



Portland General Electric Company
Legal Department
121 SW Salmon Street • Portland, Oregon 97204
503-464-8315 • Facsimile 503-464-2200

Donald J. Light
Assistant General Counsel

July 27, 2018

Via Electronic Filing

Public Utility Commission of Oregon
Attention: Filing Center
201 High St SE, Suite 100
P.O. Box 1088
Salem, OR 97308-1088

Re: UM 1931 – Portland General Electric Company vs. Alfalfa Solar I LLC, et al.

Dear Filing Center:

Enclosed for filing in Docket UM 1931 is Portland General Electric Company's Motion to Compel Discovery, Sur-Reply to Defendants' Motion for Protective Order to Stay Discovery, and Motion for a Scheduling Order for Defendants' Motion for Summary Disposition.

Thank you in advance for your assistance.

Sincerely,

A handwritten signature in blue ink that reads "Donald J. Light". The signature is written in a cursive, flowing style.

Donald J. Light
Assistant General Counsel

DJL:hp
Enclosure

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1931

PORTLAND GENERAL ELECTRIC
COMPANY,

Complainant,

vs.

ALFALFA SOLAR I LLC, DAYTON
SOLAR I LLC, FORT ROCK SOLAR I LLC,
FORT ROCK SOLAR II LLC, FORT ROCK
SOLAR IV LLC, HARNEY SOLAR I LLC,
RILEY SOLAR I LLC, STARVATION
SOLAR I LLC, TYGH VALLEY SOLAR I
LLC, WASCO SOLAR I LLC,

Defendants.

**PORTLAND GENERAL ELECTRIC
COMPANY’S MOTION TO COMPEL
DISCOVERY, SUR-REPLY TO
DEFENDANTS’ MOTION FOR
PROTECTIVE ORDER TO STAY
DISCOVERY**

**AND MOTION FOR A SCHEDULING
ORDER FOR DEFENDANTS’
MOTION FOR SUMMARY
DISPOSITION**

I. CERTIFICATE OF CONFERRAL

Pursuant to OAR 860-001-0420(2), movant Portland General Electric Company (“PGE”) conferred with Defendants by email and telephone, and the parties were not able to resolve this dispute.

II. MOTION

PGE respectfully requests that the Public Utility Commission of Oregon (“Commission”) or its Administrative Law Judge (“ALJ”) order Defendants to respond to Data Request Nos. 1 and 2 from PGE’s first set of data requests (attached), and order Defendants to either respond to requests 6, 8, 9, and 10 or stipulate that their motion for summary disposition contains their complete responses to those requests. The Commission should compel Defendants to produce the documents and responses that Defendants have put at issue and made relevant in their motion for summary disposition, and Defendants should respond to the data requests with sufficient time to

allow PGE to review and analyze the responses before responding to the motion for summary disposition.

Defendants filed a motion for summary disposition in which they assert that the Commission can interpret their ten power purchase agreements (“PPAs”) pursuant to Oregon’s method for interpreting common law contracts. Under that interpretative framework, the Commission will have to analyze the “context” of the PPAs, which under Oregon law means the circumstances concerning the formation of the contracts.¹ Defendants should not be allowed to withhold from the Commission’s review that context and should be compelled to respond to a subset of PGE’s discovery requests now.

PGE also moves for a briefing schedule for: (1) production of Defendants’ responses to those data requests; (2) for the response and reply briefing for Defendants’ motion for summary disposition; and (3) for briefing of a PGE cross-motion for summary disposition, all as proposed below.

III. RELEVANT PROCEDURAL BACKGROUND

On June 25, 2018, PGE served Defendants with PGE’s first set of data requests. On July 2, 2018, Defendants filed a motion for summary disposition of this case. The ALJ has tolled all deadlines concerning that motion.

