback) at ¶ 89; UM 1882 (Pika) at ¶ 89.

<sup>55</sup> Docket No. UM 1878 (Valhalla), Complaint at ¶ 79 (Aug. 7, 2017) (the following citations are compressed references to the relevant paragraph in the complaint in each docket); UM 1880 (Skyward) at ¶ 73; UM 1884 (Cottontail) at ¶ 68; UM 1885 (Osprey) at ¶ 67; UM 1886 (Wapiti) at ¶ 68; UM 1888 (Bighorn) at ¶ 64; UM 1889 (Minke) at ¶ 64; UM 1890 (Harrier) at ¶ 64; UM 1877 (Bottlenose) at ¶ 90; UM 1879 (Whipsnake) at ¶ 90; UM 1881 (Leatherback) at ¶ 90; UM 1882 (Pika) at ¶ 90.

<sup>56</sup> Docket No. UM 1878 (Valhalla), Complaint at ¶ 18 (Aug. 7, 2017) (the following citations are compressed references to the relevant paragraph in the complaint in each docket); UM 1880 (Skyward) at ¶ 18; UM 1884 (Cottontail) at ¶ 27; UM 1885 (Osprey) at ¶ 26; UM 1886 (Wapiti) at ¶ 27; UM 1888 (Bighorn) at ¶ 27; UM 1889 (Minke) at ¶ 27; UM 1890 (Harrier) at ¶ 27; UM 1877 (Bottlenose) at ¶ 27; UM 1879 (Whipsnake) at ¶ 27; UM 1881 (Leatherback) at ¶ 27; UM 1882 (Pika) at ¶ 27.

There are a number of fatal flaws with Complainants' argument. First, it is not true that the Commission's policy requires a June 28 effective date or that June 28 was the "normal" effective date. The Commission has ordered PGE to file an annual rate update on May 1 of each year.<sup>57</sup> The order does not prescribe the exact date on which a May 1 rate update will become effective. Rather, the order states: "Electric utilities' annual updates will be presented at a public meeting, with a rate effective date *within* 60 days of the May 1 filing date."<sup>58</sup> There is no suggestion in the order that the effective date of the May 1 rate update must be set as close to the end of the 60 day period as possible. And there is no suggestion that just because a utility may seek, or the Commission may grant, an effective date in late June in one year, that the utility is prevented from seeking—and the Commission from granting—an earlier effective date in subsequent years.

In Order No. 16-174, the Commission stated that 30 days must pass before an update to avoided cost rates will be effective.<sup>59</sup> However, this statement was made as part of a background section that was focused on the requirements for avoided cost updates following the acknowledgment of an integrated resource plan. It appears the Commission's statement on Order No. 16-174 was focused on OAR 860-029-0040(a), a rule that requires 30 days to pass before an update to avoided cost rates following the acknowledgment of an IRP.

Further, Complainants are wrong when they suggest that PGE's past practice has been to seek an effective date after the last meeting in June. In 2015, PGE requested a June 1, 2015

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<sup>57</sup> Docket No. UM 1610, Order No. 14-058 at 2 (Feb. 24, 2014) ("We adopt a new requirement for utilities to provide a limited update to avoided cost prices on May 1 each year.").

<sup>58</sup> *Id.* at 26 (emphasis added).

<sup>59</sup> Docket No. UM 1610, Order No. 16-174 at 12 (May 13, 2016).



effective date.<sup>60</sup> It is true that the annual update for 2015 was ultimately made effective June 30, 2015, but that was not because PGE originally requested an effective date after the last public meeting in June. Rather, PGE requested an effective date of June 1, 2015.<sup>61</sup> In response to the May 1, 2015 filing, Community Renewable Energy Association commented that PGE's proposed rates included adjustment factors that exceeded the scope of Order No. 14-058.<sup>62</sup> The Commission agreed in an order issued June 23, 2015,<sup>63</sup> and on June 29, 2015, PGE filed a revised annual rate update,<sup>64</sup> which became effective one day later on June 30, 2015.<sup>65</sup> Renewable Energy Coalition argued that the Commission should rule that annual rate updates will not become effective until the end of the 60 days following May 1, but the Commission did not so rule.<sup>66</sup>

Order No. 14-058 provides that the annual rate update will become effective *within* 60 days of May 1. The question of whether this means the effective date must be near the end of the 60-day period (e.g., June 28) or whether the Commission can establish an effective date at any point within the 60 day period (once Staff has reviewed and recommended approval of the update) was considered in detail at the Commission's May 18, 2017 special public meeting.<sup>67</sup>

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<sup>60</sup> Docket No. UM 1728, PGE's Application to Update Schedule 201 Qualifying Facility Information at 1 (May 1, 2015) (PGE submits annual rate update for 2015 and requests effective date of June 1, 2015).

<sup>61</sup> *Id.*

<sup>62</sup> Docket No. UM 1725, Community Renewable Energy Association's Comments (Jun. 4, 2015).

<sup>63</sup> Docket No. UM 1725, Order No. 15-206 (Jun. 18, 2015).

<sup>64</sup> Docket No. UM 1725, PGE's Revised Application to Update Schedule 201 Qualifying Facility Information (Jun. 29, 2015).

<sup>65</sup> Docket No. UM 1725, Staff's Letter Accepting Avoided Costs (Jul. 27, 2015).

<sup>66</sup> Docket No. UM 1725, Renewable Energy Coalition's Comments at 1-3 (Jun. 4, 2015); Docket No. UM 1725, Order No. 15-206 (Jun. 18, 2015).

<sup>67</sup> The issue was extensively briefed in written comments presented before the meeting and argued before the Commission for more than an hour during its May 18, 2017 special public meeting. QF developers were well represented through their trade organizations, including the Renewable Energy Coalition ("REC"). Complainants' counsel, Mr. Sanger, participated very actively on behalf of REC which filed extensive comments laying out in detail the theory that the Commission's rules and policies require that the May 1 update become effective on the day after the last public meeting in June.

The Commission recognized that it had set the effective date in late June in 2015 and 2016. Commissioner Decker characterized this as the Commission’s past practice but noted that such practice did not reflect a policy decision that requires an effective date at the end of June.<sup>68</sup> Rather, the Commission affirmed that its policy is simply that annual updates will become effective at some date that is within 60 days of May 1. In setting this year’s effective date at June 1, 2017, the Commission was careful to note that the 2017 date does not establish a policy either and that parties should not assume future annual updates will necessarily become effective 30 days after filing. These conclusions are reflected in the following exchanges during the Commission’s May 18, 2017 special public meeting:

Tyler Pepple: “The only thing in writing in any Commission order is *within 60 days*. That’s the Commission policy.”

Chair Hardie: “I agree with you.”<sup>69</sup>

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Chair Hardie: “The expectation of 60 days should not be assumed going forward. And I would move that we adopt this [PGE’s May 1 rate update] with a June 1 effective date.”

Comm. Decker: “Second that”

Chair Hardie: “And I don’t ... think we’re telegraphing that there’s an automatic 30 day assumption either at this point. ... I think everyone can expect that there is going to be a May 1 update, that there should be a quick review, and ... I think folks should be able to review it in the time that Staff does.”<sup>70</sup>

It is apparent from Order No. 14-058 and the Commission’s decision making process at the May 18, 2017 special public meeting that the Commission has no policy requiring an

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<sup>68</sup> May 18, 2017 Special Public Meeting at 43:32 (Commissioner Decker statement characterizing late June effective dates in 2015 and 2016: “... as the Commission practice, I wouldn’t necessarily call it a policy at all ....”).

<sup>69</sup> May 18, 2017 Special Public Meeting at 1:04:14 to 1:04:26 (Comments of Tyler Pepple representing the Industrial Customers of Northwest Utilities and Chair Hardie).

<sup>70</sup> May 18, 2017 Special Public Meeting at 1:14:29 to 1:15:11 (Comments of Chair Hardie and Commissioner Decker).

effective date in late June and that a June 28 effective date is not the “normal” effective date. It follows that PGE was not requesting a “deviation from the norm” or from the requirements of Commission policy when it requested a May 17, 2017 effective date and obtained a June 1, 2017 effective date. The Commission can and should deny, as a matter of law, the claim that PGE improperly obstructed progress toward a LEO when it sought and obtained an effective date for the annual rate update that was within 60 days of May 1.

There is another equally compelling reason to reject the Complainants’ claim that PGE obstructed progress toward an executable PPA by seeking an effective date earlier than June 28, 2017. Simply put, if PGE had sought and obtained a June 28, 2017 effective date it would not have altered the outcome in these cases. PGE provided each Complainant with an initial draft PPA between May 15 and May 23, 2017. Each Complainant initially requested changes to their draft PPA on May 23, 2017. Under Schedule 201 and the Commission’s orders, this triggered an obligation for PGE to provide revised draft contracts within 15 business days—i.e., by June 14, 2017.<sup>71</sup> If each Complainant received a revised draft contract on June 14 and immediately accepted all of the terms and conditions of the revised draft contract and requested an executable contract on June 14; then PGE would have been required to provide an executable contract within 15-business day, or by July 6, 2017.<sup>72</sup> As a result, given the timelines involved under Schedule 201, none of the Complainants would have had a right to obtain an executable contract and establish a LEO before a hypothetical June 28, 2017 rate change date. In sum, in obtaining a June 1 effective date instead of a June 28 effective date, PGE did not engage in any improper behavior and PGE did not alter the Complainants’ ability to obtain an executable contract ahead of the rate change.

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<sup>71</sup> See footnotes 20 and 22 *supra*.

<sup>72</sup> See footnote 14 *supra*.

Complainants also make much of the fact that PGE did not provide them with individualized notice of PGE's May 1 filing or of PGE's request for a May 17, 2017 effective date.<sup>73</sup> Complainants claim they may have behaved differently if they had received notice.<sup>74</sup> But PGE has no duty or obligation to provide any QF with individualized notice of its publicly available May 1 rate update. Complainants were clearly aware that PGE makes an annual May 1 rate filing, as they allege this informed their expectations regarding the proposed rate's effective date.<sup>75</sup> And Complainants were clearly aware of the fact that PGE had obtained a June 1 effective date when Complainants requested changes to their draft PPAs because Complainants' May 23 requests for changes ask PGE to provide executable contracts by May 31, 2017, so that the Complainants can obtain the pre-June 1 rates.<sup>76</sup> Indeed, Complainants have not alleged that they were unaware of PGE's May 1 filing or the results of that filing.<sup>77</sup>

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<sup>73</sup> Docket No. UM 1878 (Valhalla), Complaint at ¶¶ 16 and 17 (Aug. 7, 2017) (the following citations are compressed references to the relevant paragraph in the complaint in each docket); UM 1880 (Skyward) at ¶¶ 16 and 17; UM 1884 (Cottontail) at ¶¶ 20 and 21; UM 1885 (Osprey) at ¶¶ 19 and 20; UM 1886 (Wapiti) at ¶¶ 20 and 21; UM 1888 (Bighorn) at ¶¶ 20 and 21; UM 1889 (Minke) at ¶¶ 20 and 21; UM 1890 (Harrier) at ¶¶ 20 and 21; UM 1877 (Bottlenose) at ¶¶ 25 and 26; UM 1879 (Whipsnake) at ¶¶ 25 and 26; UM 1881 (Leatherback) at ¶¶ 25 and 26; UM 1882 (Pika) at ¶¶ 25 and 26.

<sup>74</sup> See footnote 56 *supra*.

<sup>75</sup> Docket No. UM 1878 (Valhalla), Complaint at ¶ 15 (Aug. 7, 2017) (indicating Complainant expected PGE to seek an end-of-June effective date for its 2017 annual rate update); Docket No. UM 1880 (Skyward), Complaint at ¶ 15 (Aug. 7, 2017) (the following citations are compressed references to the relevant paragraph in the complaint in each docket); UM 1884 (Cottontail) at ¶ 22; UM 1885 (Osprey) at ¶ 18; UM 1886 (Wapiti) at ¶ 19; UM 1888 (Bighorn) at ¶ 19; UM 1889 (Minke) at ¶ 19; UM 1890 (Harrier) at ¶ 19; UM 1877 (Bottlenose) at ¶ 24; UM 1879 (Whipsnake) at ¶ 24; UM 1881 (Leatherback) at ¶ 24; UM 1882 (Pika) at ¶ 24.

<sup>76</sup> See e.g., Docket No. UM 1878 (Valhalla), Complaint at ¶ 29 (Aug. 7, 2017); see also Brown Declaration at 8 and Exhibit C (Jan. 24, 2018) (copies of emails from Complainants requesting changes to draft PPAs and an executable PPA before the end of May 2017).

<sup>77</sup> Complainants' allege that they might not have requested changes to their draft PPAs if they had been aware of PGE's plan to seek an effective date for updated rates that occurred earlier than June 28, 2017 (see footnote 56 *supra*), but the Complainants were fully aware of the Commission's May 18, 2017 public decision to grant a June 1, 2017 effective date when the Complainants made their May 23, May 24 and May 26, 2017 requests to change their draft PPAs.

What they seem to be complaining about is that PGE did not provide them with any *advanced* notice of the effective date PGE would request in its May 1 filing.<sup>78</sup> But PGE had no obligation to do so, and PGE had no obligation to commit itself to any particular requested effective date until it made its May 1 filing. The Commission should reject Complainants' suggestion that PGE needed to declare a proposed effective date *ahead* of May 1 and provide Complainants with advanced notice of that proposed effective date, especially since the choice of a June 1 or June 28 effective date made no difference under the facts of these cases.

Complainants also suggest that PGE behaved improperly when it filed an application to lower the eligibility cap for solar QF projects to obtain standard prices; Complainants protest that PGE did not provide them with advanced or individualized notice.<sup>79</sup> But PGE's application to revise the eligibility cap is completely irrelevant to Complainants' cases. The application was made June 30, 2017, well after the June 1 rate change.<sup>80</sup> If the Complainants established LEOs before June 1, 2017—which is what Complainants are asserting in all three of their claims for relief—then they could not have been adversely affected by PGE's June 30 eligibility cap application.

On these undisputed facts, the Commission can and should conclude that PGE did not engage in any improper delay or obstruction of progress toward an executable PPA when it filed its May 1 rate update and requested a May 17, 2017 effective date. The Commission thoroughly

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<sup>78</sup> See e.g., Docket No. UM 1878 (Valhalla), Complaint at ¶ 16 (Aug. 7, 2017) (“PGE never informed [Complainant] that [PGE] was *planning* to seek approval of its May 1 Update at the May 16, 2017 Public Meeting rather than the last Public Meeting scheduled in June as it had done in past years.”) (emphasis added); see also footnote 73 *supra*.

<sup>79</sup> Docket No. UM 1878 (Valhalla), Complaint at ¶¶ 20-23 (Aug. 7, 2017) (the following citations are compressed references to the relevant paragraph in the complaint in each docket); UM 1880 (Skyward) at ¶¶ 20-23; UM 1884 (Cottontail) at ¶¶ 24-27; UM 1885 (Osprey) at ¶¶ 23-26; UM 1886 (Wapiti) at ¶¶ 24-27; UM 1888 (Bighorn) at ¶¶ 24-27; UM 1889 (Minke) at ¶¶ 24-27; UM 1890 (Harrier) at ¶¶ 24-27; UM 1877 (Bottlenose) at ¶¶ 29-32; UM 1879 (Whipsnake) at ¶¶ 29-32; UM 1881 (Leatherback) at ¶¶ 29-32; UM 1882 (Pika) at ¶¶ 29-32.

<sup>80</sup> Docket No. UM 1854, PGE's Application to Lower the Standard Price and Standard Contract Eligibility Cap for Solar Qualifying Facilities (Jun. 30, 2017).

considered all of the QF community’s objections when it reached its decision at its May 18, 2017 special public meeting. To the extent Complainants’ second claim for relief depends on Complainants’ objection that the June 1 effective date is somehow improper, Complainants’ claim is a collateral attack on the Commission’s May 18, 2017 decision and Order No. 17-177.<sup>81</sup> Complainants were clearly aware of that decision and that order and should have sought reconsideration or appealed the order if they believed it was improper. The time to do so has now passed.

**2. PGE Did Not Delay or Obstruct Progress Toward an Executable PPA by Refusing to Respond to Complainants’ May 31 Draft PPA.**

In their second claim for relief, Complainants allege that PGE improperly delayed or obstructed progress toward pre-June 1 executable contracts by failing to execute the May 31 draft contract created by each Complainant.

First, Complainants allege: “By no later than May 26, 2017, [Complainant] and PGE had agreed to all material terms and conditions, and [Complainant] requested an executable version of the PPA.”<sup>82</sup> Recall that PGE provided an initial draft PPA to each Complainant on a date between May 15 and May 23, 2017.<sup>83</sup> On May 23, 2017, each Complainant requested multiple changes to their draft PPA.<sup>84</sup> Then on May 24 and May 26, 2017, a few Complainants informed

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<sup>81</sup> ORS 756.561 (providing for rehearing and reconsideration of Commission orders), ORS 756.610 (providing for judicial review of Commission orders), and ORS 756.568 (providing for recession, suspension or amendment of Commission orders) provide ample opportunity to Complainants to challenge or seek modification of the Commission’s decision in Order No. 17-177 to set a June 1 effective date for PGE’s May 1, 2017 standard avoided cost rate update. Attacking the legitimacy of that decision without seeking reconsideration, amendment or appeal of Order No. 17-177 is a collateral attack on the order and is disfavored by the law. *See* Am. Jur. 2d Judgments at § 698 (2017); *see also Oregon v. Guzek*, 546 U.S. 517, 526-27 (2005) (“The law typically discourages collateral attack ....”); *Louisville Gas & Elec. Co.*, 144 FERC ¶ 61,054, at P 12 (2013) (explaining that a “collateral attack is an ‘attack on a judgment in a proceeding other than a direct appeal and is generally prohibited.’”) (quoting *Wall v. Kholi*, 131 S.Ct. 1278, 1284 (2011)); OPUC Docket No. Order No. 08-176 (Mar. 20, 2008) (Commission strikes pre-filed testimony on grounds that it is an attempt to collaterally attack the validity of OAR 860-022-0041).

