



**Portland General Electric**  
121 SW Salmon Street • Portland, Ore. 97204  
PortlandGeneral.com

January 11, 2019

**Via email**

puc.filingcenter@state.or.us

Public Utility Commission of Oregon  
Attn: Filing Center  
201 High Street, Ste. 100  
PO Box 1088  
Salem OR 97308

**RE: UM 1931 Reply Testimony of Robert Macfarlane, Bruce True, and John Morton**

Attention Filing Center:

Enclosed for filing in UM 1931 are Reply Testimony and Exhibits of Portland General Electric Company (PGE) consisting of:

- PGE 400 – Reply Testimony of Robert Macfarlane
- PGE 500 – Reply Testimony of Bruce True with PGE Exhibits 501 and 502
- PGE 600 – Reply Testimony of John Morton

If you have any questions, please call me at (503) 464-7805. All formal correspondence and requests are to be directed to [pge.opuc.filings@pgn.com](mailto:pge.opuc.filings@pgn.com).

Sincerely,

*for* 

Karla Wenzel  
Manager, Pricing and Tariffs

**UM 1931 / PGE / 400  
Macfarlane**

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF THE STATE OF OREGON**

**UM 1931**

**PORTLAND GENERAL ELECTRIC COMPANY  
v.  
ALFALFA SOLAR I, LLC, DAYTON SOLAR I, LLC; FORT  
ROCK SOLAR I, LLC; FORT ROCK SOLAR II, LLC;  
FORT ROCK SOLAR IV, LLC; HARNEY SOLAR I, LLC; RILEY  
SOLAR I, LLC; STARVATION SOLAR I, LLC,  
TYGH VALLEY SOLAR I, LLC, AND WASCO SOLAR I, LLC**

**PORTLAND GENERAL ELECTRIC COMPANY**

Reply Testimony of

*Robert Macfarlane*

January 11, 2019

1 **Q. Please state your name and position.**

2 A. My name is Robert Macfarlane. I am a Regulatory Consultant in Pricing and  
3 Tariffs at Portland General Electric Company (“PGE”). My qualifications are  
4 stated in PGE Exhibit 100 (“my Direct Testimony”).<sup>1</sup>

5 **Q. What is the purpose of your testimony?**

6 A. The purpose of my testimony is to support PGE’s January 25, 2018, complaint  
7 against the following ten qualifying facilities (“QFs”): Alfalfa Solar I, LLC;  
8 Dayton Solar I, LLC; Fort Rock Solar I, LLC; Fort Rock Solar II, LLC; Fort Rock  
9 Solar IV, LLC; Harney Solar I, LLC; Riley Solar I, LLC; Starvation Solar I, LLC;  
10 Tygh Valley Solar I, LLC; and Wasco Solar I, LLC (collectively, the “NewSun  
11 Parties”).

12 **Q. Have you testified before in this matter?**

13 A. Yes. My Direct Testimony was filed in this matter as PGE Exhibit 100 on  
14 December 7, 2018.

15 **Q. What is the scope of your new testimony?**

16 A. My testimony is in reply to the testimony filed by the NewSun Parties and by the  
17 Intervenors, and my testimony separately addresses a few issues raised in their  
18 response testimony.

19 **Q. Have you reviewed that response testimony?**

20 A. Yes, I have.

21 **Q. What parts of the testimony do you wish to respond to?**

22 A. I testify concerning the lack of any role that industry standards played when PGE  
23 proposed, and the Commission approved, PGE’s standard power purchase

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<sup>1</sup> PGE/100, Macfarlane/32.

1 agreement (“PPA”) forms and Schedule 201. I will also testify concerning Mr.  
2 Sanger’s testimony concerning the text for the standard PPA that PGE proposed  
3 during the UM 1396 and the UM 1610 proceedings.<sup>2</sup>

4 **Q. How are you aware of the lack of any role that industry standards played**  
5 **when PGE proposed and the Commission approved PGE’s standard PPAs**  
6 **and Schedule 201?**

7 A. One of the roles of my job is to be involved in proposing the revisions to the  
8 standard PPAs and Schedule 201. I was involved in the revisions in 2015 for the  
9 development of the PPAs and Schedule 201 that the NewSun Parties signed with  
10 PGE in 2016. I was also involved in the revisions for the immediately preceding  
11 version of the PPAs and the immediately following version of the PPAs. I  
12 interacted with other people at PGE involved in the revision process. I had  
13 contact with Commission staff during the revision process.

14 **Q. What role did industry standards play in those revisions to the form PPAs**  
15 **and Schedule 201 concerning the length of the term of the PPAs or the**  
16 **meaning of the word “term” in the PPAs?**

17 A. None. As I discussed in my Direct Testimony, the 2014 and 2015 revisions to the  
18 PPA forms did not relate to the length of the term of the PPA or to the meaning of  
19 the word “term” in the PPA or Schedule 201.<sup>3</sup> To the best of my knowledge, PGE  
20 did not propose and the Commission did not review and approve the changes to  
21 the PPAs in 2014 and 2015 by reference to any supposed industry standards  
22 concerning the meaning of the word “term” for the term of the PPA or the length

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<sup>2</sup> CREA-NIPPC-REC/200, Sanger.3-9.