On July 6, 2018, Defendants filed a motion for protective order staying all discovery. On July 9, 2018, Defendants filed responses to PGE’s first set of data requests (a copy of Defendants’ responses is attached). In their July 9 response, Defendants objected entirely to almost all of PGE’s data requests and, aside from No. 7, did not provide any substantive response. With regard to several data requests, Defendants stated that the July 2 motion for

¹ See *PGE’s Response to Defendants’ Protective Order* at 8-11 (Jul. 13, 2018).

summary disposition effectively provided a partial response to the data request while stating that they may provide additional responses in future briefing “in this proceeding or any other proceeding,” but not in response to the requests themselves.²

IV. ARGUMENT

A. Argument to Compel Discovery

For the reasons detailed in PGE’s July 13, 2018 response in opposition to Defendants’ motion for protective order staying all discovery, PGE’s first set of data requests are proper and Defendants should be required to provide substantive responses to those data requests *before* PGE is required to respond to Defendants’ motion for summary disposition, and Defendants’ motion for a protective order should be denied.

Oregon law, stated clearly by the Oregon Supreme Court, is that extrinsic evidence is both admissible and may be considered by the court (and this Commission) when deciding whether a contract is ambiguous. “[I]n contract interpretation . . . , in deciding whether an ambiguity exists, the court is not limited to mere text and context, but may consider parol and other evidence extrinsic to the contract.” *See State v. Gaines*, 346 Or. 160, 173 n.8 (2009) (citation omitted).³

Pursuant to that rule, as explained further in PGE’s response to Defendants’ motion for a protective order incorporated by reference here, the Commission should compel Defendants to provide responses to all PGE’s initial data requests. PGE seeks the efficient and expedited resolution of this proceeding and therefore proposes the following approach to resolving the

² See Defendants’ responses to PGE Data Request Nos. 6, 8, 9 and 10.

³ Defendants’ contention that discovery is a burden is contradicted by Defendants’ prosecution of these cases: Defendants filed a complaint in federal court and under Rule 26(a)(1)(A)(ii), they would have been required to produce all documents in support of their allegations before filing a motion for summary judgment. Further, to the extent that Defendants complain that they are financially unable to engage in discovery, that is contradicted by Defendants’ decision to construct 100 MW of generation and to hire two top law firms, Richardson Adams PLLC and Stoll Berne.

current discovery dispute and moving forward with this proceeding. PGE moves that the Commission compel Defendants to provide responses to a subset of PGE's first set of Data Requests (described below) *before* further briefing on summary disposition; the balance of the responses will be due *after* the Commission rules on cross-motions for summary disposition, if neither motion is granted in full. PGE proposed this approach to Defendants, and, after consideration, they rejected it, necessitating this motion to compel. Defendants offered only a minor stipulation and to produce only their emails *with PGE* and nothing more.

First, PGE moves the Commission or its ALJ to order Defendants to produce all documents responsive to the following subsets of PGE Data Request No. 1 and PGE Data Request No. 2:

- Data Request No. 1 subset: Please produce all communications between Defendants and PGE regarding the NewSun PPAs, including any attachments.
- Data Request No. 2 subset: (A) Please produce all of Defendants' internal documents and communications regarding or discussing: (i) the 15-year fixed-price period under the NewSun PPAS or PGE's standard contract forms; or (ii) PGE's position on the 15-year fixed-price period. (B) Please produce all communications between Defendants and any third-parties related to or discussing: (i) the 15-year fixed-price period under the NewSun PPAS or PGE's standard contract forms; or (ii) PGE's position on the 15-year fixed-price period. The responses to this subset of Data Request No. 2 do not need to include specific financial models but must include any communications about financial modeling to the extent those communications reference or rely upon either 15-year fixed-price period interpretation.
- Defendants stipulate, in lieu of producing specific financial models, that their internal analysis of the projects contemplated both parties' positions: 15 years of fixed prices measured from (a) contract execution (PGE's position) and (b) commercial operation (Defendants' position).

Responses to these subsets is limited to the time period 2015 through August 2016, which is the time period for the formation of the PPAs, *i.e.* the context under which the PPAs were formed, which is the issue that Defendants have made relevant in their motion for summary disposition. PGE proposes that the remainder of Data Request Nos. 1 and 2 not addressed by

these subsets and time limits will be stayed pending resolution of Defendants' motion for summary disposition.