<sup>82</sup> *See e.g.*, Docket No. UM 1878 (Valhalla), Complaint at ¶ 81 (Aug. 7, 2017).

<sup>83</sup> *See* Table D and footnote 13 *supra*.

<sup>84</sup> *See* allegations in each complaint referenced in Table F and cited in footnote 19 *supra*.

PGE that they sought a different set of changes to the draft PPA.<sup>85</sup> On May 25 and May 30, 2017, PGE responded to nine of the twelve Complainants with a form email indicating that PGE had received the requests for changes to the draft PPAs and would respond within 15 business days of the May 23, 2017 requests (i.e., by June 14 or June 15, 2017).<sup>86</sup> PGE indicated that by June 14 or June 15 it would either provide a revised draft PPA, a final draft PPA, or request any additional information PGE might require.<sup>87</sup>

Under Schedule 201 and the Commission's rules and policies, a utility provides a draft PPA and the QF can accept all terms and conditions and request an executable PPA or the QF can request changes to the draft PPA.<sup>88</sup> If the QF requests changes, then the utility has 15 business days to provide the next draft contract (or request additional information).<sup>89</sup> The QF can then accept all the terms and conditions of the next draft contract and request an executable contract, or request further changes precipitating another revised draft from the utility.<sup>90</sup> Once

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<sup>85</sup> For example, Valhalla sought the following specific changes to the draft PPA provided to Valhalla by PGE on May 15, 2017: (1) change the scheduled initial delivery date in Section 2.2.1 from December 31, 2018 to May 1, 2020; (2) change the scheduled commercial operation date in Section 2.2.2 from December 31, 2018 to May 1, 2020; and (3) deleted item seven from Exhibit C which lists the tests that the QF must satisfy as part of start-up testing (item seven involved testing the communication system for offsite monitoring and for all requirements of the Western Energy Imbalance Market). Brown Declaration at ¶ 8 and Exhibit C (Jan. 24, 2018) (copies of May 26, 2017 emails from Valhalla and Skyward requesting change to scheduled initial delivery date and change to scheduled commercial operation date and change to Exhibit C of the draft PPA); *see also* allegations in each complaint referenced in Table F and cited in footnote 19 *supra*.

<sup>86</sup> Brown Declaration at ¶ 9 and Exhibit D (Jan. 24, 2018) (copies of May 25, 2017, and May 30, 2017 emails from PGE acknowledging receipt of Complainant requests for changes to draft PPAs). PGE did not send an email acknowledging receipt of the requested draft PPA changes to the three Sabal Solar projects—Cottontail, Osprey and Wapiti—but this omission was not material; PGE's form email is a courtesy that is not required by Schedule 201 or by Commission orders and the absence of such an email did not impact the relevant deadlines under Schedule 201.

<sup>87</sup> *Id.*

<sup>88</sup> *See* page 18 *supra*; *see also* Docket No. UM 1610, Order No. 16-174 at 24 (May 13, 2016) (describing steps in standard contract process); Docket No. UM 1129, Order No. 06-538 at 35 (Sep. 20, 2006) (articulating the process steps and timelines that need to be included in each utilities' standard contracting rate schedule); Docket No. UM 1728, PGE's Revised Application to Update Schedule 201 Qualifying Facility Information, at Sheet 201-2 (Sep. 14, 2017) (Schedule 201 provisions regarding process steps and timing).

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

the QF indicates that it accepts all of the terms and conditions in a draft PPA, then the utility has 15 business days to produce an executable PPA.<sup>91</sup>

Complainants imagine a different system in which a utility provides an initial draft PPA, the QF responds by requesting specific changes, and the utility then owes the QF an executable PPA within 15 business days of the request for changes. This is not the system established by Schedule 201 or by the Commission's rules or policies. But even if it was, and even if the Complainants and PGE had reached full agreement on all terms on May 23, 2017 when Complainants initially proposed their changes, PGE would then have 15 business days to provide an executable contract. So even under Complainants incorrect version of the facts and applicable legal process, PGE would not have owed Complainants an executable PPA before June 14, 2017, which is after the June 1 rate change.

**3. PGE Did Not Delay or Obstruct Progress Toward a Pre-June 1 Executable Contract by Missing Schedule 201 Deadlines.**

Complainants allege PGE violated the Commission's and FERC's rules and policies and violated Schedule 201 when PGE "delayed and obstructed progress toward executing [sec] PPA."<sup>92</sup> The facts as set forth in the pleadings show that PGE did not delay or otherwise obstruct Complainants' ability to receive a PPA before the June 1, 2017 price change.

The above-captioned complaints allege that PGE missed Schedule 201 deadlines in seven of the 12 cases (Cottontail, Osprey, Wapiti, Bottlenose, Whipsnake, Leatherback and Pika). The pleadings and the declaration submitted in support of this motion show that, in fact, PGE did not miss any Schedule 201 deadline in three of those seven cases (Cottontail, Osprey, and Wapiti). PGE admits that it missed a Schedule 201 deadline by 3 to 4 business days in four of the above-

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<sup>91</sup> *Id.*

<sup>92</sup> *See* footnote 50 *supra*.



captioned cases (Bottlenose, Whipsnake, Leatherback and Pika).<sup>93</sup> But PGE denies that the missed deadlines impacted the four Complainants' ability to obtain an executable PPA before June 1, 2017.

**a. In Four Cases PGE Missed a Schedule 201 Deadline by Three to Four Business-Days But These Missed Deadlines Were Harmless Error.**

In the four cases where PGE missed a deadline (Bottlenose, Whipsnake, Leatherback and Pika), the Complainants provided PGE with initial project information on March 22, 2017, and PGE requested additional information on April 13, which was 16 business days later. The Complainants provided additional project information on April 27, 2017, and PGE then owed the four Complainants draft PPAs within 15 business days (i.e., by May 18, 2017).<sup>94</sup> However, PGE did not provide the draft PPAs until May 23, 2017, which was 18 business days after the Complainants had provided the additional project information.<sup>95</sup> As a result, PGE was three to four business days late in providing draft PPAs to the four Complainants.<sup>96</sup> However, this was

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<sup>93</sup> It should be noted that PGE's error in missing the draft PPA deadline by three or four days in four cases is not evidence of any improper motive. At the time in question PGE was processing at least 45 requests for Schedule 201 or Schedule 202 contracts. See UM 1728, PGE's Application to Update Schedule 201 Qualifying Facility Information, at 1 (May 1, 2017). This extreme volume of activity was pressing PGE to the limits of its ability to process requests within the relevant 15 business day time frames. As a simple matter of logistics, processing 45 requests through consecutive 15 day processing loops meant that PGE needed to process each step of each request in an average of one-third of a business day. PGE needed to keep this pace up day in and day out. And this assumes (unrealistically) that all the requests for contract were evenly spaced and that the PGE staff processing the requests had no other duties and never got sick or took any vacation. The point is that it is easy to understand how PGE could inadvertently miss a deadline by a few days when it was attempting to process so many requests.

<sup>94</sup> Docket No. UM 1877 (Bottlenose), Complaint at ¶¶ 22 and 23 (Aug. 7, 2017) (indicating that Bottlenose provided its response to PGE's additional information request on April 27, 2017 and that PGE acknowledged receipt and stated it would provide a draft PPA or request additional information by May 17, 2017); Docket No. UM 1879 (Whipsnake), Complaint at ¶¶ 22 and 23 (Aug. 7, 2017); Docket No. UM 1881 (Leatherback), Complaint at ¶¶ 22 and 23 (Aug. 7, 2017); Docket No. UM 1882 (Pika), Complaint at ¶¶ 22 and 23 (Aug. 7, 2017).

<sup>95</sup> Docket No. UM 1877 (Bottlenose), Complaint at ¶ 36 (Aug. 7, 2017); Docket No. UM 1879 (Whipsnake), Complaint at ¶ 36 (Aug. 7, 2017); Docket No. UM 1881 (Leatherback), Complaint at ¶ 36 (Aug. 7, 2017); Docket No. UM 1882 (Pika), Complaint at ¶ 36 (Aug. 7, 2017).

<sup>96</sup> It is clear that PGE had a 15-business day deadline to provide draft PPAs under Schedule 201 and that PGE missed that deadline by 3 days. It is unclear whether Schedule 201 establishes a 15-business day deadline for PGE to request additional information in response to a QF's submission of initial project information. It took PGE 16 business days to request additional information regarding these four projects. As a result, *if* there is a 15-business day deadline, then PGE missed that deadline by 1 day. Because of the uncertainty regarding whether there is a 15-

harmless error. If PGE had provided the draft PPAs in 15 business days on May 18, 2017, as required by Schedule 201, the Complainants would not have had a right to obtain an executable PPA before June 1, 2017.

Specifically, if PGE had provided the draft PPAs on May 18, 2017, as required by Schedule 201, then the Complainants could have accepted all the terms of the draft PPAs and requested executable PPAs on that same day (May 18) in which case PGE would have owed the Complainants executable PPAs by June 9, 2017 (15 business days after May 18, 2017). Moreover, if the Complainants had received timely draft PPAs on May 18 and requested contract changes (as they did when they actually received draft PPAs on May 23), then PGE would have owed them a revised draft contract on June 9 and the soonest they would have been entitled to an executable PPA as of right would have been June 30, 2017 (if they had immediately accepted all terms of the June 9 revised draft contract and requested an executable contract). As this analysis demonstrates, PGE's error in failing to provide Bottlenose, Whipsnake, Leatherback, and Pika with draft PPAs by May 18, 2017, was harmless error because the projects would not have been entitled to an executable PPA before June 1 even if PGE has provided timely draft PPAs on May 18, 2017.<sup>97</sup>

**b. PGE did not miss an April 13 deadline in three cases.**

In the complaints for the Cottontail, Osprey and Wapiti projects, Complainants appear to allege that PGE missed a Schedule 201 deadline by one day.<sup>98</sup> In those cases, the QFs submitted

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business day deadline to request additional information, PGE has indicated that it missed Schedule 201 deadlines with regard to the Bottlenose, Whipsnake, Leatherback and Pika projects by from 3 to 4 days.

<sup>97</sup> This remains true, even if PGE is considered to have missed Schedule 201 deadlines by four days rather than three days. *See* footnote 96 *supra*.

<sup>98</sup> Docket No. UM 1884 (Cottontail), Amended Complaint at ¶¶ 11 and 16 (Aug 11, 2017) (Complainant notes PGE sent a March 24, 2017 email acknowledging receipt of Complainants' initial information on March 23, 2017, and indicating PGE will respond by April 13, 2017, which is 15 business days later; Complainant alleges it submitted its initial information on March 22, 2017, and notes April 13, 2017 is 16 business days after March 22, 2017); Docket

initial information to PGE by email between 5:13 and 5:20 pm on March 22, 2017.<sup>99</sup> PGE then sent the QFs an email acknowledging receipt and indicating that PGE would provide a draft PPA or request additional information by April 13, 2017.<sup>100</sup> PGE then provided each QF with a request for additional information on April 13, 2017.<sup>101</sup>

In their complaints, the QFs argue that April 13, 2017 is 16 business days after March 22, 2017, and therefore suggest that PGE missed its Schedule 201 deadline by one business day.<sup>102</sup> However, the QFs provided their initial information to PGE after regular business hours on March 22, 2017 (between 5:13 pm and 5:20 pm).<sup>103</sup> As a result, PGE treated the submission of initial information as effective on the following business day—March 23, 2017—and PGE provided its request for additional information 15 business days later on April 25, 2017.

Accordingly, PGE was not late in requesting additional information from Cottontail, Osprey and Wapiti—PGE did so within 15 business days of receiving the initial information between 5:13 pm and 5:20 pm on March 22, 2017.

Moreover, neither Schedule 201 nor the Commission’s orders require a utility to request additional information within 15 business days. So even if PGE requested additional information 16 business days after the initial information was provided, that was not a violation of Schedule 201.

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No. UM 1885 (Osprey), Amended Complaint at ¶¶ 14 and 15 (Aug 11, 2017); Docket No. UM 1886 (Wapiti), Amended Complaint at ¶¶ 11 and 16 (Aug 11, 2017).

<sup>99</sup> Brown Declaration at ¶ 6. Exhibit A (Jan. 24, 2018) (copy of emails from Cottontail, Osprey and Wapiti to PGE transmitting initial project information each dated March 22, 2017, after 5:00 PM).

<sup>100</sup> Docket No. UM 1884 (Cottontail), Amended Complaint at ¶ 16 (Aug 11, 2017); Docket No. UM 1885 (Osprey), Amended Complaint at ¶ 14 (Aug 11, 2017); Docket No. UM 1886 (Wapiti), Amended Complaint at ¶ 16 (Aug 11, 2017).

<sup>101</sup> Docket No. UM 1884 (Cottontail), Amended Complaint at ¶ 11 (Aug 11, 2017); Docket No. UM 1885 (Osprey), Amended Complaint at ¶ 15 (Aug 11, 2017); Docket No. UM 1886 (Wapiti), Amended Complaint at ¶ 11 (Aug 11, 2017).

<sup>102</sup> See footnote 98 *supra*.

<sup>103</sup> See footnote 99 *supra*.

Finally, even if Schedule 201 requires the utility to request additional information within 15 business days of receiving initial project information, and even if PGE missed that deadline and requested initial information from Cottontail, Osprey and Wapiti 16 business days after receiving initial information, such an error was irrelevant and harmless. The QFs received draft PPAs on May 18, 2017, and then requested changes on May 23, 2017. If the timeline was compressed by a day to account for PGE requesting additional information on April 13 instead of April 12, then the QFs might have received their draft PPAs on May 17 instead of May 18. This would have made no difference to the question of whether the QFs were entitled to an executable PPA before the June 1 rate change.

If the QFs had received a draft PPA on May 17 and immediately accepted all of the terms and conditions of the draft and requested an executable PPA, PGE would have had 15 business days or until June 6, 2017, to provide the executable PPA.<sup>104</sup> Of course, none of the QFs actually accepted the terms of the draft PPAs. Rather, they requested changes on May 23, 2017.<sup>105</sup> If they had requested changes a day earlier, on May 22, 2017, then PGE would have owed them a revised draft contract by June 13, 2017, instead of on June 14, 2017. Either way, the QFs were not entitled to an executable PPA before the June 1 rate change.

In sum, PGE was not one business day late in requesting additional information from Cottontail, Osprey and Wapiti; but even if it was, such an error was irrelevant and harmless because it did not impact whether or not the QFs were entitled to an executable PPA before the June 1 rate change.

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<sup>104</sup> See footnote 14 *supra*.

<sup>105</sup> See footnote 19 *supra*.

**c. In the remaining five cases, there are no allegations of missed deadlines.**

The Valhalla and Skyward projects provided initial information on April 26, 2017, and PGE provided draft PPAs 14 business days later on May 15, 2017 (after 5:00 pm).<sup>106</sup> If Valhalla and Skyward had accepted all of the terms and conditions of the draft PPAs on May 15, 2017, and requested executable PPAs, the QFs would not have been entitled to receive executable PPAs until 15 business days later—June 6, 2017. They therefore had no right to an executable PPA before the rate change. As a matter of fact, Valhalla and Skyward did not accept all of the terms of the draft PPAs. Rather, on May 23 and May 26, they requested changes to the draft PPA.<sup>107</sup> This means that PGE owed the QFs revised draft contacts by June 14, 2017 (at the earliest) and if the QFs had immediately accepted those revised drafts the earliest they could demand executable PPAs would be July 6, 2017.

The other three projects with no alleged deadline violations are Bighorn, Minke and Harrier. The QFs provided initial information on April 4, 2017.<sup>108</sup> PGE requested additional information 15 business days later on April 25, 2017.<sup>109</sup> The QFs provided additional information on May 1, 2017.<sup>110</sup> And PGE provided draft PPAs 13 business days later on May 18, 2017.<sup>111</sup> At that point, even if the QFs had immediately accepted all terms and conditions in the draft PPAs and requested executable contract, PGE would not have been obligated to provide executable contracts before June 9, 2017 (15 business days after May 18, 2017). In fact, the QFs

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<sup>106</sup> See footnote 10 *supra*.

<sup>107</sup> Docket No. UM 1878 (Valhalla) Complaint at ¶¶ 27 and 28 (Aug. 7, 2017) (“On May 23, 2017, Valhalla Solar sent an email to PGE requesting execution copies of the draft PPA with five changes ... On May 26, 2017, Valhalla Solar sent an email to PGE revising its request to include only two changes ...” [note PGE disagrees that the May 26 email requested only two changes, it requested three distinct changes to the terms of the May 15 draft PPA]); Docket No. UM 1880 (Skyward), Complaint at ¶¶ 27 and 28 (Aug. 7, 2017).

<sup>108</sup> See Table A and footnote 9 *supra*.

<sup>109</sup> See Table B and footnote 11 *supra*.

<sup>110</sup> See Table C and footnote 12 *supra*.

<sup>111</sup> See Table D and footnote 13 *supra*.

requested changes to the draft PPAs on May 23, 2017.<sup>112</sup> So the next deadline that PGE was required to satisfy was providing revised draft contracts by June 14, 2017. There is no basis in the undisputed facts in the record on which to conclude that PGE missed any deadlines or otherwise delayed or obstructed progress toward an executable PPA before June 1, 2017, with regard to the Bighorn, Harrier, and Minke projects.