<sup>3</sup> PGE/100, Macfarlane/21-26.

1 of a PPA. Instead, PGE proposed and the Commission approved PPAs where the  
2 word “Term” is defined in the PPA.<sup>4</sup>

3 **Q. What role did industry standards play in PGE’s revisions to the form PPAs**  
4 **and Schedule 201 concerning when the 15-year period for fixed prices would**  
5 **begin?**

6 A. None. As I discussed in my Direct Testimony, PGE’s revisions to the PPA forms  
7 in 2014, 2015 and 2016 did not relate to the start date for the 15-year period for  
8 fixed prices under the PPA.<sup>5</sup> To the best of my knowledge, PGE did not propose,  
9 and the Commission did not review and approve, those changes to the PPA by  
10 reference to any supposed industry standards concerning when the 15-year period  
11 for fixed prices would start. As I testified in my Direct Testimony, when I wrote  
12 and revised Schedule 201 and the PPAs and proposed them to the Commission, I  
13 did not base the text concerning the start of the 15-year fixed price period on the  
14 practices of any other utility, only on the requirements of Order No. 05-584 and  
15 subsequent relevant Commission orders.<sup>6</sup>

16 **Q. During UM 1396, do you know why the Commission staff did not accept**  
17 **PGE’s proposed text from David White concerning the term of the PPA that**  
18 **Mr. Sanger testified about?**

19 A. Yes. PGE’s proposed text in the attachment to David White’s email of December  
20 2012<sup>7</sup> concerning the term of the PPA was not put before the Commission  
21 because the parties had previously agreed that only items in the scope of

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<sup>4</sup> See, e.g. PGE/203, True/6 § 1.38 (defining “Term”).

<sup>5</sup> PGE/100, Macfarlane/20-26.

<sup>6</sup> *Id.* at 30-31.

<sup>7</sup> CREA-NIPCC-REC/203, Sanger/10-11.

1 implementing Order No. 11-505 would be included. In communications between  
2 the parties, Commission staff representative Adam Bless stated why that change  
3 was not part of the allowable revisions to the standard PPA during UM 1396—he  
4 stated in the comment box next to that proposed text that the topic of the 15-year  
5 fixed price period start date was outside of the scope of Order No. 11-505 in  
6 UM 1396 and was, instead, a “UM 1610 issue[.]”<sup>8</sup> Mr. Bless’s statement is, in  
7 my opinion, accurate because in Phase II of UM 1396, the Commission ordered  
8 PGE and PacifiCorp to “each file applications with supporting testimony setting  
9 forth proposed rates and tariffs to effectuate the legal and policy decisions made  
10 in this order.”<sup>9</sup> It is my understanding that the legal and policy decisions in that  
11 order concerned how renewable rates and tariffs were to be calculated; the issue  
12 of the term of a PPA and the start of the 15-year period for fixed prices were not  
13 part of the order.<sup>10</sup>

14 **Q. What was the status quo with respect to the start of the 15-year period that**  
15 **remained in effect when Commission Staff decided in January 2013 not to**  
16 **move forward with PGE’s proposed text?**

17 A. The status quo was as I described it in my Direct Testimony: section 5 of PGE’s  
18 standard PPAs at that time was unambiguous that the 15-years of fixed prices  
19 commenced at execution.<sup>11</sup> Nothing in any of the response testimony from the  
20 Intervenors and Defendants challenges that the original section 5 of PGE’s PPAs  
21 unambiguously provided that the 15-year fixed price period began at execution.

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<sup>8</sup> CREA-NIPPC-REC/204, Sanger/6 (comment box labeled “AS7”).

<sup>9</sup> *In the Matter of Public Utility Commission of Oregon Investigation into Resource Sufficiency Pursuant to Order No. 06-538*, Docket No. UM 1396, Order No. 11-505 at 12 (Dec. 13, 2011).

<sup>10</sup> *Id.* at 1-2 (summary of legal issues).

<sup>11</sup> PGE/100, Macfarlane/15-16 (quoting PGE’s then in effect standard PPA).