Second, PGE moves the Commission or ALJ for an order that Defendants must either: (A) provide substantive responses to PGE Data Request Nos. 6, 8, 9 and 10 before PGE's response to the motion for summary disposition; or (B) stipulate that Defendants' motion for summary disposition provides a full response to those Data Requests and Defendants are estopped from raising any additional arguments that would have been responsive to PGE Data Request Nos. 6, 8, 9 and 10 but were not raised in Defendants' motion for summary disposition and the declarations filed in support of the motion for summary disposition.

The Commission should order Defendants to respond to the subset of discovery requests described above for the reasons in the July 13, 2018 PGE response to Defendants' motion for a protective order staying discovery. In short, Defendants have made those requests relevant to respond to Defendants' motion for summary disposition, because those data requests concern the context of the PPAs, and the Commission must examine the context of the PPAs when interpreting them, if the Commission interprets them as contracts, as Defendants contend.

If the Commission grants PGE's motion to compel, then PGE does not oppose staying Defendants' obligation to provide substantive responses to the balance of PGE's first set of data requests until after the Commission rules on Defendants' motion for summary disposition (i.e., Defendants' obligation to respond to PGE Data Request Nos. 3, 4, 5, and the remainder of Nos. 1 and 2 would be stayed pending resolution of Defendants' motion for summary disposition).

PGE's motion streamlines and stages discovery to meet the needs of this case.

B. Argument for Scheduling Order

The Commission can consider Defendants’ motion for summary disposition with the minimum of additional delay by granting the above motion to compel and the following motion for a scheduling order.

PGE moves for an order setting the following procedural schedule:

| Event | Date |
|--|--|
| Defendants provide substantive responses to the identified subsets of DR 1 and DR 2 and either provide substantive responses to DR 6, DR 8 DR 9 and DR 10 or agree that the motion for summary disposition provided a full response to those DRs | The later of August 17, 2018, or 14 days after the ALJ ruling or Commission order granting PGE’s motion to compel and motion for procedural schedule. |
| PGE’s Response to Defendants’ Motion for Summary Disposition and PGE’s Cross-Motion for Summary Disposition | The later of September 7, 2018 or 21 days after the deadline for Defendants’ substantive response to PGE’s data requests as required by the first event above. |
| Defendants’ Reply in Support of Defendants’ Motion for Summary Disposition | The later of September 21, 2018 or 14 days after PGE’s deadline to file its response to Defendants’ motion for summary disposition. |
| Defendants’ Response to PGE’s Cross-Motion for Summary Disposition | The later of September 28, 2018 or 21 days after PGE’s deadline to file its cross-motion for summary disposition. |
| If Defendants file a combined Reply and Response, the deadline for that combined brief is the later date of the above two events. | |
| PGE’s Reply in Support of PGE’s Cross-Motion for Summary Disposition | The later of October 12, 2018 or 14 days after Defendants’ response to PGE’s cross-motion for summary disposition. |

This schedule provides Defendants with 14 days to respond to the modified scope of Data Requests. It then provides PGE with three weeks after the deadline for the responses to the modified scope of Data Request to prepare and file its response to the motion for summary disposition (and PGE’s own cross-motion for summary disposition). And it provides two weeks for Defendants’ reply as well as scheduling the briefing on PGE’s cross-motion for summary disposition. The proposed schedule is reasonable and it addresses the fact that key PGE staff and

counsel will be unavailable during significant periods between July 27, 2018 and the end of August 2018 because of pre-existing travel and vacation plans.

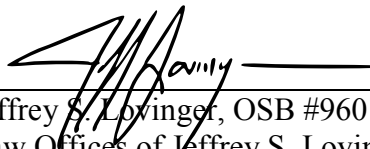
PGE proposed the above resolution of the discovery dispute to Defendants in writing on July 19, 2018; PGE and Defendants' discussed the proposal and exchanged several counter-proposals during the week of July 23, 2018, but were unable to reach agreement. The above approach to resolution of the discovery dispute and to timing of a briefing schedule allows for the efficient and expedited resolution of this case.

DATED this 27th day of July, 2018.