**4. The Other Forms of Delay Alleged by Complainants Did Not Obstruct Progress Toward a Pre-June 1 Executable Contract.**

On January 18, 2018, Complainants filed a reply in support of their motion to compel discovery in the above-captioned cases. In that reply, Complainants state that their legal theories include allegations that PGE has delayed or obstructed progress toward an executable contract by:

1) requiring the qualifying facility to re-submit information multiple times; 2) not informing the qualifying facility that information was received; 3) refusing to meet or delaying meetings with the qualifying facility; 4) always taking the full fifteen business days to respond rather than providing responsive information or the next draft contract upon completion; 5) requesting unreasonable information; 6) refusing to respond to requests for information; 7) incorrectly counting the number of business days; 8) refusing to provide draft contracts when due; and 9) not informing qualifying facilities about expected regulatory filings that would lower avoided costs, shorten the time in which rates would change, and reduce eligibility for standard contracts and prices.<sup>113</sup>

To begin with, it is not at all clear that the complaints in these cases assert claims for relief based on each of these allegations. Secondly, PGE disagrees with many of these allegations. For example, as shown in the tables in Section III of this Motion, it is demonstrably false that PGE always waited 15 business days to provide a Schedule 201 response or that PGE refused to provide draft PPAs when they were due.

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<sup>112</sup> See Table F and footnote 19 *supra*.

<sup>113</sup> Docket No. UM 1878 (Valhalla), Complainants' Reply in Support of Motion to Compel Discovery at 2-3 (Jan. 18, 2018).

The other allegations, even if true, are irrelevant to the resolution of this motion for summary judgment. For example, Complainants allege PGE engaged in delaying behavior by “requiring the qualifying facilities to re-submit information multiple times.” Complainants are presumably referring the time when four Complainants (Bottlenose, Whipsnake, Leatherback and Pika) submitted their initial information to the wrong PGE staff member and PGE asked them to resubmit to the correct PGE staff member.<sup>114</sup> But this request to resubmit information had no impact on when the Complainants were entitled to receive an executable PPA because PGE has calculated its compliance with Schedule 201 deadlines based on the date the Complainants first submitted information to PGE—March 22, 2017.<sup>115</sup>

The QFs complain that PGE did not inform them that information was received.<sup>116</sup> In most instances PGE did provide a form email indicating that project information had been received and would be responded to by a specified date. In a few instances, PGE did not provide such an email.<sup>117</sup> Such emails are a courtesy extended by PGE and are not required by Schedule 201. Any failure by PGE to provide such a courtesy email did not represent a failure to comply with Schedule 201 nor obstruct progress toward an executable PPA; the Schedule 201 timelines applied and were satisfied whether PGE provided a courtesy email or not.

The QFs complain that PGE refused to meet with, or delayed meetings with, QFs. The allegations regarding meetings involve meetings that some Complainants (Valhalla, Skyward, Bottlenose, Whipsnake, Leatherback and Pika) requested between May 26, 2017 and May 31, 2017, which was from Friday through Wednesday of the Memorial Day holiday

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<sup>114</sup> See e.g., Docket No. UM 1877 (Bottlenose), Complaint at ¶ 10 (Dec. 7, 2017); see also Whipsnake, Leatherback and Pika Complaints at ¶ 10.

<sup>115</sup> See footnote 9 *supra*.

<sup>116</sup> Docket No. UM 1878 (Valhalla), Complainants’ Reply in Support of Motion to Compel Discovery at 2-3 (Jan. 18, 2018).

<sup>117</sup> See footnote 86 *supra*.

weekend.<sup>118</sup> Complainants were seeking to meet with PGE to urge it to provide executable PPAs before the June 1 rate change. PGE had already explained to Complainants that it intended to follow its regular Schedule 201 process and provide responses to the QFs' requests to change draft PPAs within 15 business days of those requests.<sup>119</sup> Schedule 201 does not mandate a meeting under such circumstances. Nor was it reasonable for Complainants to expect PGE to be available to meet within three business days of a request for meeting, especially with the large volume of QF applications that PGE was processing and with a holiday weekend occurring in the middle of the period in question. Finally, the lack of a meeting did not impact the relevant timeframes under Schedule 201.

As for the Complainants' remaining allegations of delaying behavior, they have been addressed elsewhere in this motion for summary judgment and/or they do not represent behavior that impacted the relevant Schedule 201 timelines in any way. While PGE denies engaging in any improper or delaying behavior, even if the behavior alleged on pages 2 and 3 of Complainants' reply in support of its motion to compel discovery is assumed to be true for the sake of argument, it is not relevant to the question of whether PGE obstructed progress toward the Complainants' receipt of an executable PPA before the June 1, 2017 rate change. As PGE has explained in the previous sections of this motion for summary judgment, given the Complainants' actions regarding when they submitted project information and how they requested changes to the draft PPAs provided by PGE, none of the Complainants were entitled to an executable PPA before the June 1, 2017 rate change and the Commission can and should

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<sup>118</sup> Docket No. UM 1878 (Valhalla), Complaint at ¶¶ 29 and 30 (Aug. 7, 2017) (the following citations are compressed references to the relevant paragraph in the complaint in each docket); UM 1880 (Skyward) at ¶¶ 29 and 30; UM 1884; UM 1877 (Bottlenose) at ¶¶ 44 and 45; UM 1879 (Whipsnake) at ¶¶ 44 and 45; UM 1881 (Leatherback) at ¶¶ 44 and 45; UM 1882 (Pika) at ¶¶ 44 and 45.

<sup>119</sup> Brown Declaration at ¶ 9 and Exhibit D (Jan. 24, 2018).



reach this conclusion as a matter of law notwithstanding Complainants' allegations in their reply in support of the motion to compel discovery.

### C. Third Claim for Relief.

The third claim for relief asserted by each Complainant is that the Commission acted improperly when it approved a June 1, 2017 effective date for PGE's May 1 annual rate filing and that this somehow established a LEO at pre-June 1 rates.<sup>120</sup> This claim can and should be denied as a matter of law for the reasons discussed in Section IV(B)(1) beginning on page 21 above.

Complainants' premise that by approving a June 1 effective date the Commission "allow[ed] PGE to shorten the time available to QF's to conclude their negotiations with PGE before the effective date of its May 1 Update"<sup>121</sup> is incorrect. There was no preexisting policy that May 1 rates become effective at the end on June.<sup>122</sup>

To the extent that Complainants believe the Commission lacked the authority to set a June 1 effective date for PGE's May 1 update the Complainants should have challenged Order No. 17-177. They could have requested rehearing or reconsideration within 60 days,<sup>123</sup> or appealed the order to the Oregon Court of Appeals.<sup>124</sup> But claiming in these cases that Order 17-

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<sup>120</sup> Docket No. UM 1878 (Valhalla), Complaint at ¶ 91 (Dec. 7, 2017) (the following citations are compressed references to the relevant paragraph in the complaint in each docket); UM 1880 (Skyward) at ¶ 84; UM 1884 (Cottontail) at ¶ 79; UM 1885 (Osprey) at ¶ 78; UM 1886 (Wapiti) at ¶ 79; UM 1888 (Bighorn) at ¶ 75; UM 1889 (Minke) at ¶ 75; UM 1890 (Harrier) at ¶ 75; UM 1877 (Bottlenose) at ¶ 102; UM 1879 (Whipsnake) at ¶ 102; UM 1881 (Leatherback) at ¶ 4 (page 22); UM 1882 (Pika) at ¶ 96.

<sup>121</sup> *Id.*

<sup>122</sup> The requirement to file a May 1 rate update was established by the Commission in Order No. 14-058. That order states the rate update will become effective *within 60 days* of May 1. The Commission has rejected the suggestion that this means the May 1 update will become effective at the end of a 60-day period. Rather, the Commission has noted that it expects to make the May 1 update effective as soon as Commission Staff has had an adequate opportunity to review the filing and recommend approval. *See* pages 21-26 *supra*.

<sup>123</sup> *See* ORS 756.561.

<sup>124</sup> *See* ORS 756.610.

177 was improper is an impermissible collateral attack on the order and the Commission should deny the claim as a matter of law.<sup>125</sup>

## V. CONCLUSION

For the reasons detailed above, PGE moves the Commission to grant summary judgment with regard to all three claims for relief in each of the above-captioned complaints and to dismiss each complaint with prejudice.

To summarize the Commission should make the following findings as a matter of law:

- (1) Complainants did not establish a LEO when they unilaterally modified the draft PPAs provided by PGE and signed those modified documents on May 31, 2017, and Complainants' first claim for relief is therefore denied.
- (2) PGE did not obstruct progress toward Complainants' receipt of an executable PPA by May 31, 2017, through any of the following actions, and Complainants' second claim for relief is therefore denied:
  - (a) Applying for a May 17, 2017 effective date and obtaining a June 1, 2017 effective date for PGE's May 1, 2017 annual rate update.
  - (b) Refusing to counter-sign the May 31, 2017 documents created by Complainants and referenced in issue (1) above.
  - (c) Missing the following Schedule 201 deadlines:
    - (i) Missing the Schedule 201 deadline for providing a draft PPA to Bottlenose, Whipsnake, Leatherback and Pika by three business days because those projects would not have been entitled to an executable PPA before June 1 even if they had received a draft PPA 3 business days earlier.
    - (ii) Possibly missing the Schedule 201 deadline for requesting additional information by one business day (depending on how that deadline is defined) with regard to 7 projects (Cottontail, Osprey, Wapiti, Bottlenose, Whipsnake, Leatherback and Pika) because requesting the additional information one business day earlier would not have entitled the impacted projects to receive an executable PPA before June 1, 2017.

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<sup>125</sup> See footnote 81 *supra*.

- (d) Allegedly engaging in other activities characterized as misconduct by Complainants (i.e., allegedly waiting the full 15-business days to provide responses, allegedly refusing to meet with Complainants or to respond to all of Complainants' emails, allegedly requiring Complainants to resubmit information multiple times) because PGE disputes these allegations but even if they are true, they do not change the fact that under the Schedule 201 timeframes, Complainants were not entitled to receive executable PPAs before the June 1, 2017.

(3) The Commission did not behave improperly and did not establish a LEO before June 1, 2017, when it approved a June 1, 2017 effective date for PGE's 2017 annual avoided cost rate update, and the Complainants' third claim for relief is therefore denied.

PGE urges the Commission to make specific rulings with regard to each of the issues identified above and with regard to each of Complainants' three claims for relief so that the resolution of the legal issues raised by the complaints and this motion for summary judgment can be used to aid the parties in resolving the remaining contested complaint proceedings filed by QFs against PGE in August 2017.

Dated this 24th day of January 2018.

Respectfully submitted,



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V. Denise Saunders, OSB #903769  
Associate General Counsel  
Portland General Electric Company  
121 SW Salmon Street, 1WTC1301  
Portland, Oregon 97204  
(541) 752-9060 (phone)  
(503) 464-2200 (fax)  
[denise.saunders@pgn.com](mailto:denise.saunders@pgn.com)



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Jeffrey S. Lovinger, OSB #960147  
Law Offices of Jeffrey S. Lovinger  
2000 NE 42<sup>nd</sup> Avenue, Suite 131  
Portland, OR 97213-1397  
(503) 230-7120 (office)  
(503) 709-9549 (cell)  
[jeff@lovingerlaw.com](mailto:jeff@lovingerlaw.com)

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

Bottlenose Solar, LLC et. al.

vs.

Portland General Electric Company

**EXHIBIT A**

(The information contained in Tables A through F of Portland General Electric Company's Motion for Summary Judgment have been combined into one table as Exhibit A)

<b>Milestone: PGE Requested Additional Information Regarding Project Submission</b>				<b>Milestone: PGE Issued Draft PPA</b>			<b>Assessment: Earliest Date Executable Due If No Change Requested to Draft PPA</b>		<b>Assessment: Earliest Date Executable Due Based On Initial Change Request</b>	
<b>Project</b>	<b>QF's Initial Submission of Project Information</b>	<b>PGE Requests Additional Information</b>	<b>Business Days Elapsed</b>	<b>Complainant Provided Additional Info.</b>	<b>PGE Provided Draft PPA</b>	<b>Elapsed Business Days</b>	<b>PGE Provided Draft PPA</b>	<b>Earliest Date Executable PPA Due</b>	<b>Changes Requested by Complainant</b>	<b>Earliest Date Executable PPA Due</b>
Valhalla	April 26, 2017	n/a	n/a	n/a	May 15, 2017 (after 5:00 PM)	14	May 15, 2017 (after 5:00 PM)	June 7, 2017	May 23 & 26, 2017	June 14, 2017
Skyward	April 26, 2017	n/a	n/a	n/a	May 15, 2017 (after 5:00 PM)	14	May 15, 2017 (after 5:00 PM)	June 7, 2017	May 23 & 26, 2017	June 14, 2017
Cottontail	March 22, 2017 (After 5:00 PM)	April 13, 2017	15	April 26, 2017	May 16, 2017	14	May 16, 2017	June 7, 2017	May 23, 2017	June 14, 2017
Osprey	March 22, 2017 (After 5:00 PM)	April 13, 2017	15	April 26, 2017	May 15, 2017 (after 5:00 PM)	14	May 15, 2017 (after 5:00 PM)	June 7, 2017	May 23, 2017	June 14, 2017
Wapiti	March 22, 2017 (After 5:00 PM)	April 13, 2017	15	April 26, 2017	May 15, 2017 (after 5:00 PM)	14	May 15, 2017 (after 5:00 PM)	June 7, 2017	May 23, 2017	June 14, 2017
Bighorn	April 4, 2017	April 25, 2017	15	May 1, 2017	May 18, 2017	13	May 18, 2017	June 9, 2017	May 23 & 26, 2017	June 14, 2017
Minke	April 4, 2017	April 25, 2017	15	May 1, 2017	May 18, 2017	13	May 18, 2017	June 9, 2017	May 23 & 26, 2017	June 14, 2017
Harrier	April 4, 2017	April 25, 2017	15	May 1, 2017	May 18, 2017	13	May 18, 2017	June 9, 2017	May 23 & 26, 2017	June 14, 2017
Bottlenose	March 22, 2017	April 13, 2017	16	April 27, 2017	May 23, 2017	18	May 23, 2017	June 14, 2017	May 23 & 24, 2017	June 14, 2017
Whipsnake	March 22, 2017	April 13, 2017	16	April 27, 2017	May 23, 2017	18	May 23, 2017	June 14, 2017	May 23 & 24, 2017	June 14, 2017
Leatherback	March 22, 2017	April 13, 2017	16	April 27, 2017	May 23, 2017	18	May 23, 2017	June 14, 2017	May 23 & 24, 2017	June 14, 2017
Pika	March 22, 2017	April 13, 2017	16	April 27, 2017	May 23, 2017	18	May 23, 2017	June 14, 2017	May 23 & 24, 2017	June 14, 2017

BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON

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

BOTTLENOSE SOLAR, LLC (UM 1877);  
VALHALLA SOLAR, LLC (UM 1878);  
WHIPSNAKE SOLAR, LLC (UM 1879);  
SKYWARD SOLAR, LLC (UM 1880);  
LEATHERBACK SOLAR, LLC (UM 1881);  
PIKA SOLAR, LLC (UM 1882);  
COTTONTAIL SOLAR, LLC (UM 1884);  
OSPREY SOLAR, LLC (UM 1885);  
WAPITI SOLAR, LLC (UM 1886);  
BIGHORN SOLAR, LLC (UM 1888);  
MINKE SOLAR, LLC (UM 1889);  
HARRIER SOLAR, LLC (UM 1890),

Complainants,

vs.

PORTLAND GENERAL ELECTRIC  
COMPANY,

Defendant.

**DECLARATION OF REBECCA  
BROWN IN SUPPORT OF  
PORTLAND GENERAL  
ELECTRIC COMPANY'S  
MOTION FOR SUMMARY  
JUDGMENT**

I, Rebecca Brown, declare under penalty of perjury under the laws of the State of Oregon:

1. My name is Rebecca Brown. I have been employed by Portland General Electric Company ("PGE") as a Senior Regulatory Analyst in Rates and Regulatory Affairs for over 10 years. My current job duties include performing and managing PGE's analysis of avoided cost rates and participating as part of the PGE team responsible for the processing of requests for Schedule 201 and Schedule 202 contracts.

2. I am familiar with PGE's calculation of avoided cost rates in 2017 and with PGE's email communications in 2017 with 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 (collectively, “Complainants”).

3. I prepared the following tables which compare PGE’s standard renewable avoided cost prices for solar in effect in May 2017 with PGE’s standard renewable avoided cost prices for solar in effect on June 1, 2017, on a levelized basis:

**Table 1. Standard Renewable Prices Compare (\$/MWh)**

<b>Pre-June 1</b>	<b>June 1</b>	<b>Difference</b>
74.42	65.26	(12.3)%

**Table 2. Standard Renewable Payments over 15 Years<sup>1</sup> (000,000’s)**

<b>Pre-June 1</b>	<b>June 1</b>	<b>Difference</b>
\$47.3	\$41.5	\$(5.9)

4. As Table 1 above demonstrates, the difference between PGE’s May 2017 and PGE’s June 1, 2017 avoided cost rate for a solar project to receive standard renewable prices is over 12 percent. Table 2 demonstrates the difference between the payment streams using Pre-June 1 pricing and June 1 prices.

5. I have concluded that if PGE is required to purchase the Complainants’ aggregate output at May 2017 rates, PGE’s customers will be required to pay approximately \$5.9 million more than if PGE is required to purchase Complainants’ aggregate output at rates which were in effect on June 1, 2017.

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<sup>1</sup> The 15-year period runs from 2017 to 2032 for Pre-June 1 and June 1 pricing.

6. Attached hereto as Exhibit A are true, complete and correct copies of the emails that Cottontail Solar LLC, Osprey Solar LLC, and Wapiti Solar LLC sent to PGE on March 22, 2017 after 5:00 pm transmitting initial project information to PGE.

7. Attached hereto as Exhibit B are true, complete and correct copies of the transmittal emails and cover letters that PGE sent to each Complainant between May 15, 2017 and May 23, 2017 when PGE provided each Complainant with an initial draft power purchase agreement (“PPA”).

