

BEFORE THE
PUBLIC UTILITY COMMISSION OF OREGON

Portland General Electric Company, Complainant,)	CASE NO. UM 1894
)	
v.)	PETITION TO INTERVENE AND
)	RESPONSE IN SUPPORT OF ALJ
)	CERTIFICATION OF THE
Pacific Northwest Solar, LLC, Defendant)	COMMUNITY RENEWABLE ENERGY
)	ASSOCIATION

Pursuant to ORS 756.525 and OAR 860-001-0300, the Community Renewable Energy Association (“CREA”) hereby respectfully petitions the Public Utility Commission of Oregon (“OPUC” or “Commission”) to grant CREA intervenor status in this proceeding and submits its response in support of Pacific Northwest Solar, LLC’s request for certification and reversal of the Administrative Law Judge ruling dated October 27, 2017.

In support of this Petition and Response, CREA states as follows:

1. The name and address of CREA is:

Community Renewable Energy Association
c/o Brian Skeahan
1113 Kelly Ave
Dalles, OR 97058
Email: Brian.skeahan@yahoo.com

2. CREA will be represented in this proceeding by Peter J. Richardson (OSB No. 066687) and Gregory M. Adams (OSB No. 101779), of the law firm Richardson Adams, PLLC.

3. All documents relating to this proceeding should be served on the following persons:

Gregory M. Adams (OSB No. 101779)
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4. CREA is an Oregon Rev. Stat. Ch. 190 intergovernmental association. *See* ORS 190.003 - 190.118. CREA consists of local governments seeking to promote locally-owned renewable energy projects for all forms of renewable generation recognized in Oregon's Renewable Portfolio Standard (biomass, geothermal, hydropower, ocean thermal, solar, tidal, wave, wind and hydrogen). CREA is comprised of several Oregon counties which provide active participation through their county commissioners, including Sherman, Wasco, Gilliam, Harney, Hood River, Morrow, Polk, Union, Wheeler, Curry, and Wallowa. In addition to these counties, CREA's current membership includes the Mid-Columbia Council of Governments, Columbia Gorge Community College, and 25 irrigation districts, businesses, individuals and non-profit organizations who have interest in a viable community renewable energy sector for Oregon.

5. In its efforts to establish a viable market in Oregon for community-scale renewable energy projects, CREA has intervened or otherwise actively participated in dockets at the Commission regarding the implementation of the mandatory purchase provisions of the Public Utility Regulatory Policies Act of 1978 ("PURPA"), including OPUC dockets UM 1129, UM 1396, UM 1442, UM 1443, UE 245, UM 1610, UM 1794, UM 1802, UM 1805, and DR

46. CREA has also intervened or actively participated in proceedings before the Federal Energy Regulatory Commission (“FERC”) that affect Oregon qualifying facilities (“QFs”), including dockets RM13-2 (regarding small generator interconnection rules), EL15-6 & EL16-16 (*PaTu Wind Farm, LLC v. Portland General Electric Co.*), and AD16-16 (Implementation Issues Under the Public Utility Regulatory Policies Act of 1978).

6. CREA does not ordinarily intervene in disputes before the Commission between individual QF parties and the purchasing utility. However, the issue raised by Portland General Electric Company’s (“PGE”) stance in this case would potentially establish an incorrect precedent that would adversely impact Oregon’s PURPA industry and undermine the assurance investors and developers of QF projects need to develop and finance PURPA projects.

7. The Commission’s implementation of PURPA should provide the right to a binding contractual obligation with contractual rights to sell to the utility under the terms of the contract. *See* 18 C.F.R. § 292.304(d)(2)(ii). By definition, contracts are enforceable in the courts. Courts have traditionally been the forum to resolve common law contract disputes between QFs and utilities. *Or. Trail Elec. Consumers Coop., Inc. v. Co-Gen Co.*, 168 Or App 466, 473-74, 7 P3d 594 (2000) (holding “the determination of parties' rights under a contract is a common-law issue that falls within a circuit court's general jurisdiction”). In contrast, the Commission is a quasi-legislative agency that is primarily designed to set rates based on economic principles; it does not resolve contracts under common law contract principles on a regular basis in the manner that a court does. Nor does it have jurisdiction to award damages to a QF in such disputes. The law is also very clear that PURPA preempts any attempt to directly or indirectly revise the rates or terms of PURPA contracts once they are executed, and

therefore the Commission's expertise in rate-setting becomes wholly irrelevant once the PURPA contract is executed. *See id.* at 482-84. When the dispute presents a pure question of common law contract construction, the Commission has no specialized expertise and should not attempt to unilaterally usurp the role of the courts at the purchasing utility's urging.

8. CREA is very concerned with PGE's argument in this case, and the Administrative Law Judge's preliminary ruling, that a utility can unilaterally bring a QF before the Commission to have common law contract issues adjudicated before the Commission over the QF's objection. Without weighing in on the merits of the substantive dispute between the parties to this case regarding the meaning of the contract itself, CREA agrees with, and intends to support, the position of Pacific Northwest Solar, LLC in its application for ALJ Certification – that is, the Commission should dismiss PGE's complaint to allow the dispute to be resolved in court. CREA reserves its right to further supplement its position if intervention is granted. The legal reasons for this conclusion are plain from Pacific Northwest Solar's filings.

9. CREA wishes to stress that the Commission will be sending the wrong signal to prospective PURPA developers and others interested in participating financially in Oregon PURPA projects if it allows PGE to file a complaint *against a QF* at the Commission. Such a ruling will undermine the certainty that is needed to invest in long-term PURPA contracts without the fear that the assumptions and terms relied upon will be subject to ongoing Commission oversight. In short, QFs need assurance that once they execute a PURPA contract with an Oregon utility that contract is enforceable in the same manner as any other binding contract – in court.

10. CREA's participation in this docket will assist the Commission in resolving the

issues and will not unreasonably burden the record, delay the proceedings or broaden the issues. In fact, CREA believes this proceeding should be terminated altogether on jurisdictional and policy grounds.

11. Because no other party can adequately represent CREA's interests in this proceeding, CREA respectfully requests that the Commission grant this Petition to Intervene and consider CREA's Response in Support of ALJ Certification.

RESPECTFULLY SUBMITTED on November 27, 2017.

RICHARDSON ADAMS, PLLC

/s/ Gregory M. Adams

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