Respectfully submitted,



Donald Light, OSB #025415
Assistant General Counsel
Portland General Electric Company
121 SW Salmon Street, 1WTC1301
Portland, Oregon 97204
(503) 464-8315 (phone)
(503) 464-2200 (fax)
donald.light@pgn.com



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

-and-

Dallas S. DeLuca, OSB #072992
Markowitz Herbold PC
1211 SW Fifth Avenue, Suite 3000
Portland, OR 97204-3730
Tel: (503) 295-3085
Fax: (503) 323-9105
DallasDeLuca@MarkowitzHerbold.com

UM 1931

PORTLAND GENERAL ELECTRIC COMPANY'S MOTION TO
COMPEL DISCOVERY, SUR-REPLY TO DEFENDANTS' MOTION
FOR PROTECTIVE ORDER TO STAY DISCOVERY

AND MOTION FOR A SCHEDULING ORDER FOR DEFENDANTS'
MOTION FOR SUMMARY DISPOSITION

ATTACHMENT 1

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1931

| | | |
|------------------------------------|---|------------------------------------|
| PORTLAND GENERAL ELECTRIC COMPANY, |) | |
| |) | |
| Complainant, |) | DEFENDANTS' RESPONSES TO |
| |) | PORTLAND GENERAL ELECTRIC |
| v. |) | COMPANY'S FIRST SET OF DATA |
| |) | REQUESTS |
| |) | |
| ALFALFA SOLAR I LLC, et al. |) | |
| |) | |
| Defendants. |) | |

Defendants Alfalfa Solar I LLC (“Alfalfa”), Dayton Solar I LLC (“Dayton”), Fort Rock Solar I LLC (“Fort Rock I”), Fort Rock Solar II LLC (Fort Rock II”), Fort Rock Solar IV LLC (“Fort Rock IV”), Harney Solar I LLC (“Harney”), Riley Solar I LLC (“Riley”), Starvation Solar I LLC (“Starvation”), Tygh Valley Solar I LLC (“Tygh Valley”), and Wasco Solar I LLC (“Wasco”) (collectively, the “NewSun Parties” or “Defendants”), respond as follows to Plaintiff’s First Set of Data Requests:

GENERAL OBJECTIONS

1. Defendants’ responses are made to the best of their knowledge, information, and belief. Defendants’ responses are at all times subject to such additional discovery or investigation that further discovery or investigation may disclose and are subject to such refreshing of recollection, and such additional knowledge of facts, as may result from further discovery or investigation.

2. By stating in these responses that Defendants will produce documents, Defendants do not represent that any documents actually exist, but rather that in good faith

Defendants will search and attempt to ascertain whether such documents do, in fact, exist.

3. Defendants object to Plaintiff's requests to the extent those requests seek documents that are subject to the attorney-client privilege, the work product doctrine, or any other applicable privilege on the ground that such documents are exempt from discovery.

4. Defendants object to all definitions, instructions, and document requests to the extent Plaintiff seeks documents not currently in Defendants' possession, custody, or control, or refer to persons, entities or events not known to Defendants, on the grounds that such definitions or requests seek to require more of Defendants than any obligation imposed by law, would subject Defendants to unreasonable and undue annoyance, oppression, burden, and expense, and would seek to impose on Defendants an obligation to investigate or discover information or materials from third parties or sources that are equally accessible to Plaintiff.

5. Defendants reserve all objections or other questions as to the competency, authenticity, relevance, materiality, privilege, or admissibility as evidence in any subsequent proceeding in, or trial of, this or any other action for any purpose whatsoever of this response and any document or thing produced in response to Plaintiff's requests.

6. Defendants object to Plaintiff's requests to the extent they seek to impose obligations on Defendants not authorized by Public Utility Commission of Oregon rules or the Oregon Rules of Civil Procedure.

7. Defendants object to Plaintiff's requests to the extent they are vague, ambiguous, unintelligible, overly broad as to time and subject matter, seek irrelevant and/or immaterial information, and are not reasonably calculated to lead to the discovery of admissible evidence. Further, Defendants object to Plaintiff's requests to the extent they cause undue burden, harassment, or annoyance.

8. Each of these general objections is incorporated into each of Defendants' specific responses as if set forth in full below.