8. Attached hereto as Exhibit C are true, complete and correct copies of the emails that each Complainant sent to PGE on May 23, 2017 (Bottlenose, Leatherback, Pika, Skyward, Valhalla, Whipsnake / Bighorn, Harrier, Minke / Cottontail, Osprey, Wapiti), May 24, 2017 (Bottlenose, Leatherback, Pika, Whipsnake), and/or May 26, 2017 (Skyward, Valhalla / Bighorn, Harrier, Minke) requesting certain changes to the initial draft PPAs that PGE sent to each Complainant between May 15, 2017 and May 23, 2017.

9. Attached hereto as Exhibit D are true, complete and correct copies of the emails that PGE sent to Complainants (Bottlenose, Leatherback, Pika, Skyward, Valhalla, Whipsnake, Bighorn, Harrier, Minke) acknowledging receipt of the request for changes to initial draft PPAs and indicating PGE would respond by June 14, 2017 or June 15, 2017.

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence before the Public Utility Commission of Oregon and is subject to penalty for perjury.

DATED this 24th day of January, 2018.



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Rebecca Brown



# **EXHIBIT A**

UM 1877-UM 1882, UM 1884-UM 1886, UM 1888-UM 1890  
Bottlenose Solar, LLC et. al.

vs.

Portland General Electric Company

**DECLARATION OF REBECCA BROWN  
IN SUPPORT OF PORTLAND GENERAL ELECTRIC COMPANY'S  
MOTION FOR SUMMARY JUDGMENT**

**From:** Steven Cohen <steve@sabalsolar.com>  
**Sent:** Wednesday, March 22, 2017 5:16 PM  
**To:** Bruce.True@pgn.com; Angeline.Chong@pgn.com  
**Cc:** Steven Cohen  
**Subject:** Subject: Cottontail Solar, LLC - PGE Standard PPA, Schedule 201 Initial Information Form  
**Attachments:** Cottontail Solar, LLC\_ PGE Standard PPA, Schedule 201 Initial Information Form.zip

\*\*\*Please take care when opening links, attachments or responding to this email as it originated outside of PGE.\*\*\*

**Subject: Cottontail Solar, LLC - PGE Standard PPA, Schedule 201 Initial Information Form**

Good afternoon Angeline,

I am writing to indicate our interest in obtaining a Standard Power Purchase Agreement for Cottontail Solar, LLC. This is a 2.2 MWac facility. In support of our request, please find attached a .zip file containing these materials:

- Schedule 201 Initial Information Form
- FERC Form 556 (QF17-3-000)
- Single Line Diagram
- 8760 and 12 x 24 Production Estimates
- PVsyst Report
- Hanwha Q CELLS 330W Modules Data Sheet
- Huawei SUN2000-45KW-45KVA-US-HV 01 Inverter Data Sheet
- Site Aerial
- Ground Lease Agreement (fully executed, redacted) x 3
- Map of Active PGE projects owned by Sabal Solar Development, LLC

Upon notice of completion, please provide the Standard Power Purchase Agreement as governed by PGE Schedule 201.

Please let us know if you have any questions or need additional material.

Regards,

Steve Cohen  
Sabal Solar Development

**From:** Steven Cohen <steve@sabalsolar.com>  
**Sent:** Wednesday, March 22, 2017 5:20 PM  
**To:** Bruce.True@pgn.com; Angeline.Chong@pgn.com  
**Cc:** Steven Cohen  
**Subject:** Subject: Osprey Solar, LLC - PGE Standard PPA, Schedule 201 Initial Information Form  
**Attachments:** Osprey Solar, LLC\_PGE Standard PPA, Schedule 201 Initial Information Form.zip

\*\*\*Please take care when opening links, attachments or responding to this email as it originated outside of PGE.\*\*\*

Good afternoon Angeline,

I am writing to indicate our interest in obtaining a Standard Power Purchase Agreement for Osprey Solar, LLC. This is a 2.2 MWac facility. In support of our request, please find attached a .zip file containing these materials:

- Schedule 201 Initial Information Form
- FERC Form 556 (QF17-3-000)
- Single Line Diagram
- 8760 and 12 x 24 Production Estimates
- PVsyst Report
- Hanwha Q CELLS 330W Modules Data Sheet
- Huawei SUN2000-45KW-45KVA-US-HV 01 Inverter Data Sheet
- Site Aerial
- Ground Lease Agreement (fully executed, redacted)
- Map of Active PGE projects owned by Sabal Solar Development, LLC

Upon notice of completion, please provide the Standard Power Purchase Agreement as governed by PGE Schedule 201.

Please let us know if you have any questions or need additional material.

Regards,

Steve Cohen  
Sabal Solar Development

**From:** Steven Cohen <steve@sabalsolar.com>  
**Sent:** Wednesday, March 22, 2017 5:13 PM  
**To:** Bruce.True@pgn.com; Angeline.Chong@pgn.com  
**Cc:** Steven Cohen  
**Subject:** Subject: Wapiti Solar, LLC - PGE Standard PPA, Schedule 201 Initial Information Form  
**Attachments:** Wapiti Solar, LLC\_PGE Standard PPA, Schedule 201 Initial Information Form.zip

\*\*\*Please take care when opening links, attachments or responding to this email as it originated outside of PGE.\*\*\*

Good afternoon Angeline,

I am writing to indicate our interest in obtaining a Standard Power Purchase Agreement for Wapiti Solar, LLC. This is a 2.2 MWac facility. In support of our request, please find attached a .zip file containing these materials:

- Schedule 201 Initial Information Form
- FERC Form 556 (QF17-3-000)
- Single Line Diagram
- 8760 and 12 x 24 Production Estimates
- PVsyst Report
- Hanwha Q CELLS 330W Modules Data Sheet
- Huawei SUN2000-45KW-45KVA-US-HV 01 Inverter Data Sheet
- Site Aerial
- Ground Lease Agreement (fully executed, redacted)
- Map of Active PGE projects owned by Sabal Solar Development, LLC

Upon notice of completion, please provide the Standard Power Purchase Agreement as governed by PGE Schedule 201.

Please let us know if you have any questions or need additional material.

Regards,

Steve Cohen  
Sabal Solar Development

## **EXHIBIT B**

UM 1877-UM 1882, UM 1884-UM 1886, UM 1888-UM 1890  
Bottlenose Solar, LLC et. al.

vs.

Portland General Electric Company

**DECLARATION OF REBECCA BROWN  
IN SUPPORT OF PORTLAND GENERAL ELECTRIC COMPANY'S  
MOTION FOR SUMMARY JUDGMENT**

**From:** Angeline Chong <Angeline.Chong@pgn.com>  
**Sent:** Thursday, May 18, 2017 12:57 PM  
**To:** Jason Groenewold (jGroenewold@pgrenewables.com)  
**Cc:** Bruce True  
**Subject:** Draft PPA for Bighorn  
**Attachments:** Cover letter draft PPA - Bighorn.pdf; Draft PPA and Schedule Bighorn Solar On-Syst Renewable.pdf

Please see the attached.

Angeline D. Chong |  
Portland General Electric |  
121 SW Salmon St. 3WTC0306 | Portland, Oregon 97204 |  
W: 503-464-7343 | F: 503-464-2605 |  
E: [angeline.chong@pgn.com](mailto:angeline.chong@pgn.com)



**Portland General Electric Company**  
121 SW Salmon Street • Portland, Oregon 97204

**May 18, 2017**

*Jason Groenewold*  
*Big Horn Solar LLC c/o PineGate Renewables*  
*1111 Hawthorne Lane, Suite 201*  
*Charlotte, NC 28205*

RE: Transmittal of Draft Standard PPA  
**Bighorn Solar** project, a proposed 2.2 megawatt **Solar QF**

Dear **Mr. Groenewold**,

Thank you for your interest in entering into a Standard Power Purchase Agreement (Standard PPA) with Portland General Electric (PGE). We received your written response to PGE's *Schedule 201 Initial Information Form* on **April 5, 2017**. On April 25, 2017 PGE sent you a request for additional or clarifying information, and you responded in writing on **May 1, 2017**. PGE has determined that you have provided sufficient information to allow PGE to prepare a draft Standard PPA.

Enclosed please find a draft Standard PPA for your **Bighorn Solar** project, a proposed 2.2 megawatt solar generating facility that was self certified as a qualifying facility (QF) pursuant to 18 CFR 292.207. PGE understands that **Bighorn Solar LLC** a **limited liability company** formed under the laws of the State of **Oregon** is the owner of the **Bighorn Solar** project and will be the Seller under the Standard PPA. If any of this information or any of the factual details contained in the enclosed draft Standard PPA are incorrect or change, please inform PGE immediately.

The enclosed draft Standard PPA is a discussion draft; it is not a binding offer and PGE reserves the right to revise any of its variable terms, including exhibits. No binding Standard PPA will exist between PGE and **Bighorn Solar LLC** unless and until PGE has provided **Bighorn Solar LLC** with an executable Standard PPA and both **Bighorn Solar LLC** and PGE have executed the document.

At this stage in the process you have several options: you can decide not to pursue a contract any further; you can propose in writing substantive changes to your project proposal or to the variable terms of the draft Standard PPA; or you can send PGE a written request to prepare a final draft Standard PPA without proposing any substantive changes to your project or the draft contract.

If you propose substantive changes to your project or the variable terms of the draft Standard PPA, PGE will treat your proposal as a new request for a draft Standard PPA. Within 15 business days of receiving your written proposal, PGE will send you either a

Page 2 of 2

new draft Standard PPA or PGE will request additional or clarifying information if PGE reasonably determines that it requires more information before it can prepare a new draft Standard PPA in response to your proposal to change contract terms or project details.

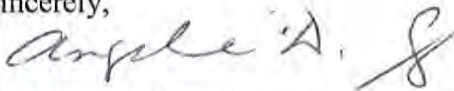
If you request a final draft Standard PPA without proposing substantive changes to your project proposal or to the variable terms of the draft Standard PPA, then within 15 business days of receiving your written request, PGE will send you either a final draft Standard PPA or request additional or clarifying information if PGE reasonably determines that additional information is necessary to prepare a final draft Standard PPA.

Once you have received a final draft Standard PPA, you will need to request in writing an executable Standard PPA. Within 15 business days of receiving such a written request, PGE will send you either an executable Standard PPA, a new draft Standard PPA (if you have requested substantive revisions to the final draft Standard PPA as part of your request for an executable Standard PPA), or a request for additional or clarifying information if PGE determines more information is needed to prepare an executable or new draft Standard PPA.

Once you receive an executable Standard PPA, you can execute it without alteration and establish a legally enforceable obligation. Pursuant to PGE's Schedule 201 at Sheet No. 201-3 and OPUC Order No. 16-174 at 3, the power purchase prices you are entitled to receive under your Standard PPA will be based on PGE's Standard Avoided Costs or Renewable Avoided Costs in effect at the time that you execute an executable Standard PPA provided to you by PGE.

This letter summarizes certain aspects of the Standard PPA process; it does not address every detail of the process. Additional details will be provided for each stage in PGE's letters associated with each stage. If you have any questions, please contact PGE's Power Production Coordinator at (503) 464-8000.

Sincerely,



Angeline D. Chong |  
Portland General Electric |  
121 SW Salmon St. 3WTC0306 | Portland, Oregon 97204 |  
W: 503-464-7343 | F: 503-464-2605 |  
E: [angeline.chong@pgn.com](mailto:angeline.chong@pgn.com)

enclosure: *Draft Standard PPA for Bighorn Solar LLC's Bighorn Solar Project*



**From:** Angeline Chong <Angeline.Chong@pgn.com>  
**Sent:** Tuesday, May 23, 2017 1:28 PM  
**To:** Chris Norqual (norqual@ccrenew.com)  
**Subject:** Bottlenose  
**Attachments:** Cover letter draft PPA.pdf; Draft PPA and Sched Bottlenose STANDARD RENEWABLE IN May 23, 2017.pdf

Chris – please ignore the previous one I sent. This is the corrected cover letter. Sorry for the confusion.

Angeline D. Chong |  
Portland General Electric |  
121 SW Salmon St. 3WTC0306 | Portland, Oregon 97204 |  
W: 503-464-7343 | F: 503-464-2605 |  
E: [angeline.chong@pgn.com](mailto:angeline.chong@pgn.com)



**Portland General Electric Company**  
121 SW Salmon Street • Portland, Oregon 97204

**May 23, 2017**

**Chris Norqual**  
**norqual@ccrenew.com**

RE: Transmittal of Draft Standard PPA  
**Bottlenose** project, a proposed 2.2 megawatt **Solar QF**

Dear **Mr. Norqual**,

Thank you for your interest in entering into a Standard Power Purchase Agreement (Standard PPA) with Portland General Electric (PGE). PGE has determined that you have provided sufficient information to allow PGE to prepare a draft Standard PPA.

Enclosed please find a draft Standard PPA for your **Bottlenose Solar** project, a proposed 2.2 megawatt **solar** generating facility that was self certified as a qualifying facility (QF) pursuant to 18 CFR 292.207. PGE understands that **Bottlenose Solar LLC** a limited liability company formed under the laws of the State of **Oregon** is the owner of the **Bottlenose Solar** project and will be the Seller under the Standard PPA. If any of this information or any of the factual details contained in the enclosed draft Standard PPA are incorrect or change, please inform PGE immediately.

The enclosed draft Standard PPA is a discussion draft; it is not a binding offer and PGE reserves the right to revise any of its variable terms, including exhibits. No binding Standard PPA will exist between PGE and **Bottlenose Solar LLC** unless and until PGE has provided **Bottlenose Solar LLC** with an executable Standard PPA and both **Bottlenose Solar LLC** and PGE have executed the document.

At this stage in the process you have several options: you can decide not to pursue a contract any further; you can propose in writing substantive changes to your project proposal or to the variable terms of the draft Standard PPA; or you can send PGE a written request to prepare a final draft Standard PPA without proposing any substantive changes to your project or the draft contract.

If you propose substantive changes to your project or the variable terms of the draft Standard PPA, PGE will treat your proposal as a new request for a draft Standard PPA. Within 15 business days of receiving your written proposal, PGE will send you either a new draft Standard PPA or PGE will request additional or clarifying information if PGE reasonably determines that it requires more information before it can prepare a new draft Standard PPA in response to your proposal to change contract terms or project details.

Page 2 of 2

If you request a final draft Standard PPA without proposing substantive changes to your project proposal or to the variable terms of the draft Standard PPA, then within 15 business days of receiving your written request, PGE will send you either a final draft Standard PPA or request additional or clarifying information if PGE reasonably determines that additional information is necessary to prepare a final draft Standard PPA.

Once you have received a final draft Standard PPA, you will need to request in writing an executable Standard PPA. Within 15 business days of receiving such a written request, PGE will send you either an executable Standard PPA, a new draft Standard PPA (if you have requested substantive revisions to the final draft Standard PPA as part of your request for an executable Standard PPA), or a request for additional or clarifying information if PGE determines more information is needed to prepare an executable or new draft Standard PPA.

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This letter summarizes certain aspects of the Standard PPA process; it does not address every detail of the process. Additional details will be provided for each stage in PGE's letters associated with each stage. If you have any questions, please contact PGE's Power Production Coordinator at (503) 464-8000.

Sincerely,



Angeline D. Chong |  
Portland General Electric |  
121 SW Salmon St. 3WTC0306 | Portland, Oregon 97204 |  
W: 503-464-7343 | F: 503-464-2605 |  
E: [angeline.chong@pgn.com](mailto:angeline.chong@pgn.com)

enclosure: *Draft Standard PPA for Bottlenose LLC's Bottlenose Project*

**From:** Angeline Chong <Angeline.Chong@pgn.com>  
**Sent:** Tuesday, May 16, 2017 10:27 AM  
**To:** Steven Cohen (steve@sabalsolar.com)  
**Cc:** Bruce True  
**Subject:** Cottontail Solar  
**Attachments:** Cover letter draft PPA - Cottontail.pdf; Draft PPA Cottontail Solar and Sched STANDARD RENEWABLE IN April 17 2017.pdf

Please see the attached.

Angeline D. Chong |  
Portland General Electric |  
121 SW Salmon St. 3WTC0306 | Portland, Oregon 97204 |  
W: 503-464-7343 | F: 503-464-2605 |  
E: [angeline.chong@pgn.com](mailto:angeline.chong@pgn.com)



**Portland General Electric Company**  
121 SW Salmon Street • Portland, Oregon 97204

**May 16, 2017**

**Cottontail Solar LLC**  
**steve@sabalsolar.com**

RE: Transmittal of Draft Standard PPA  
**Cottontail Solar** project, a proposed 2.25 megawatt **Solar QF**

Dear **Mr. Cohen**,

Thank you for your interest in entering into a Standard Power Purchase Agreement (Standard PPA) with Portland General Electric (PGE). We received your written response to PGE's *Schedule 201 Initial Information Form* on March 23, 2017. On **April 13, 2017** PGE sent you a request for additional or clarifying information, and you responded in writing on **April 26, 2017**. PGE has determined that you have provided sufficient information to allow PGE to prepare a draft Standard PPA.

Enclosed please find a draft Standard PPA for your **Cottontail Solar** project, a proposed **2.25** megawatt **solar** generating facility that was self certified as a qualifying facility (QF) pursuant to 18 CFR 292.207. PGE understands that **Cottontail Solar LLC** a limited liability company formed under the laws of the State of **Oregon** is the owner of the Osprey project and will be the Seller under the Standard PPA. If any of this information or any of the factual details contained in the enclosed draft Standard PPA are incorrect or change, please inform PGE immediately.

The enclosed draft Standard PPA is a discussion draft; it is not a binding offer and PGE reserves the right to revise any of its variable terms, including exhibits. No binding Standard PPA will exist between PGE and **Cottontail Solar LLC** unless and until PGE has provided **Cottontail Solar LLC** with an executable Standard PPA and both **Cottontail Solar LLC** and PGE have executed the document.

At this stage in the process you have several options: you can decide not to pursue a contract any further; you can propose in writing substantive changes to your project proposal or to the variable terms of the draft Standard PPA; or you can send PGE a written request to prepare a final draft Standard PPA without proposing any substantive changes to your project or the draft contract.