RESPONSES TO INDIVIDUAL REQUESTS

Portland General Electric Company Data Request No. 1:

For each NewSun QF, please provide a separate response to this Data Request 1 and each of its subparts

(A) Please identify each and every individual that represented each NewSun QF in the contracting process or in otherwise requesting, obtaining, interpreting, negotiating, or implementing the NewSun PPA for the NewSun QF in question.

(B) Please describe the role played by each representative identified in response to Data Request 1(A).

(C) For each representative identified in response to Data Request 1(A), please identify all contacts or communications that representative has had with PGE regarding the NewSun QF in question, including the date and subject matter of each contact or communication.

(D) For each communication identified in response to Data Request 1(C), please produce each and every document representing the communication, attached to the communication, or associated with the communication.

Response to Portland General Electric Company Data Request No. 1:

(A)-(D) In addition to the general objections stated above, Defendants object to this request on the grounds that the request is unreasonably burdensome, overly broad, vague, and irrelevant to the issues in dispute. Defendants further object to this request to the extent that it seeks documents or information that are subject to the attorney client privilege or the attorney work product doctrine.

Defendants object to this request to the extent it seeks documents or information equally within Plaintiff's possession or control. In particular, as the recipient of all the contacts and communications that are the subject of this request, Plaintiff Portland General Electric Company ("PGE") already possesses the requested documents and information. Finally, Defendants object to this request for the reasons set forth in Defendants' Motion for Protective Order Staying Discovery.

Portland General Electric Company Data Request No. 2:

For each NewSun QF and the NewSun PPA associated with that NewSun QF (please provide a separate response to this Data Request 2 for each NewSun QF):

- (A) Please produce all documents about pricing or revenue expected to be received for the contract term, including financial models and financial projections.
- (B) Please produce all communications or documents exchanged with third-parties concerning financing based on the pricing or revenue referred to in Data Request 2(A).
- (C) Please provide all internal documents about interpreting the disputed PPA terms or that analyze how long the fixed prices last and when they start.

Response to Portland General Electric Company Data Request No. 2:

(A)-(C) In addition to the general objections stated above, Defendants object to this request on the grounds that the request is unreasonably burdensome, overly broad, vague, and irrelevant to the issues in dispute. Defendants further object to this request to the extent that it seeks documents or information that are subject to the attorney client privilege or the attorney work product doctrine, as well as documents that are subject to protection as commercially sensitive material. Defendants further object to this request on the ground that Section 210(e) and 18 CFR § 292.602 bar inquiries into the financing and utility-type ratemaking inquiries of the qualifying facilities under development in this state regulatory commission proceeding. Finally, Defendants object to this request for the reasons set forth in Defendants' Motion for Protective Order Staying Discovery.

In addition to these objections, Defendants note that responding to this request would require collection and review of extensive electronic information and would take months to complete. Defendants are unable to fully evaluate the scope and cost of such a production due to the vagueness and overbreadth of the request.

Portland General Electric Company Data Request No. 3:

For each NewSun PPA, please indicate whether Defendants expect to have completed all requirements under Section 1.5 and to have established the Commercial Operation Date by the deadline established in Section 2.2.2.

Response to Portland General Electric Company Data Request No. 3:

In addition to the general objections stated above, Defendants object to this request on the grounds that the request is unreasonably burdensome, overly broad, vague, and irrelevant to the issues in dispute. Defendants further object to this request for the reasons set forth in Defendants' Motion for Protective Order Staying Discovery.

Portland General Electric Company Data Request No. 4:

For each NewSun PPA, if the answer to Data Request 3 is no, please indicate whether Defendants expect to have completed all requirements under Section 1.5 and to have established the Commercial Operation Date within 12 months of the deadline established in Section 2.2.2.

Response to Portland General Electric Company Data Request No. 4:

In addition to the general objections stated above, Defendants object to this request on the grounds that the request is unreasonably burdensome, overly broad, vague, and irrelevant to the issues in dispute. Defendants further object to this request for the reasons set forth in Defendants' Motion for Protective Order Staying Discovery.