If you propose substantive changes to your project or the variable terms of the draft Standard PPA, PGE will treat your proposal as a new request for a draft Standard PPA. Within 15 business days of receiving your written proposal, PGE will send you either a new draft Standard PPA or PGE will request additional or clarifying information if PGE

Page 2 of 2

reasonably determines that it requires more information before it can prepare a new draft Standard PPA in response to your proposal to change contract terms or project details.

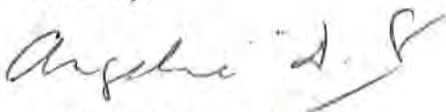
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This letter summarizes certain aspects of the Standard PPA process; it does not address every detail of the process. Additional details will be provided for each stage in PGE's letters associated with each stage. If you have any questions, please contact PGE's Power Production Coordinator at (503) 464-8000.

Sincerely,



Angeline D. Chong |  
Portland General Electric |  
121 SW Salmon St. 3WTC0306 | Portland, Oregon 97204 |  
W: 503-464-7343 | F: 503-464-2605 |  
E: [angeline.chong@pgn.com](mailto:angeline.chong@pgn.com)

enclosure: *Draft Standard PPA for Cottontail Solar LLC's Cottontail Solar Project*

**From:** Angeline Chong <Angeline.Chong@pgn.com>  
**Sent:** Thursday, May 18, 2017 12:55 PM  
**To:** Jason Groenewold (jGroenewold@pgrenewables.com)  
**Cc:** Bruce True  
**Subject:** Draft PPA for Harrier  
**Attachments:** Cover letter draft PPA - Harrier.pdf; Draft PPa and Schedule Harrier Solar On-Syst Renewable.pdf

Please see the attached.

Angeline D. Chong |  
Portland General Electric |  
121 SW Salmon St. 3WTC0306 | Portland, Oregon 97204 |  
W: 503-464-7343 | F: 503-464-2605 |  
E: [angeline.chong@pgn.com](mailto:angeline.chong@pgn.com)



**Portland General Electric Company**  
121 SW Salmon Street • Portland, Oregon 97204

**May 18, 2017**

*Jason Groenewold*  
*Harrier Solar LLC c/o PineGate Renewables*  
*1111 Hawthorne Lane, Suite 201*  
*Charlotte, NC 28205*

RE: Transmittal of Draft Standard PPA  
**Harrier Solar** project, a proposed 2.2 megawatt **Solar QF**

Dear **Mr. Groenewold**,

Thank you for your interest in entering into a Standard Power Purchase Agreement (Standard PPA) with Portland General Electric (PGE). We received your written response to PGE's *Schedule 201 Initial Information Form* on **April 5, 2017**. On April 25, 2017 PGE sent you a request for additional or clarifying information, and you responded in writing on **May 1, 2017**. PGE has determined that you have provided sufficient information to allow PGE to prepare a draft Standard PPA.

Enclosed please find a draft Standard PPA for your **Harrier Solar** project, a proposed 2.2 megawatt solar generating facility that was self certified as a qualifying facility (QF) pursuant to 18 CFR 292.207. PGE understands that **Harrier Solar LLC** a **limited liability company** formed under the laws of the State of **Oregon** is the owner of the **Harrier Solar** project and will be the Seller under the Standard PPA. If any of this information or any of the factual details contained in the enclosed draft Standard PPA are incorrect or change, please inform PGE immediately.

The enclosed draft Standard PPA is a discussion draft; it is not a binding offer and PGE reserves the right to revise any of its variable terms, including exhibits. No binding Standard PPA will exist between PGE and **Harrier Solar LLC** unless and until PGE has provided **Harrier Solar LLC** with an executable Standard PPA and both **Harrier Solar LLC** and PGE have executed the document.

At this stage in the process you have several options: you can decide not to pursue a contract any further; you can propose in writing substantive changes to your project proposal or to the variable terms of the draft Standard PPA; or you can send PGE a written request to prepare a final draft Standard PPA without proposing any substantive changes to your project or the draft contract.

If you propose substantive changes to your project or the variable terms of the draft Standard PPA, PGE will treat your proposal as a new request for a draft Standard PPA. Within 15 business days of receiving your written proposal, PGE will send you either a



Page 2 of 2

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This letter summarizes certain aspects of the Standard PPA process; it does not address every detail of the process. Additional details will be provided for each stage in PGE's letters associated with each stage. If you have any questions, please contact PGE's Power Production Coordinator at (503) 464-8000.

Sincerely,



Angeline D. Chong |

Portland General Electric |

121 SW Salmon St. 3WTC0306 | Portland, Oregon 97204 |

W: 503-464-7343 | F: 503-464-2605 |

E: [angeline.chong@pgn.com](mailto:angeline.chong@pgn.com)

enclosure: *Draft Standard PPA for Harrier Solar LLC's Harrier Solar Project*

**From:** Angeline Chong <Angeline.Chong@pgn.com>  
**Sent:** Tuesday, May 23, 2017 1:30 PM  
**To:** Chris Norqual (norqual@ccrenew.com)  
**Cc:** Bruce True  
**Subject:** Leatherback  
**Attachments:** Cover letter draft PPA.pdf; Draft PPA Leatherback Solar STANDARD RENEWABLE IN  
May 23, 2017.pdf

Please see the attached.

Angeline D. Chong |  
Portland General Electric |  
121 SW Salmon St. 3WTC0306 | Portland, Oregon 97204 |  
W: 503-464-7343 | F: 503-464-2605 |  
E: [angeline.chong@pgn.com](mailto:angeline.chong@pgn.com)



**Portland General Electric Company**  
121 SW Salmon Street • Portland, Oregon 97204

**May 23, 2017**

**Chris Norqual**  
**norqual@ccrenew.com**

RE: Transmittal of Draft Standard PPA  
**Leatherback Solar** project, a proposed 2.2 megawatt **Solar QF**

Dear **Mr. Norqual**,

Thank you for your interest in entering into a Standard Power Purchase Agreement (Standard PPA) with Portland General Electric (PGE). PGE has determined that you have provided sufficient information to allow PGE to prepare a draft Standard PPA.

Enclosed please find a draft Standard PPA for your **Letterback Solar** project, a proposed 2.2 megawatt **solar** generating facility that was self certified as a qualifying facility (QF) pursuant to 18 CFR 292.207. PGE understands that **Leatherback Solar LLC** a limited liability company formed under the laws of the State of **Oregon** is the owner of the **Leatherback Solar** project and will be the Seller under the Standard PPA. If any of this information or any of the factual details contained in the enclosed draft Standard PPA are incorrect or change, please inform PGE immediately.

The enclosed draft Standard PPA is a discussion draft; it is not a binding offer and PGE reserves the right to revise any of its variable terms, including exhibits. No binding Standard PPA will exist between PGE and **Leatherback Solar LLC** unless and until PGE has provided **Leatherback Solar LLC** with an executable Standard PPA and both **Leatherback Solar LLC** and PGE have executed the document.

At this stage in the process you have several options: you can decide not to pursue a contract any further; you can propose in writing substantive changes to your project proposal or to the variable terms of the draft Standard PPA; or you can send PGE a written request to prepare a final draft Standard PPA without proposing any substantive changes to your project or the draft contract.

If you propose substantive changes to your project or the variable terms of the draft Standard PPA, PGE will treat your proposal as a new request for a draft Standard PPA. Within 15 business days of receiving your written proposal, PGE will send you either a new draft Standard PPA or PGE will request additional or clarifying information if PGE reasonably determines that it requires more information before it can prepare a new draft Standard PPA in response to your proposal to change contract terms or project details.

Page 2 of 2

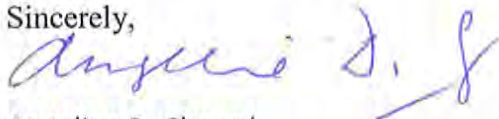
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This letter summarizes certain aspects of the Standard PPA process; it does not address every detail of the process. Additional details will be provided for each stage in PGE's letters associated with each stage. If you have any questions, please contact PGE's Power Production Coordinator at (503) 464-8000.

Sincerely,



Angeline D. Chong |  
Portland General Electric |  
121 SW Salmon St. 3WTC0306 | Portland, Oregon 97204 |  
W: 503-464-7343 | F: 503-464-2605 |  
E: [angeline.chong@pgn.com](mailto:angeline.chong@pgn.com)

enclosure: *Draft Standard PPA for Leatherback Solar LLC's Leatherback Project*

**From:** Angeline Chong <Angeline.Chong@pgn.com>  
**Sent:** Thursday, May 18, 2017 12:58 PM  
**To:** Jason Groenewold (jGroenewold@pgrenewables.com)  
**Cc:** Bruce True  
**Subject:** Draft PPA for Minke  
**Attachments:** Cover letter draft PPA - Minke.pdf; Draft and Sched PPA Minke STANDARD RENEWABLE IN.pdf

Please see the attached.

Angeline D. Chong |  
Portland General Electric |  
121 SW Salmon St. 3WTC0306 | Portland, Oregon 97204 |  
W: 503-464-7343 | F: 503-464-2605 |  
E: [angeline.chong@pgn.com](mailto:angeline.chong@pgn.com)



**Portland General Electric Company**  
121 SW Salmon Street • Portland, Oregon 97204

**May 18, 2017**

*Jason Groenewold*  
*Minke Solar LLC c/o PineGate Renewables*  
*1111 Hawthorne Lane, Suite 201*  
*Charlotte, NC 28205*

RE: Transmittal of Draft Standard PPA  
**Minke Solar** project, a proposed 2.2 megawatt **Solar QF**

Dear **Mr. Groenewold**,

Thank you for your interest in entering into a Standard Power Purchase Agreement (Standard PPA) with Portland General Electric (PGE). We received your written response to PGE's *Schedule 201 Initial Information Form* on **April 5, 2017**. On April 25, 2017 PGE sent you a request for additional or clarifying information, and you responded in writing on **May 1, 2017**. PGE has determined that you have provided sufficient information to allow PGE to prepare a draft Standard PPA.

Enclosed please find a draft Standard PPA for your Minke Solar project, a proposed 2.2 megawatt solar generating facility that was self certified as a qualifying facility (QF) pursuant to 18 CFR 292.207. PGE understands that Minke Solar LLC a limited liability company formed under the laws of the State of Oregon is the owner of the Minke Solar project and will be the Seller under the Standard PPA. If any of this information or any of the factual details contained in the enclosed draft Standard PPA are incorrect or change, please inform PGE immediately.

The enclosed draft Standard PPA is a discussion draft; it is not a binding offer and PGE reserves the right to revise any of its variable terms, including exhibits. No binding Standard PPA will exist between PGE and Minke Solar LLC unless and until PGE has provided Minke Solar LLC with an executable Standard PPA and both Minke Solar LLC and PGE have executed the document.

At this stage in the process you have several options: you can decide not to pursue a contract any further; you can propose in writing substantive changes to your project proposal or to the variable terms of the draft Standard PPA; or you can send PGE a written request to prepare a final draft Standard PPA without proposing any substantive changes to your project or the draft contract.

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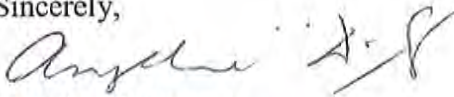
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Sincerely,



Angeline D. Chong |  
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W: 503-464-7343 | F: 503-464-2605 |  
E: [angeline.chong@pgn.com](mailto:angeline.chong@pgn.com)

enclosure: *Draft Standard PPA for Minke Solar LLC's Minke Solar Project*

**From:** Angeline Chong <Angeline.Chong@pgn.com>  
**Sent:** Monday, May 15, 2017 9:15 PM  
**To:** Steven Cohen (steve@sabalsolar.com)  
**Cc:** Bruce True  
**Subject:** Osprey Solar  
**Attachments:** Cover letter draft PPA - Osprey.pdf; Draft PPA and Sched Osprey Solar LLC STANDARD RENEWABLE IN May 12, 2017.pdf

Please see the attached.

Angeline D. Chong |  
Portland General Electric |  
121 SW Salmon St. 3WTC0306 | Portland, Oregon 97204 |  
W: 503-464-7343 | F: 503-464-2605 |  
E: [angeline.chong@pgn.com](mailto:angeline.chong@pgn.com)





**Portland General Electric Company**  
121 SW Salmon Street • Portland, Oregon 97204

**May 16, 2017**

**Osprey Solar LLC**  
**steve@sabalsolar.com**

RE: Transmittal of Draft Standard PPA  
**Osprey Solar** project, a proposed 2.25 megawatt **Solar QF**

Dear **Mr. Cohen**,

Thank you for your interest in entering into a Standard Power Purchase Agreement (Standard PPA) with Portland General Electric (PGE). We received your written response to PGE's *Schedule 201 Initial Information Form* on March 23, 2017. On **April 13, 2017** PGE sent you a request for additional or clarifying information, and you responded in writing on **April 26, 2017**. PGE has determined that you have provided sufficient information to allow PGE to prepare a draft Standard PPA.

Enclosed please find a draft Standard PPA for your **Osprey Solar** project, a proposed **2.25** megawatt **solar** generating facility that was self certified as a qualifying facility (QF) pursuant to 18 CFR 292.207. PGE understands that **Osprey Solar LLC** a limited liability company formed under the laws of the State of **Oregon** is the owner of the Osprey project and will be the Seller under the Standard PPA. If any of this information or any of the factual details contained in the enclosed draft Standard PPA are incorrect or change, please inform PGE immediately.

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At this stage in the process you have several options: you can decide not to pursue a contract any further; you can propose in writing substantive changes to your project proposal or to the variable terms of the draft Standard PPA; or you can send PGE a written request to prepare a final draft Standard PPA without proposing any substantive changes to your project or the draft contract.

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W: 503-464-7343 | F: 503-464-2605 |  
E: [angeline.chong@pgn.com](mailto:angeline.chong@pgn.com)

enclosure: *Draft Standard PPA for Osprey Solar LLC's Osprey Solar Project*

**From:** Angeline Chong <Angeline.Chong@pgn.com>  
**Sent:** Tuesday, May 23, 2017 1:32 PM  
**To:** Chris Norqual (norqual@ccrenew.com)  
**Cc:** Bruce True  
**Subject:** Pika  
**Attachments:** Cover letter draft PPA.pdf; Draft PPA and Sched Pika STANDARD RENEWABLE IN May 23 2017.pdf

Angeline D. Chong |  
Portland General Electric |  
121 SW Salmon St. 3WTC0306 | Portland, Oregon 97204 |  
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**Portland General Electric Company**  
121 SW Salmon Street • Portland, Oregon 97204

**May 23, 2017**

**Chris Norqual**  
**norqual@ccrenew.com**

RE: Transmittal of Draft Standard PPA  
**Pika** project, a proposed 2.2 megawatt **Solar QF**

Dear **Mr. Norqual**,

Thank you for your interest in entering into a Standard Power Purchase Agreement (Standard PPA) with Portland General Electric (PGE). PGE has determined that you have provided sufficient information to allow PGE to prepare a draft Standard PPA.

Enclosed please find a draft Standard PPA for your **Pika Solar** project, a proposed 2.2 megawatt **solar** generating facility that was self certified as a qualifying facility (QF) pursuant to 18 CFR 292.207. PGE understands that **Pika Solar LLC** a limited liability company formed under the laws of the State of **Oregon** is the owner of the **Pika Solar** project and will be the Seller under the Standard PPA. If any of this information or any of the factual details contained in the enclosed draft Standard PPA are incorrect or change, please inform PGE immediately.

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This letter summarizes certain aspects of the Standard PPA process; it does not address every detail of the process. Additional details will be provided for each stage in PGE's letters associated with each stage. If you have any questions, please contact PGE's Power Production Coordinator at (503) 464-8000.

Sincerely,



Angeline D. Chong |

Portland General Electric |

121 SW Salmon St. 3WTC0306 | Portland, Oregon 97204 |

W: 503-464-7343 | F: 503-464-2605 |

E: [angeline.chong@pgn.com](mailto:angeline.chong@pgn.com)

enclosure: *Draft Standard PPA for Pika Solar LLC's Pika Project*

**From:** Angeline Chong <Angeline.Chong@pgn.com>  
**Sent:** Monday, May 15, 2017 9:26 PM  
**To:** Chris Norqual (norqual@ccrenew.com); John McQueeney  
(john.mcqueeney@ccrenew.com)  
**Cc:** Bruce True  
**Subject:** Skyward Solar  
**Attachments:** Cover letter PPA - Skyward.pdf; DRAFT PPA SKYWARD AND SCHEDULE STANDARD  
RENEWABLE IN 5-9-2017.pdf

Please see the attached.

Angeline D. Chong |  
Portland General Electric |  
121 SW Salmon St. 3WTC0306 | Portland, Oregon 97204 |  
W: 503-464-7343 | F: 503-464-2605 |  
E: [angeline.chong@pgn.com](mailto:angeline.chong@pgn.com)



**Portland General Electric Company**  
121 SW Salmon Street • Portland, Oregon 97204

**May 16, 2017**

**John McQueeney**  
**Skyward Solar, LLC**  
**3259 Ocean Park Blvd, Suite 355**  
**Santa Monica, CA 90405**  
*john.mcqueeney@ccrenew.com*

RE: Transmittal of Draft Standard PPA  
**Skyward Solar** project, a proposed 2.25 megawatt **Solar QF**

Dear **Mr. McQueeney**,

Thank you for your interest in entering into a Standard Power Purchase Agreement (Standard PPA) with Portland General Electric (PGE). We received your written response to PGE's *Schedule 201 Initial Information Form* on **April 26, 2017**. PGE has determined that you have provided sufficient information to allow PGE to prepare a draft Standard PPA.