Portland General Electric Company Data Request No. 5:

Please refer to Defendant's Answer at pages 3 and 4 where Defendants state: "PGE was aware ... that the NewSun Parties disagreed with PGE's interpretation and that the NewSun Parties understood PGE's standard form contracts at issue here to require PGE to pay fixed prices for 15 years from the Commercial Operation Date." Please also refer to Defendant's Answer at Paragraph 22 where Defendants state: "PGE was aware before execution of the NewSun PPAs that the NewSun Parties disagreed with PGE's interpretation and that the NewSun Parties understood PGE's standard form contracts to require PGE to pay fixed prices for 15 years from the Commercial Operation Date."

(A) Please provide all documents reflecting or otherwise showing that PGE was "aware" of the facts that Defendants allege PGE was aware of in the allegations referred to above.

(B) Did Defendants ever inform PGE or any Person employed by PGE or representing PGE "that the NewSun Parties disagreed with PGE's interpretation and that the NewSun Parties understood PGE's standard form contracts at issue here to require PGE to pay fixed prices for 15 years from the Commercial Operation Date"?

(C) If the answer to Data Request 5(B) is yes, please identify each and every Person employed by PGE or representing PGE that Defendants so informed and the date or dates of each time the Defendants so informed each such Person, and the identity of the Person that so informed PGE.

Response to Portland General Electric Company Data Request No. 5:

(A)-(C) In addition to the general objections stated above, Defendants object to this request on the grounds that the request is unreasonably burdensome, overly broad, vague, and irrelevant to the issues in dispute. Defendants further object to this request to the extent it seeks documents or information equally within Plaintiff's possession or control. In particular, as the recipient of all the contacts and communications that are the subject of this request, PGE already possesses the requested documents and information. Defendants further object to this request for the reasons set forth in Defendants' Motion for Protective Order Staying Discovery.

Portland General Electric Company Data Request No. 6:

Please refer to Defendants' Answer at Page 4 where the Defendants assert that "the provisions of [PGE's standard contract forms at issue in this case] all make sense only if the fixed price period begins at commercial operation" Please identify every provision of the standard contract form at issue in this proceeding that allegedly does not make sense if the fixed price period begins at contract execution.

Response to Portland General Electric Company Data Request No. 6:

In addition to the general objections stated above, Defendants object to this request on the ground that it seeks a legal conclusion. Defendants further object to this request to the extent that it seeks documents or information that are subject to the attorney client privilege or the attorney work product doctrine. Defendants further object to this request for the reasons set forth in Defendants' Motion for Protective Order Staying Discovery.

Subject to and without waiving these objections, and without waiving the right to supply additional argument or evidence on this topic in this proceeding or any other proceeding, Defendants refer PGE to Defendants' Motion for Summary Disposition.

Portland General Electric Company Data Request No. 7:

Please refer to Page 4 of the Answer where Defendants assert that their understanding of the 15-year fixed-price period under the NewSun PPAs “was informed by ... the NewSun Parties’ reasonable understanding of the policy articulated in the Commission’s Order No. 05-584, which Order No. 17-256 and Order No. 18-079 confirmed was correct” Please state Defendants’ understanding, as of the time that Defendants signed the NewSun PPAs, of the referenced Commission policy.

Response to Portland General Electric Company Data Request No. 7:

In addition to the general objections stated above, Defendants object to this request on the grounds that the request is unreasonably burdensome, overly broad, vague, and irrelevant to the issues in dispute. Defendants further object to this request to the extent that it seeks documents or information that are subject to the attorney client privilege or the attorney work product doctrine. Finally, Defendants object to this request for the reasons set forth in Defendants’ Motion for Protective Order Staying Discovery.

Subject to and without waiving these objections, the Defendants’ authorized representative at the time each of the NewSun PPAs was executed was Jacob Stephens. At the time of contract execution, Mr. Stephens’ understanding was the same as that articulated by the Public Utility Commission of Oregon in Order No. 18-079.