Enclosed please find a draft Standard PPA for your **Skyward Solar** project, a proposed **2.25** megawatt **solar** generating facility that was self certified as a qualifying facility (QF) pursuant to 18 CFR 292.207. PGE understands that **Skyward Solar, LLC** a limited liability company formed under the laws of the State of Oregon is the owner of the Skyward Solar project and will be the Seller under the Standard PPA. If any of this information or any of the factual details contained in the enclosed draft Standard PPA are incorrect or change, please inform PGE immediately.

The enclosed draft Standard PPA is a discussion draft; it is not a binding offer and PGE reserves the right to revise any of its variable terms, including exhibits. No binding Standard PPA will exist between PGE and **Skyward Solar, LLC** unless and until PGE has provided **Skyward Solar, LLC** with an executable Standard PPA and both **Skyward Solar, LLC** and PGE have executed the document.

At this stage in the process you have several options: you can decide not to pursue a contract any further; you can propose in writing substantive changes to your project proposal or to the variable terms of the draft Standard PPA; or you can send PGE a written request to prepare a final draft Standard PPA without proposing any substantive changes to your project or the draft contract.

If you propose substantive changes to your project or the variable terms of the draft Standard PPA, PGE will treat your proposal as a new request for a draft Standard PPA. Within 15 business days of receiving your written proposal, PGE will send you either a

Page 2 of 2

new draft Standard PPA or PGE will request additional or clarifying information if PGE reasonably determines that it requires more information before it can prepare a new draft Standard PPA in response to your proposal to change contract terms or project details.

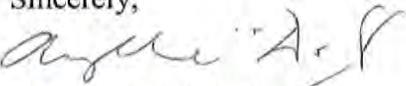
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Once you receive an executable Standard PPA, you can execute it without alteration and establish a legally enforceable obligation. Pursuant to PGE's Schedule 201 at Sheet No. 201-3 and OPUC Order No. 16-174 at 3, the power purchase prices you are entitled to receive under your Standard PPA will be based on PGE's Standard Avoided Costs or Renewable Avoided Costs in effect at the time that you execute an executable Standard PPA provided to you by PGE.

This letter summarizes certain aspects of the Standard PPA process; it does not address every detail of the process. Additional details will be provided for each stage in PGE's letters associated with each stage. If you have any questions, please contact PGE's Power Production Coordinator at (503) 464-8000.

Sincerely,



Angeline D. Chong |  
Portland General Electric |  
121 SW Salmon St. 3WTC0306 | Portland, Oregon 97204 |  
W: 503-464-7343 | F: 503-464-2605 |  
E: [angeline.chong@pgn.com](mailto:angeline.chong@pgn.com)

enclosure: *Draft Standard PPA for Skyward Solar, LLC's Skyward Solar Project*



**From:** Angeline Chong <Angeline.Chong@pgn.com>  
**Sent:** Monday, May 15, 2017 9:25 PM  
**To:** Chris Norqual (norqual@ccrenew.com); John McQueeney (john.mcqueeney@ccrenew.com)  
**Cc:** Bruce True  
**Subject:** Valhalla Solar  
**Attachments:** Cover letter draft PPA - Valhalla.pdf; DRAFT VALHALLA SOLAR AND SCHEDULE STANDARD RENEWABLE IN 5-10-2017.pdf

Please see the attached.

Angeline D. Chong |  
Portland General Electric |  
121 SW Salmon St. 3WTC0306 | Portland, Oregon 97204 |  
W: 503-464-7343 | F: 503-464-2605 |  
E: [angeline.chong@pgn.com](mailto:angeline.chong@pgn.com)



**Portland General Electric Company**  
121 SW Salmon Street • Portland, Oregon 97204

**May 16, 2017**

**John McQueeney**  
**Valhalla Solar, LLC**  
**3259 Ocean Park Blvd, Suite 355**  
**Santa Monica, CA 90405**  
*john.mcqueeney@ccrenew.com*

RE: Transmittal of Draft Standard PPA  
**Valhalla Solar** project, a proposed 2.25 megawatt **Solar QF**

Dear **Mr. McQueeney**,

Thank you for your interest in entering into a Standard Power Purchase Agreement (Standard PPA) with Portland General Electric (PGE). We received your written response to PGE's *Schedule 201 Initial Information Form* on **April 26, 2017**. PGE has determined that you have provided sufficient information to allow PGE to prepare a draft Standard PPA.

Enclosed please find a draft Standard PPA for your **Valhalla Solar** project, a proposed **2.25** megawatt **solar** generating facility that was self certified as a qualifying facility (QF) pursuant to 18 CFR 292.207. PGE understands that **Valhalla Solar, LLC** a limited liability company formed under the laws of the State of Oregon is the owner of the Skyward Solar project and will be the Seller under the Standard PPA. If any of this information or any of the factual details contained in the enclosed draft Standard PPA are incorrect or change, please inform PGE immediately.

The enclosed draft Standard PPA is a discussion draft; it is not a binding offer and PGE reserves the right to revise any of its variable terms, including exhibits. No binding Standard PPA will exist between PGE and **Valhalla Solar, LLC** unless and until PGE has provided **Valhalla Solar, LLC** with an executable Standard PPA and both **Valhalla Solar, LLC** and PGE have executed the document.

At this stage in the process you have several options: you can decide not to pursue a contract any further; you can propose in writing substantive changes to your project proposal or to the variable terms of the draft Standard PPA; or you can send PGE a written request to prepare a final draft Standard PPA without proposing any substantive changes to your project or the draft contract.

If you propose substantive changes to your project or the variable terms of the draft Standard PPA, PGE will treat your proposal as a new request for a draft Standard PPA. Within 15 business days of receiving your written proposal, PGE will send you either a

Page 2 of 2

new draft Standard PPA or PGE will request additional or clarifying information if PGE reasonably determines that it requires more information before it can prepare a new draft Standard PPA in response to your proposal to change contract terms or project details.

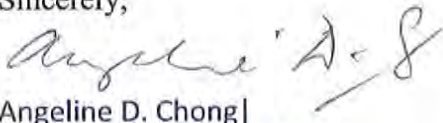
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This letter summarizes certain aspects of the Standard PPA process; it does not address every detail of the process. Additional details will be provided for each stage in PGE's letters associated with each stage. If you have any questions, please contact PGE's Power Production Coordinator at (503) 464-8000.

Sincerely,



Angeline D. Chong |  
Portland General Electric |  
121 SW Salmon St. 3WTC0306 | Portland, Oregon 97204 |  
W: 503-464-7343 | F: 503-464-2605 |  
E: [angeline.chong@pgn.com](mailto:angeline.chong@pgn.com)

enclosure: *Draft Standard PPA for Valhalla Solar LLC's, Valhalla Solar Solar Project*

**From:** Angeline Chong <Angeline.Chong@pgn.com>  
**Sent:** Monday, May 15, 2017 9:22 PM  
**To:** Steven Cohen (steve@sabalsolar.com)  
**Cc:** Bruce True  
**Subject:** Waipiti  
**Attachments:** Cover letter draft PPA - Waipiti.pdf; DRAFT PPA WAPITI SOLAR AND SCHEDULE STANDARD RENEWABLE IN 5-9-2017.pdf

Please see the attached.

Angeline D. Chong |  
Portland General Electric |  
121 SW Salmon St. 3WTC0306 | Portland, Oregon 97204 |  
W: 503-464-7343 | F: 503-464-2605 |  
E: [angeline.chong@pgn.com](mailto:angeline.chong@pgn.com)



**Portland General Electric Company**  
121 SW Salmon Street • Portland, Oregon 97204

**May 16, 2017**

**Wapiti Solar LLC**  
**steve@sabalsolar.com**

RE: Transmittal of Draft Standard PPA  
**Wapiti Solar** project, a proposed 2.25 megawatt **Solar QF**

Dear **Mr. Cohen**,

Thank you for your interest in entering into a Standard Power Purchase Agreement (Standard PPA) with Portland General Electric (PGE). We received your written response to PGE's *Schedule 201 Initial Information Form* on March 23, 2017. On **April 13, 2017** PGE sent you a request for additional or clarifying information, and you responded in writing on **April 26, 2017**. PGE has determined that you have provided sufficient information to allow PGE to prepare a draft Standard PPA.

Enclosed please find a draft Standard PPA for your **Waipiti Solar** project, a proposed **2.25** megawatt **solar** generating facility that was self certified as a qualifying facility (QF) pursuant to 18 CFR 292.207. PGE understands that **Waipiti Solar LLC** a limited liability company formed under the laws of the State of **Oregon** is the owner of the Osprey project and will be the Seller under the Standard PPA. If any of this information or any of the factual details contained in the enclosed draft Standard PPA are incorrect or change, please inform PGE immediately.

The enclosed draft Standard PPA is a discussion draft; it is not a binding offer and PGE reserves the right to revise any of its variable terms, including exhibits. No binding Standard PPA will exist between PGE and **Waipiti Solar LLC** unless and until PGE has provided **Waipiti Solar LLC** with an executable Standard PPA and both **Waipiti Solar LLC** and PGE have executed the document.

At this stage in the process you have several options: you can decide not to pursue a contract any further; you can propose in writing substantive changes to your project proposal or to the variable terms of the draft Standard PPA; or you can send PGE a written request to prepare a final draft Standard PPA without proposing any substantive changes to your project or the draft contract.

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Page 2 of 2

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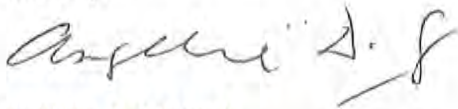
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This letter summarizes certain aspects of the Standard PPA process; it does not address every detail of the process. Additional details will be provided for each stage in PGE's letters associated with each stage. If you have any questions, please contact PGE's Power Production Coordinator at (503) 464-8000.

Sincerely,



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Portland General Electric |  
121 SW Salmon St. 3WTC0306 | Portland, Oregon 97204 |  
W: 503-464-7343 | F: 503-464-2605 |  
E: [angeline.chong@pgn.com](mailto:angeline.chong@pgn.com)

enclosure: *Draft Standard PPA for Waipiti Solar LLC's Waipiti Solar Project*

**From:** Angeline Chong <Angeline.Chong@pgn.com>  
**Sent:** Tuesday, May 23, 2017 1:33 PM  
**To:** Chris Norqual (norqual@ccrenew.com)  
**Cc:** Bruce True  
**Subject:** Whipsnake  
**Attachments:** Cover letter draft PPA.pdf; Draft PPA and Sched Whipsnake STANDARD RENEWABLE IN May 23, 2017.pdf

Angeline D. Chong |  
Portland General Electric |  
121 SW Salmon St. 3WTC0306 | Portland, Oregon 97204 |  
W: 503-464-7343 | F: 503-464-2605 |  
E: [angeline.chong@pgn.com](mailto:angeline.chong@pgn.com)



**Portland General Electric Company**  
121 SW Salmon Street • Portland, Oregon 97204

**May 23, 2017**

**Chris Norqual**  
**norqual@ccrenew.com**

RE: Transmittal of Draft Standard PPA  
**Whipsnake** project, a proposed 2.2 megawatt **Solar QF**

Dear **Mr. Norqual**,

Thank you for your interest in entering into a Standard Power Purchase Agreement (Standard PPA) with Portland General Electric (PGE). PGE has determined that you have provided sufficient information to allow PGE to prepare a draft Standard PPA.

Enclosed please find a draft Standard PPA for your **Whipsnake Solar** project, a proposed 2.2 megawatt **solar** generating facility that was self certified as a qualifying facility (QF) pursuant to 18 CFR 292.207. PGE understands that **Whipsnake Solar LLC** a limited liability company formed under the laws of the State of **Oregon** is the owner of the **Whipsnake Solar** project and will be the Seller under the Standard PPA. If any of this information or any of the factual details contained in the enclosed draft Standard PPA are incorrect or change, please inform PGE immediately.

The enclosed draft Standard PPA is a discussion draft; it is not a binding offer and PGE reserves the right to revise any of its variable terms, including exhibits. No binding Standard PPA will exist between PGE and **Whipsnake Solar LLC** unless and until PGE has provided **Whipsnake Solar LLC** with an executable Standard PPA and both **Whipsnake Solar LLC** and PGE have executed the document.

At this stage in the process you have several options: you can decide not to pursue a contract any further; you can propose in writing substantive changes to your project proposal or to the variable terms of the draft Standard PPA; or you can send PGE a written request to prepare a final draft Standard PPA without proposing any substantive changes to your project or the draft contract.

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Page 2 of 2

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Angeline D. Chong |  
Portland General Electric |  
121 SW Salmon St. 3WTC0306 | Portland, Oregon 97204 |  
W: 503-464-7343 | F: 503-464-2605 |  
E: [angeline.chong@pgn.com](mailto:angeline.chong@pgn.com)

enclosure: *Draft Standard PPA for Whipsnake Solar LLC's Whipsnake Solar Project*

## **EXHIBIT C**

UM 1877-UM 1882, UM 1884-UM 1886, UM 1888-UM 1890  
Bottlenose Solar, LLC et. al.

vs.

Portland General Electric Company

**DECLARATION OF REBECCA BROWN  
IN SUPPORT OF PORTLAND GENERAL ELECTRIC COMPANY'S  
MOTION FOR SUMMARY JUDGMENT**

## **EXHIBIT C**

May 23, 2017 Complainant Emails

### **Cypress Creek Renewables Projects**

BOTTLENOSE SOLAR, LLC (UM 1877)  
VALHALLA SOLAR, LLC (UM 1878)  
WHIPSNAKE SOLAR, LLC (UM 1879)  
SKYWARD SOLAR, LLC (UM 1880)  
LEATHERBACK SOLAR, LLC (UM 1881)  
PIKA SOLAR, LLC (UM 1882)

---

**From:** Chris Norqual <norqual@ccrenew.com>  
**Sent:** Tuesday, May 23, 2017 12:35 PM  
**To:** Angeline Chong  
**Cc:** John McQueeney; Garrett Hollingsworth; Danny Obeler; Andrew Berrier; David Bunge  
**Subject:** Skyward / Valhalla PPA notes  
**Attachments:** Skyward\_Standard Renewable PPA and Schedule (draft, unsigned)\_5-9-2017.pdf;  
Valhalla\_Standard Renewable PPA and Schedule (draft, unsigned)\_5-10-2017....pdf

**Importance:** High

**\*\*\*Please take care when opening links, attachments or responding to this email as it originated outside of PGE.\*\*\***

Hi Angeline,

Thank you very much for your call and time this morning. For your review, here are the few notes and requests we discussed. Again, our priority is to receive Execution Copies of the PPAs as soon as possible this week since we intend to sell the power from our six applied-for projects to PGE under the currently available Schedule 201. This includes Skyward and Valhalla, as well as Pika, Leatherback, Whipsnake, and Bottlenose, which you noted will have drafts available today.

1. Valhalla is missing this note in the top margin on all pages: Schedule 201 Standard Renewable In-System Variable Power Purchase Agreement Form Effective August 12, 2016. We are OK with this, as long as PGE is
2. Skyward, Exhibit B – for consistency, please remove/exclude expected dates
3. All Projects, Exhibit C – Please remove point #7
4. All Projects -- Section 4.5 -- We suggest returning to the prior language from the previously signed SP Solar 2, LLC PPA:
  - a. 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. With respect to Environmental Attributes not transferred to PGE under this Agreement ("Seller-Retained Environmental Attributes") Seller may report under §1605(b) of the Energy Policy Act of 1992 or under any applicable program as belonging to Seller any of the Seller-Retained Environmental Attributes, and PGE shall not report under such program that such Seller-Retained Environmental Attributes belong to it. With respect to RPS Attributes transferred to PGE under this Agreement ("Transferred RECs"), PGE may report under §1605(b) of the Energy Policy Act of 1992 or under any applicable program as belonging to it any of the Transferred RECs, and Seller shall not report under such program that such Transferred RECs belong to it.
5. All Projects -- Section 9.2 -- We suggest returning to the prior language from the previously signed SP Solar 2, LLC PPA:
  - a. In the event of a default hereunder, except as otherwise provided in this Agreement, the non-defaulting party may immediately terminate this Agreement at its sole discretion by delivering written notice to the other Party. In addition, the non-defaulting party may pursue any and all legal or equitable remedies provided by law or pursuant to this Agreement including damages related to the need to procure replacement power. A termination hereunder shall be effective upon the date of delivery of notice, as

provided in Section 20. The rights provided in this Section 9 are cumulative such that the exercise of one or more rights shall not constitute a waiver of any other rights. Provided; however, PGE may not terminate this Agreement for Seller's failure to meet the Guarantee of Mechanical Availability established in Section 3.1.10.

- b. 9.1.6 and 9.3 – were not included in the previous PPA. We suggest removing both to be consistent

By way of introduction, I have copied Andrew Berrier from Pine Gate, since I believe he is also interested in pursuing execution copies for his three projects, with similar comments. I'll let him respond directly to you.

Please don't hesitate to call if you have any questions or needs.

**Chris Norqual**

Cypress Creek Renewables

3250 Ocean Park Blvd, Suite 355 | Santa Monica, California 90405

(o) 213-347-9377 (c) 310-746-7067 | [norqual@ccrenew.com](mailto:norqual@ccrenew.com)



## **EXHIBIT C**

May 23, 2017 Complainant Emails

### **Pinegate Renewables LLC Projects**

BIGHORN SOLAR, LLC (UM 1888)

MINKE SOLAR, LLC (UM 1889)

HARRIER SOLAR, LLC (UM 1890)

---

**From:** Andrew Berrier <aberrier@pgrenewables.com>  
**Sent:** Tuesday, May 23, 2017 12:51 PM  
**To:** Chris Norqual; Angeline Chong  
**Cc:** John McQueeney; Garrett Hollingsworth; Danny Obeler; David Bunge; Jason Groenewold; Ben Catt; James Ortega; Mike Wrenn; Stephanie Murr  
**Subject:** RE: Skyward / Valhalla PPA notes

\*\*\*Please take care when opening links, attachments or responding to this email as it originated outside of PGE.\*\*\*

Hello Angeline,

To follow up on Chris's email, Pine Gate would be interested in following the same path as CCR on the Bighorn, Harrier, and Minke PPAs. We would be happy to discuss in conjunction with Chris/CCR to keep this process all under one track and running as smooth as possible.