Portland General Electric Company Data Request No. 8:

Please refer to Page 4 of the Answer where Defendants refer to “the common industry practice and understanding that a term of years of fixed prices in power purchase agreements (‘PPAs’) for new power generation facilities typically runs from the time the seller becomes operational and begins transmitting power to the buyer, not from the date—generally years earlier—on which the seller executes the agreement”

- (A) Please provide all documents on which Defendants rely to support their assertion of the existence of the “common industry practice and understanding” alleged and referenced on page 4 of the Answer.
- (B) For each document provided in response to Data Request 8(A), please explain how the document evidences a “common industry practice and understanding that a term of years of fixed prices in power purchase agreements ... runs from the time the seller becomes operational and begins transmitting power to the buyer”
- (C) Has the Public Utility Commission of Oregon (“Commission”) indicated that it relied on the “common industry practice and understanding” referenced above in requiring the 15-year fixed-price period? If so, please identify each instance in which the Commission has so indicated and provide any documents in which the Commission has so indicated.

Response to Portland General Electric Company Data Request No. 8:

(A)-(C) In addition to the general objections stated above, Defendants object to this request on the ground that it seeks a legal conclusion. Defendants further object to this request to the extent that it seeks documents or information that are subject to the attorney client privilege or the attorney work product doctrine. Defendants further object to this request for the reasons set forth in Defendants’ Motion for Protective Order Staying Discovery.

Subject to and without waiving these objections, and without waiving the right to supply additional argument or evidence on this topic in this proceeding or any other proceeding, Defendants refer PGE to Defendants’ Motion for Summary Disposition, including the declarations and exhibits submitted in support of Defendants’ motion.

Portland General Electric Company Data Request No. 9:

Please refer to Page 4 of the Answer where Defendants state: "... the NewSun Parties understood PGE's standard form contracts at issue here to require PGE to pay fixed prices for 15 years from the Commercial Operation Date." Please identify all of the express language in the standard form contracts at issue in this case that requires PGE to pay fixed prices for 15 years measured from the Commercial Operation Date.

Response to Portland General Electric Company Data Request No. 9:

In addition to the general objections stated above, Defendants object to this request on the grounds that it seeks legal conclusions and argument. Defendants further object to this request to the extent that it seeks documents or information that are subject to the attorney client privilege or the attorney work product doctrine. Defendants further object to this request for the reasons set forth in Defendants' Motion for Protective Order Staying Discovery.

Subject to and without waiving these objections, and without waiving the right to supply additional argument or evidence on this topic in this proceeding or any other proceeding, Defendants refer PGE to Defendants' Motion for Summary Disposition.

Portland General Electric Company Data Request No. 10:

Please refer to Page 4 of the Answer where the Defendants state: “if the NewSun PPAs were interpreted such that the 15-year fixed-price option begins on the date the contract is executed, the NewSun PPAs would contain inconsistent and contradictory terms regarding whether the applicable NewSun Party or PGE owns the Environmental Attributes of the facility in certain years of the contract.” Please identify all language contained in the NewSun PPAs that would be inconsistent or contradictory regarding whether Defendants or PGE owned Environmental Attributes if the NewSun PPAs are interpreted such that the 15-year fixed-price period begins on the date the contract is executed.

Response to Portland General Electric Company Data Request No. 10:

In addition to the general objections stated above, Defendants object to this request on the grounds that it seeks legal conclusions and argument. Defendants further object to this request to the extent that it seeks documents or information that are subject to the attorney client privilege or the attorney work product doctrine. Defendants further object to this request for the reasons set forth in Defendants’ Motion for Protective Order Staying Discovery.

Subject to and without waiving these objections, and without waiving the right to supply additional argument or evidence on this topic in this proceeding or any other proceeding, Defendants refer PGE to Defendants’ Motion for Summary Disposition.

DATED this 9th day of July 2018.

By: /s/ Gregory M. Adams
Gregory M. Adams, OSB No. 101779
RICHARDSON ADAMS, PLLC
515 North 27th Street
Boise, ID 83702
Telephone: (208) 938-2236
Facsimile: (208) 939-7904
Email: greg@richardsonadams.com

-and-

Robert A. Shlachter, OSB No. 911718
Keil M. Mueller, OSB No. 085535
STOLL STOLL BERNE LOKTING &
SHLACHTER P.C.
209 SW Oak Street, Suite 500
Portland, OR 97204
Telephone: (503) 227-1600
Facsimile: (503) 227-6840
Email: rshlachter@stollberne.com
kmueller@stollberne.com

Attorneys for Defendants