Best regards,  
Andrew

**Andrew Berrier**  
Finance Counsel

**Pine Gate Renewables, LLC**  
Direct: (919) 815-3837  
1111 Hawthorne Lane, Suite 201  
Charlotte, NC 28205  
[aberrier@pgrenewables.com](mailto:aberrier@pgrenewables.com)



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Pine Gate Renewables, LLC. is committed to encouraging sustainable business practices. Please consider the environment before printing this email.

---

**From:** Chris Norqual [mailto:norqual@ccrenew.com]  
**Sent:** Tuesday, May 23, 2017 3:35 PM  
**To:** Angeline Chong <Angeline.Chong@pgn.com>  
**Cc:** John McQueeney <john.mcqueeney@ccrenew.com>; Garrett Hollingsworth <hollingsworth@ccrenew.com>; Danny Obeler <obeler@ccrenew.com>; Andrew Berrier <aberrier@pgrenewables.com>; David Bunge <bunge@ccrenew.com>  
**Subject:** Skyward / Valhalla PPA notes  
**Importance:** High

Hi Angeline,

Thank you very much for your call and time this morning. For your review, here are the few notes and requests we discussed. Again, our priority is to receive Execution Copies of the PPAs as soon as possible this week since we intend to sell the power from our six applied-for projects to PGE under the currently available Schedule 201. This includes Skyward and Valhalla, as well as Pika, Leatherback, Whipsnake, and Bottlenose, which you noted will have drafts available today.

1. Valhalla is missing this note in the top margin on all pages: Schedule 201 Standard Renewable In-System Variable Power Purchase Agreement Form Effective August 12, 2016. We are OK with this, as long as PGE is
2. Skyward, Exhibit B – for consistency, please remove/exclude expected dates
3. All Projects, Exhibit C – Please remove point #7
4. All Projects -- Section 4.5 -- We suggest returning to the prior language from the previously signed SP Solar 2, LLC PPA:
  - a. 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. With respect to Environmental Attributes not transferred to PGE under this Agreement ("Seller-Retained Environmental Attributes") Seller may report under §1605(b) of the Energy Policy Act of 1992 or under any applicable program as belonging to Seller any of the Seller-Retained Environmental Attributes, and PGE shall not report under such program that such Seller-Retained Environmental Attributes belong to it. With respect to RPS Attributes transferred to PGE under this Agreement ("Transferred RECs"), PGE may report under §1605(b) of the Energy Policy Act of 1992 or under any applicable program as belonging to it any of the Transferred RECs, and Seller shall not report under such program that such Transferred RECs belong to it.
5. All Projects -- Section 9.2 -- We suggest returning to the prior language from the previously signed SP Solar 2, LLC PPA:
  - a. In the event of a default hereunder, except as otherwise provided in this Agreement, the non-defaulting party may immediately terminate this Agreement at its sole discretion by delivering written notice to the other Party. In addition, the non-defaulting party may pursue any and all legal or equitable remedies provided by law or pursuant to this Agreement including damages related to the need to procure replacement power. A termination hereunder shall be effective upon the date of delivery of notice, as provided in Section 20. The rights provided in this Section 9 are cumulative such that the exercise of one or more rights shall not constitute a waiver of any other rights. Provided; however, PGE may not terminate this Agreement for Seller's failure to meet the Guarantee of Mechanical Availability established in Section 3.1.10.
  - b. 9.1.6 and 9.3 – were not included in the previous PPA. We suggest removing both to be consistent

By way of introduction, I have copied Andrew Berrier from Pine Gate, since I believe he is also interested in pursuing execution copies for his three projects, with similar comments. I'll let him respond directly to you.

Please don't hesitate to call if you have any questions or needs.

**Chris Norqual**

Cypress Creek Renewables

3250 Ocean Park Blvd, Suite 355 | Santa Monica, California 90405

(o) 213-347-9377 (c) 310-746-7067 | [norqual@ccrenew.com](mailto:norqual@ccrenew.com)





## **EXHIBIT C**

May 23, 2017 Complainant Emails

### **Sabal Solar Development Projects**

COTTONTAIL SOLAR, LLC (UM 1884)

OSPREY SOLAR, LLC (UM 1885)

WAPITI SOLAR, LLC (UM 1886)

---

**From:** Steven Cohen <steve@sabalsolar.com>  
**Sent:** Tuesday, May 23, 2017 3:31 PM  
**To:** Angeline.Chong@pgn.com  
**Cc:** utility@ccrenew.com  
**Subject:** Cottontail, Osprey and Wapiti Standard Renewable PPA greement  
**Attachments:** Osprey\_Standard Renewable PPA and Schedule (draft, unsigned)\_5-12-2017.pdf;  
Cottontail\_Standard Renewable PPA and Schedule (draft, unsigned)\_5-17-20....pdf;  
Wapiti\_Standard Renewable PPA and Schedule (draft, unsigned)\_5-9-2017.pdf

\*\*\*Please take care when opening links, attachments or responding to this email as it originated outside of PGE.\*\*\*

Dear Angeline,

I wish to proceed with PPA execution copies, without substantive updates, as soon as possible. There are only two minor changes I'd like to please request:

- Remove point #7 from Exhibit C: "Testing the communication system for offsite monitoring and all requirements of the Western Energy Imbalance Market"
- Update the expected dates in Sections 2.2.1 and 2.2.2 to: 5/1/2020

Since the projects intend to sell all output to PGE per the currently available Schedule 201, I respectfully ask that you please provide the execution copies this week.

Thank you for your assistance.

Steve

## **EXHIBIT C**

May 24, 2017 Complainant Emails

### **Cypress Creek Renewables Projects**

BOTTLENOSE SOLAR, LLC (UM 1877)  
WHIPSNAKE SOLAR, LLC (UM 1879)  
LEATHERBACK SOLAR, LLC (UM 1881)  
PIKA SOLAR, LLC (UM 1882)

---

**From:** Chris Norqual <norqual@ccrenew.com>  
**Sent:** Wednesday, May 24, 2017 6:17 PM  
**To:** Angeline Chong  
**Cc:** Garrett Hollingsworth; Danny Obeler; Bruce True  
**Subject:** Whipsnake/Pika/Leatherback/Bottlenose - PPA Execution Copy Request  
**Attachments:** Draft PPA and Sched Whipsnake STANDARD RENEWABLE IN May 23, 2017.pdf; Draft PPA and Sched Pika STANDARD RENEWABLE IN May 23 2017.pdf; Draft PPA Leatherback Solar STANDARD RENEWABLE IN May 23, 2017.pdf; Draft PPA and Sched Bottlenose STANDARD RENEWABLE IN May 23, 2017.pdf

**\*\*\*Please take care when opening links, attachments or responding to this email as it originated outside of PGE.\*\*\***

Hi Angeline,

Thanks for sending these four copies yesterday. I request to proceed with PPA execution copies, without substantive updates, as soon as possible for all four projects. There are two minor edits I'd like to please request in each copy:

- Remove point #7 from Exhibit C: "Testing the communication system for offsite monitoring and all requirements of the Western Energy Imbalance Market"
- Update the expected dates in Sections 2.2.1 and 2.2.2 to: 5/1/2020

Since the projects intend to sell all output to PGE per the currently available Schedule 201, I respectfully ask that you please provide the execution copies this week.

Thank you,

**Chris Norqual**

Cypress Creek Renewables

3250 Ocean Park Blvd, Suite 355 | Santa Monica, California 90405

(o) 213-347-9377 (c) 310-746-7067 | [norqual@ccrenew.com](mailto:norqual@ccrenew.com)



## **EXHIBIT C**

May 26, 2017 Complainant Emails

**Cypress Creek Renewables Projects**  
VALHALLA SOLAR, LLC (UM 1878)  
SKYWARD SOLAR, LLC (UM 1880)

---

**From:** Chris Norqual <norqual@ccrenew.com>  
**Sent:** Friday, May 26, 2017 9:46 AM  
**To:** Angeline Chong; John.Morton@pgn.com  
**Cc:** Andrew Berrier; Danny Obeler; Garrett Hollingsworth; David Bunge  
**Subject:** RE: Skyward / Valhalla PPA notes

**Importance:** High

\*\*\*Please take care when opening links, attachments or responding to this email as it originated outside of PGE.\*\*\*

Hi Angeline and John,

Thank you for your acknowledgements of receiving our comments. We know how busy you are, so our goal is to make this as simple as possible for you to prepare drafts for our signature. Angeline, as discussed on the phone, we appreciate you working to send these to us before May 31<sup>st</sup> and I am available at any time if you have any questions.

We have previously asked for only these two very minor edits to four projects' drafts:

- 1) Remove point #7 from Exhibit C: "Testing the communication system for offsite monitoring and all requirements of the Western Energy Imbalance Market"
- 2) Update the expected dates in Sections 2.2.1 and 2.2.2 to: 5/1/2020

I'd like to revise our request for Skyward and Valhalla to match the other four exactly. We are requesting this to make the updates as simple as possible for you. Therefore, please send execution copies with the two minor updates above for these **six** projects:

- Skyward Solar, LLC
- Valhalla Solar, LLC
- Whipsnake Solar, LLC
- Bottlenose Solar, LLC
- Pika Solar, LLC
- Leatherback Solar, LLC

I will be in Portland late afternoon on Tuesday 5/30 and Wednesday 5/31 morning. Would it be possible to please meet up for 30 minutes?

Thank you,  
Chris  
310-746-7067

---

**From:** Andrew Berrier [mailto:aberrier@pgrenewables.com]  
**Sent:** Tuesday, May 23, 2017 12:51 PM  
**To:** Chris Norqual <norqual@ccrenew.com>; Angeline Chong <Angeline.Chong@pgn.com>  
**Cc:** John McQueeney <john.mcqueeney@ccrenew.com>; Garrett Hollingsworth <hollingsworth@ccrenew.com>; Danny Obeler <obeler@ccrenew.com>; David Bunge <bunge@ccrenew.com>; Jason Groenewold <jGroenewold@pgrenewables.com>; Ben Catt <bcatt@pgrenewables.com>; James Ortega <jortega@pgrenewables.com>; Mike Wrenn <mwrenn@pgrenewables.com>; Stephanie Murr <smurr@pgrenewables.com>  
**Subject:** RE: Skyward / Valhalla PPA notes

Hello Angeline,

To follow up on Chris's email, Pine Gate would be interested in following the same path as CCR on the Bighorn, Harrier, and Minke PPAs. We would be happy to discuss in conjunction with Chris/CCR to keep this process all under one track and running as smooth as possible.

Best regards,  
Andrew

**Andrew Berrier**  
Finance Counsel

**Pine Gate Renewables, LLC**  
Direct: (919) 815-3837  
1111 Hawthorne Lane, Suite 201  
Charlotte, NC 28205  
[aberrier@pgrenewables.com](mailto:aberrier@pgrenewables.com)



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Pine Gate Renewables, LLC. is committed to encouraging sustainable business practices. Please consider the environment before printing this email.

---

**From:** Chris Norqual [<mailto:norqual@ccrenew.com>]

**Sent:** Tuesday, May 23, 2017 3:35 PM

**To:** Angeline Chong <[Angeline.Chong@pgn.com](mailto:Angeline.Chong@pgn.com)>

**Cc:** John McQueeney <[john.mcqueeney@ccrenew.com](mailto:john.mcqueeney@ccrenew.com)>; Garrett Hollingsworth <[hollingsworth@ccrenew.com](mailto:hollingsworth@ccrenew.com)>; Danny Obeler <[obeler@ccrenew.com](mailto:obeler@ccrenew.com)>; Andrew Berrier <[aberrier@pgrenewables.com](mailto:aberrier@pgrenewables.com)>; David Bunge <[bunge@ccrenew.com](mailto:bunge@ccrenew.com)>

**Subject:** Skyward / Valhalla PPA notes

**Importance:** High

Hi Angeline,

Thank you very much for your call and time this morning. For your review, here are the few notes and requests we discussed. Again, our priority is to receive Execution Copies of the PPAs as soon as possible this week since we intend to sell the power from our six applied-for projects to PGE under the currently available Schedule 201. This includes Skyward and Valhalla, as well as Pika, Leatherback, Whipsnake, and Bottlenose, which you noted will have drafts available today.

1. Valhalla is missing this note in the top margin on all pages: Schedule 201 Standard Renewable In-System Variable Power Purchase Agreement Form Effective August 12, 2016. We are OK with this, as long as PGE is
2. Skyward, Exhibit B – for consistency, please remove/exclude expected dates
3. All Projects, Exhibit C – Please remove point #7
4. All Projects -- Section 4.5 -- We suggest returning to the prior language from the previously signed SP Solar 2, LLC PPA:
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transferred to PGE under this Agreement. With respect to Environmental Attributes not transferred to PGE under this Agreement ("Seller-Retained Environmental Attributes") Seller may report under §1605(b) of the Energy Policy Act of 1992 or under any applicable program as belonging to Seller any of the Seller-Retained Environmental Attributes, and PGE shall not report under such program that such Seller-Retained Environmental Attributes belong to it. With respect to RPS Attributes transferred to PGE under this Agreement ("Transferred RECs"), PGE may report under §1605(b) of the Energy Policy Act of 1992 or under any applicable program as belonging to it any of the Transferred RECs, and Seller shall not report under such program that such Transferred RECs belong to it.

5. All Projects -- Section 9.2 -- We suggest returning to the prior language from the previously signed SP Solar 2, LLC PPA:
  - a. In the event of a default hereunder, except as otherwise provided in this Agreement, the non-defaulting party may immediately terminate this Agreement at its sole discretion by delivering written notice to the other Party. In addition, the non-defaulting party may pursue any and all legal or equitable remedies provided by law or pursuant to this Agreement including damages related to the need to procure replacement power. A termination hereunder shall be effective upon the date of delivery of notice, as provided in Section 20. The rights provided in this Section 9 are cumulative such that the exercise of one or more rights shall not constitute a waiver of any other rights. Provided; however, PGE may not terminate this Agreement for Seller's failure to meet the Guarantee of Mechanical Availability established in Section 3.1.10.
  - b. 9.1.6 and 9.3 – were not included in the previous PPA. We suggest removing both to be consistent

By way of introduction, I have copied Andrew Berrier from Pine Gate, since I believe he is also interested in pursuing execution copies for his three projects, with similar comments. I'll let him respond directly to you.

Please don't hesitate to call if you have any questions or needs.

**Chris Norqual**

Cypress Creek Renewables

3250 Ocean Park Blvd, Suite 355 | Santa Monica, California 90405

(o) 213-347-9377 (c) 310-746-7067 | [norqual@ccrenew.com](mailto:norqual@ccrenew.com)





## **EXHIBIT C**

May 26, 2017 Complainant Emails

### **Pinegate Renewables LLC Projects**

BIGHORN SOLAR, LLC (UM 1888)

MINKE SOLAR, LLC (UM 1889)

HARRIER SOLAR, LLC (UM 1890)

---

**From:** Andrew Berrier <aberrier@pgrenewables.com>  
**Sent:** Friday, May 26, 2017 10:43 AM  
**To:** Chris Norqual; Angeline Chong; john.morton@pgn.com  
**Cc:** Danny Obeler; Garrett Hollingsworth; David Bunge  
**Subject:** Re: Skyward / Valhalla PPA notes

\*\*\*Please take care when opening links, attachments or responding to this email as it originated outside of PGE.\*\*\*

Hello Angeline and John,

To follow up on Chris's email, can Pine Gate's three PPAs (Bighorn, Harrier, and Minke) please follow this parallel to CCR's so we can keep all of the agreements on track for execution by 5/31? If you need anything on our behalf I would be happy to assist.

Best regards,  
Andrew

Andrew Berrier  
Finance Counsel

Pine Gate Renewables, LLC  
Direct: (919) 815-3837  
1111 Hawthorne Lane, Suite 201  
Charlotte, NC 28205  
[aberrier@pgrenewables.com](mailto:aberrier@pgrenewables.com)

---

From: Chris Norqual <[norqual@ccrenew.com](mailto:norqual@ccrenew.com)>  
Sent: Friday, May 26, 2017 12:46  
Subject: RE: Skyward / Valhalla PPA notes  
To: Angeline Chong <[angeline.chong@pgn.com](mailto:angeline.chong@pgn.com)>, <[john.morton@pgn.com](mailto:john.morton@pgn.com)>  
Cc: Andrew Berrier <[aberrier@pgrenewables.com](mailto:aberrier@pgrenewables.com)>, Danny Obeler <[obeler@ccrenew.com](mailto:obeler@ccrenew.com)>, Garrett Hollingsworth <[hollingsworth@ccrenew.com](mailto:hollingsworth@ccrenew.com)>, David Bunge <[bunge@ccrenew.com](mailto:bunge@ccrenew.com)>

Hi Angeline and John,

Thank you for your acknowledgements of receiving our comments. We know how busy you are, so our goal is to make this as simple as possible for you to prepare drafts for our signature. Angeline, as discussed on the phone, we appreciate you working to send these to us before May 31<sup>st</sup> and I am available at any time if you have any questions.

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- 2) Update the expected dates in Sections 2.2.1 and 2.2.2 to: 5/1/2020

I'd like to revise our request for Skyward and Valhalla to match the other four exactly. We are requesting this to make the updates as simple as possible for you. Therefore, please send execution copies with the two minor updates above for these **six** projects:

- Skyward Solar, LLC
- Valhalla Solar, LLC
- Whipsnake Solar, LLC
- Bottlenose Solar, LLC
- Pika Solar, LLC
- Leatherback Solar, LLC

I will be in Portland late afternoon on Tuesday 5/30 and Wednesday 5/31 morning. Would it be possible to please meet up for 30 minutes?

Thank you,  
Chris  
310-746-7067

---

**From:** Andrew Berrier [<mailto:aberrier@pgreenables.com>]  
**Sent:** Tuesday, May 23, 2017 12:51 PM  
**To:** Chris Norqual <[norqual@ccrenew.com](mailto:norqual@ccrenew.com)>; Angeline Chong <[Angeline.Chong@pgn.com](mailto:Angeline.Chong@pgn.com)>  
**Cc:** John McQueeney <[john.mcqueeney@ccrenew.com](mailto:john.mcqueeney@ccrenew.com)>; Garrett Hollingsworth <[hollingsworth@ccrenew.com](mailto:hollingsworth@ccrenew.com)>; Danny Obeler <[obeler@ccrenew.com](mailto:obeler@ccrenew.com)>; David Bunge <[bunge@ccrenew.com](mailto:bunge@ccrenew.com)>; Jason Groenewold <[jGroenewold@pgreenables.com](mailto:jGroenewold@pgreenables.com)>; Ben Catt <[bcatt@pgreenables.com](mailto:bcatt@pgreenables.com)>; James Ortega <[jortega@pgreenables.com](mailto:jortega@pgreenables.com)>; Mike Wrenn <[mwrenn@pgreenables.com](mailto:mwrenn@pgreenables.com)>; Stephanie Murr <[smurr@pgreenables.com](mailto:smurr@pgreenables.com)>  
**Subject:** RE: Skyward / Valhalla PPA notes

Hello Angeline,

To follow up on Chris's email, Pine Gate would be interested in following the same path as CCR on the Bighorn, Harrier, and Minke PPAs. We would be happy to discuss in conjunction with Chris/CCR to keep this process all under one track and running as smooth as possible.

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Andrew

**Andrew Berrier**  
Finance Counsel

**Pine Gate Renewables, LLC**  
Direct: (919) 815-3837  
1111 Hawthorne Lane, Suite 201  
Charlotte, NC 28205  
[aberrier@pgreenables.com](mailto:aberrier@pgreenables.com)



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Pine Gate Renewables, LLC. is committed to encouraging sustainable business practices. Please consider the environment before printing this email.

**From:** Chris Norqual [<mailto:norqual@ccrenew.com>]

**Sent:** Tuesday, May 23, 2017 3:35 PM

**To:** Angeline Chong <[Angeline.Chong@pgn.com](mailto:Angeline.Chong@pgn.com)>

**Cc:** John McQueeney <[john.mcqueeney@ccrenew.com](mailto:john.mcqueeney@ccrenew.com)>; Garrett Hollingsworth <[hollingsworth@ccrenew.com](mailto:hollingsworth@ccrenew.com)>; Danny Obeler <[obeler@ccrenew.com](mailto:obeler@ccrenew.com)>; Andrew Berrier <[aberrier@pgrenewables.com](mailto:aberrier@pgrenewables.com)>; David Bunge <[bunge@ccrenew.com](mailto:bunge@ccrenew.com)>

**Subject:** Skyward / Valhalla PPA notes

**Importance:** High

Hi Angeline,

Thank you very much for your call and time this morning. For your review, here are the few notes and requests we discussed. Again, our priority is to receive Execution Copies of the PPAs as soon as possible this week since we intend to sell the power from our six applied-for projects to PGE under the currently available Schedule 201. This includes Skyward and Valhalla, as well as Pika, Leatherback, Whipsnake, and Bottlenose, which you noted will have drafts available today.

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4. All Projects -- Section 4.5 -- We suggest returning to the prior language from the previously signed SP Solar 2, LLC PPA:
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5. All Projects -- Section 9.2 -- We suggest returning to the prior language from the previously signed SP Solar 2, LLC PPA:
  - a. In the event of a default hereunder, except as otherwise provided in this Agreement, the non-defaulting party may immediately terminate this Agreement at its sole discretion by delivering written notice to the other Party. In addition, the non-defaulting party may pursue any and all legal or equitable remedies provided by law or pursuant to this Agreement including damages related to the need to procure replacement power. A termination hereunder shall be effective upon the date of delivery of notice, as provided in Section 20. The rights provided in this Section 9 are cumulative such that the exercise of one or more rights shall not constitute a waiver of any other rights. Provided; however, PGE may not terminate this Agreement for Seller's failure to meet the Guarantee of Mechanical Availability established in Section 3.1.10.
  - b. 9.1.6 and 9.3 – were not included in the previous PPA. We suggest removing both to be consistent

By way of introduction, I have copied Andrew Berrier from Pine Gate, since I believe he is also interested in pursuing execution copies for his three projects, with similar comments. I'll let him respond directly to you.

Please don't hesitate to call if you have any questions or needs.

**Chris Norqual**

Cypress Creek Renewables

3250 Ocean Park Blvd, Suite 355 | Santa Monica, California 90405

(o) 213-347-9377 (c) 310-746-7067 | [norqual@ccrenew.com](mailto:norqual@ccrenew.com)



## **EXHIBIT D**

UM 1877-UM 1882, UM 1884-UM 1886, UM 1888-UM 1890  
Bottlenose Solar, LLC et. al.

vs.

Portland General Electric Company

**DECLARATION OF REBECCA BROWN  
IN SUPPORT OF PORTLAND GENERAL ELECTRIC COMPANY'S  
MOTION FOR SUMMARY JUDGMENT**

---

**From:** John Morton  
**Sent:** Thursday, May 25, 2017 6:38 PM  
**To:** norqual@ccrenew.com  
**Cc:** Angeline Chong; Ryin Khandoker  
**Subject:** Bottleneck - PPA Execution Copy Request

Chris

Thank you for your interest in obtaining Standard Power Purchase Agreements (Standard PPAs) for the above referenced projects from Portland General Electric Company (PGE). On May 23, 2017, PGE sent you a draft Standard PPA. On May 23 and 24, 2017, PGE received your written requests to make changes to the draft Standard PPAs and to provide you with executable Standard PPAs by next week.

PGE is processing your requests for Standard Contracts under its regular Schedule 201 process. The next step in that process is for PGE to evaluate your requested revisions to the draft Standard PPAs and to provide, within 15 business days, either: (i) final draft Standard PPAs if there are no substantive revisions to the original draft Standard PPAs; or (ii) revised draft Standard PPAs if there are substantive revisions to the original draft Standard PPAs; or (iii) a request for any additional or clarifying information that PGE may require. One of these responses will be provided by June 15, 2017.

If you have any questions please respond to this email or contact Angeline Chong at (503) 464-8000.

**John Morton** | Origination and Structuring  
Portland General Electric Co. | 121 SW Salmon Street, 3WTC0306 | Portland, OR 97204

 Think Green before printing!

---

**From:** John Morton <John.Morton@pgn.com>  
**Sent:** Thursday, May 25, 2017 6:38 PM  
**To:** norqual@ccrenew.com  
**Cc:** Angeline Chong; Ryin Khandoker  
**Subject:** Leatherback - PPA Execution Copy Request

Chris

Thank you for your interest in obtaining Standard Power Purchase Agreements (Standard PPAs) for the above referenced projects from Portland General Electric Company (PGE). On May 23, 2017, PGE sent you a draft Standard PPA. On May 23 and 24, 2017, PGE received your written requests to make changes to the draft Standard PPAs and to provide you with executable Standard PPAs by next week.

PGE is processing your requests for Standard Contracts under its regular Schedule 201 process. The next step in that process is for PGE to evaluate your requested revisions to the draft Standard PPAs and to provide, within 15 business days, either: (i) final draft Standard PPAs if there are no substantive revisions to the original draft Standard PPAs; or (ii) revised draft Standard PPAs if there are substantive revisions to the original draft Standard PPAs; or (iii) a request for any additional or clarifying information that PGE may require. One of these responses will be provided by June 15, 2017.

If you have any questions please respond to this email or contact Angeline Chong at (503) 464-8000.

**John Morton** | Origination and Structuring  
Portland General Electric Co. | 121 SW Salmon Street, 3WTC0306 | Portland, OR 97204

 Think Green before printing!



---

**From:** John Morton <John.Morton@pgn.com>  
**Sent:** Thursday, May 25, 2017 6:38 PM  
**To:** norqual@ccrenew.com  
**Cc:** Angeline Chong; Ryin Khandoker  
**Subject:** Pika - PPA Execution Copy Request

Chris

Thank you for your interest in obtaining Standard Power Purchase Agreements (Standard PPAs) for the above referenced projects from Portland General Electric Company (PGE). On May 23, 2017, PGE sent you a draft Standard PPA. On May 23 and 24, 2017, PGE received your written requests to make changes to the draft Standard PPAs and to provide you with executable Standard PPAs by next week.

PGE is processing your requests for Standard Contracts under its regular Schedule 201 process. The next step in that process is for PGE to evaluate your requested revisions to the draft Standard PPAs and to provide, within 15 business days, either: (i) final draft Standard PPAs if there are no substantive revisions to the original draft Standard PPAs; or (ii) revised draft Standard PPAs if there are substantive revisions to the original draft Standard PPAs; or (iii) a request for any additional or clarifying information that PGE may require. One of these responses will be provided by June 15, 2017.

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**John Morton** | Origination and Structuring  
Portland General Electric Co. | 121 SW Salmon Street, 3WTC0306 | Portland, OR 97204

 Think Green before printing!

---

**From:** John Morton  
**Sent:** Thursday, May 25, 2017 6:36 PM  
**To:** norqual@ccrenew.com  
**Cc:** Angeline Chong; Ryin Khandoker  
**Subject:** Skyward - PPA Execution Copy Request

Chris

Thank you for your interest in obtaining Standard Power Purchase Agreements (Standard PPAs) for the above referenced projects from Portland General Electric Company (PGE). On May 23, 2017, PGE sent you a draft Standard PPA. On May 23 and 24, 2017, PGE received your written requests to make changes to the draft Standard PPAs and to provide you with executable Standard PPAs by next week.

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**John Morton** | Origination and Structuring  
Portland General Electric Co. | 121 SW Salmon Street, 3WTC0306 | Portland, OR 97204

 Think Green before printing!

---

**From:** John Morton  
**Sent:** Thursday, May 25, 2017 6:37 PM  
**To:** norqual@ccrenew.com  
**Cc:** Angeline Chong; Ryin Khandoker  
**Subject:** Valhalla - PPA Execution Copy Request

Chris

Thank you for your interest in obtaining Standard Power Purchase Agreements (Standard PPAs) for the above referenced projects from Portland General Electric Company (PGE). On May 23, 2017, PGE sent you a draft Standard PPA. On May 23 and 24, 2017, PGE received your written requests to make changes to the draft Standard PPAs and to provide you with executable Standard PPAs by next week.

PGE is processing your requests for Standard Contracts under its regular Schedule 201 process. The next step in that process is for PGE to evaluate your requested revisions to the draft Standard PPAs and to provide, within 15 business days, either: (i) final draft Standard PPAs if there are no substantive revisions to the original draft Standard PPAs; or (ii) revised draft Standard PPAs if there are substantive revisions to the original draft Standard PPAs; or (iii) a request for any additional or clarifying information that PGE may require. One of these responses will be provided by June 15, 2017.

If you have any questions please respond to this email or contact Angeline Chong at (503) 464-8000.

**John Morton** | Origination and Structuring  
Portland General Electric Co. | 121 SW Salmon Street, 3WTC0306 | Portland, OR 97204

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**From:** John Morton  
**Sent:** Thursday, May 25, 2017 6:39 PM  
**To:** norqual@ccrenew.com  
**Cc:** Angeline Chong; Ryin Khandoker  
**Subject:** Whipsnake - PPA Execution Copy Request

Chris

Thank you for your interest in obtaining Standard Power Purchase Agreements (Standard PPAs) for the above referenced projects from Portland General Electric Company (PGE). On May 23, 2017, PGE sent you a draft Standard PPA. On May 23 and 24, 2017, PGE received your written requests to make changes to the draft Standard PPAs and to provide you with executable Standard PPAs by next week.

PGE is processing your requests for Standard Contracts under its regular Schedule 201 process. The next step in that process is for PGE to evaluate your requested revisions to the draft Standard PPAs and to provide, within 15 business days, either: (i) final draft Standard PPAs if there are no substantive revisions to the original draft Standard PPAs; or (ii) revised draft Standard PPAs if there are substantive revisions to the original draft Standard PPAs; or (iii) a request for any additional or clarifying information that PGE may require. One of these responses will be provided by June 15, 2017.

If you have any questions please respond to this email or contact Angeline Chong at (503) 464-8000.

**John Morton** | Origination and Structuring  
Portland General Electric Co. | 121 SW Salmon Street, 3WTC0306 | Portland, OR 97204

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**From:** Angeline Chong <Angeline.Chong@pgn.com>  
**Sent:** Tuesday, May 30, 2017 11:39 AM  
**To:** Andrew Berrier (aberrier@pgrenewables.com)  
**Cc:** Ryin Khandoker; Brett Greene; John Morton  
**Subject:** Bighorn Solar project, a proposed 2.2 megawatt solar qualifying facility

To: Andrew Berrier

From: Angeline Chong

Date: May 30, 2017

Subject: Bighorn Solar project, a proposed 2.2 megawatt solar qualifying facility—Acknowledging Receipt of Request for Revisions to Draft Standard PPA

Dear Andrew,

Thank you for your interest in obtaining a Standard Power Purchase Agreement (Standard PPA) from Portland General Electric (PGE). On May 18, 2017, PGE sent you a draft Standard PPA. On May 23, 2017, PGE received your email request to make changes to the draft Standard PPA. On May 26, 2017, PGE received your email requesting that Pine Gate Renewables and PGE execute a Standard PPA by May 31, 2017.

PGE is processing your request for a Standard Contract under its regular Schedule 201 process. The next step in that process is for PGE to evaluate your requested revisions to the draft Standard PPA and to provide, within 15 business days, either: (i) a final draft Standard PPA if there are no substantive revisions to the original draft Standard PPA; or (ii) a revised draft Standard PPA if there are substantive revisions to the original draft Standard PPA; or (iii) a request for any additional or clarifying information that PGE may require. One of these responses will be provided by June 14, 2017.

If you have any questions please respond to this email or contact me at (503) 464-8000.

Sincerely,

Angeline Chong

Angeline D. Chong |  
Portland General Electric |  
121 SW Salmon St. 3WTC0306 | Portland, Oregon 97204 |  
W: 503-464-7343 | F: 503-464-2605 |  
E: [angeline.chong@pgn.com](mailto:angeline.chong@pgn.com)

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**From:** Angeline Chong  
**Sent:** Tuesday, May 30, 2017 11:41 AM  
**To:** Andrew Berrier (aberrier@pgrenewables.com)  
**Cc:** Ryin Khandoker; Brett Greene; John Morton  
**Subject:** Harrier Solar project, a proposed 2.2 megawatt solar qualifying facility

To: Andrew Berrier

From: Angeline Chong

Date: May 30, 2017

Subject: Harrier Solar project, a proposed 2.2 megawatt solar qualifying facility—Acknowledging Receipt of Request for Revisions to Draft Standard PPA

Dear Andrew,

Thank you for your interest in obtaining a Standard Power Purchase Agreement (Standard PPA) from Portland General Electric (PGE). On May 18, 2017, PGE sent you a draft Standard PPA. On May 23, 2017, PGE received your email request to make changes to the draft Standard PPA. On May 26, 2017, PGE received your email requesting that Pine Gate Renewables and PGE execute a Standard PPA by May 31, 2017.

PGE is processing your request for a Standard Contract under its regular Schedule 201 process. The next step in that process is for PGE to evaluate your requested revisions to the draft Standard PPA and to provide, within 15 business days, either: (i) a final draft Standard PPA if there are no substantive revisions to the original draft Standard PPA; or (ii) a revised draft Standard PPA if there are substantive revisions to the original draft Standard PPA; or (iii) a request for any additional or clarifying information that PGE may require. One of these responses will be provided by June 14, 2017.

If you have any questions please respond to this email or contact me at (503) 464-8000.

Sincerely,

Angeline Chong

Angeline D. Chong |  
Portland General Electric |  
121 SW Salmon St. 3WTC0306 | Portland, Oregon 97204 |  
W: 503-464-7343 | F: 503-464-2605 |  
E: [angeline.chong@pgn.com](mailto:angeline.chong@pgn.com)

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**From:** Angeline Chong <Angeline.Chong@pgn.com>  
**Sent:** Tuesday, May 30, 2017 11:38 AM  
**To:** Andrew Berrier (aberrier@pgrenewables.com)  
**Cc:** Ryin Khandoker; Brett Greene; John Morton  
**Subject:** Minke Solar project, a proposed 2.2 megawatt solar qualifying facility

To: Andrew Berrier

From: Angeline Chong

Date: May 30, 2017

Subject: Minke Solar project, a proposed 2.2 megawatt solar qualifying facility—Acknowledging Receipt of Request for Revisions to Draft Standard PPA

Dear Andrew,

Thank you for your interest in obtaining a Standard Power Purchase Agreement (Standard PPA) from Portland General Electric (PGE). On May 18, 2017, PGE sent you a draft Standard PPA. On May 23, 2017, PGE received your email request to make changes to the draft Standard PPA. On May 26, 2017, PGE received your email requesting that Pine Gate Renewables and PGE execute a Standard PPA by May 31, 2017.

PGE is processing your request for a Standard Contract under its regular Schedule 201 process. The next step in that process is for PGE to evaluate your requested revisions to the draft Standard PPA and to provide, within 15 business days, either: (i) a final draft Standard PPA if there are no substantive revisions to the original draft Standard PPA; or (ii) a revised draft Standard PPA if there are substantive revisions to the original draft Standard PPA; or (iii) a request for any additional or clarifying information that PGE may require. One of these responses will be provided by June 14, 2017.

If you have any questions please respond to this email or contact me at (503) 464-7343.

Sincerely,

Angeline Chong

Angeline D. Chong |  
Portland General Electric |  
121 SW Salmon St. 3WTC0306 | Portland, Oregon 97204 |  
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