1 **Q. Did PGE change the term of its contract or the start of the 15-year fixed**  
2 **price period in UM 1610 as Mr. Sanger contends in his testimony?**

3 A. No. Mr. Sanger's testimony omits two relevant Commission orders. It is my  
4 understanding that Order No. 11-505 and Order No. 14-058 defined the scope of  
5 Commission policy changes that PGE and other utilities had to comply with when  
6 making the 2014 update to contract forms and rate schedules, and it is my  
7 understanding that the scope of those orders did not include the length of the term  
8 or the start of the 15-year fixed price period.<sup>12</sup> Mr. Sanger also omits to mention  
9 that the Commission, in Order No. 16-174, rejected the interpretation that Mr.  
10 Sanger makes concerning ownership of Renewable Energy Credits ("RECs") after  
11 the end of the fixed price period.<sup>13</sup>

12 **Q. How does Order No. 16-174 relate to Mr. Sanger's testimony?**

13 A. Mr. Sanger, in his testimony, engages in contract interpretation to contend that  
14 section 4.6<sup>14</sup> of PGE's form PPA, and Commission policy, mean that the term of  
15 the PGE PPA is 20 years from commercial operation and that the QF retains the  
16 RECs for the period at the end of the term when the utility pays the QF market  
17 rates.<sup>15</sup> However, it is my understanding that in Order 16-174, the Commission  
18 made clear that its policy from Order No. 05-584 and Order No. 11-505 is  
19 consistent and that the ownership of the RECs is not tied to the price that the

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<sup>12</sup> Docket No. UM 1396, Order No. 11-505 (Dec. 13, 2011); *In the Matter of Public Utility Commission of Oregon, Investigation into Qualifying Facility Contracting and Pricing*, Docket No. UM 1610, Docket No. UM 1610, Order No. 14-058 at 1-3 (Feb. 24, 2014).

<sup>13</sup> Docket No. UM 1610, Order No. 16-174 at 1 (May 13, 2006).

<sup>14</sup> Numbered section 4.5 in the PPAs that the NewSun Parties signed. For renewable, off-system, **non-variable** PPAs, the REC-ownership provision is found in section 4.6; for renewable, off-system, **variable** PPAs, the REC ownership provision is found in section 4.5.

<sup>15</sup> CREA-NIPPC-REC/200, Sanger/15-18.

1 utility pays (market price versus fixed prices) but instead “Order No. 11-505 ties  
2 REC ownership to utilities’ sufficiency or deficiency position.”<sup>16</sup>

3 **Q. Please explain why PGE added section 4.6 to the 2014 Contract Forms.**

4 A. As mentioned in my Direct Testimony, PGE’s 2014 Contract Forms and 2014  
5 Schedule 201 were filed by PGE in compliance with Order No. 11-505 and Order  
6 No. 14-058.<sup>17</sup> In my understanding, Order No. 11-505 mandated that PGE offer  
7 renewable QFs the option of selling their net output to PGE at renewable fixed  
8 prices.<sup>18</sup> It is also my understanding that Order No. 11-505 provided that if a  
9 renewable QF elected to sell at renewable fixed prices, then after PGE entered its  
10 renewable resource deficiency period, the RECs associated with the renewable  
11 energy purchased under the renewable PPA would belong to the utility.<sup>19</sup> In order  
12 to implement these changes, PGE submitted its 2014 Contract Forms and its 2014  
13 Schedule 201 which modified aspects of the 2006 Contract Forms and the 2006  
14 Schedule 201. One such modification was to add Section 4.6 to the renewable  
15 PPA, this section addresses ownership of RECs.

16 **Q. Did Section 4.6 address contract price or modify PGE’s approach to limiting  
17 the availability of fixed prices to the first 15 years measured from contract  
18 execution?**

19 A. No. To my understanding, Section 4.6 addresses ownership of RECs, it does not  
20 address the price to be paid for net output or change PGE’s approach limiting the

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<sup>16</sup> Docket No. UM 1610, Order No. 16-174 at 5.

<sup>17</sup> PGE/100, Macfarlane/22.

<sup>18</sup> Docket No. UM 1396, Order No. 11-505 at 1-2 (Dec. 13, 2011) (“Separate renewable avoided cost rates should be adopted for [PGE] and PacifiCorp ... [and a] renewable QF should have the option of choosing among the renewable avoided cost stream and the standard avoided cost stream.”).

<sup>19</sup> Order No. 11-505 at 1 (Dec. 13, 2011) (“The renewable resource QF will keep all associated Renewable energy Certificates (RECs) during periods of renewable resource sufficiency, but will transfer those RECs to the purchasing utility during periods of renewable resource deficiency.”).



1 availability of fixed prices to the first 15 years measured from contract execution.  
2 As Mr. Sanger admits in his testimony, the use of the PacifiCorp text in the PGE  
3 PPA was simply to be consistent on the issue of ownership of RECs.<sup>20</sup> In making  
4 those changes during the UM 1610 process, there was no discussion of the  
5 starting period for the 15-years of fixed prices. My understanding of the  
6 UM 1610 proceeding was that the topic of when the 15-year fixed price period  
7 began was not in the scope of that proceeding.<sup>21</sup> As a result, from PGE's  
8 perspective, nothing in Section 4.6 or the 2014 contract forms changed PGE's  
9 approach to limiting the 15-year fixed-price period to the first 15 years following  
10 contract execution. This is consistent with the history of PGE's PPA forms  
11 because the Commission had previously approved PGE's approach when it  
12 approved PGE's 2005 contract form and PGE's 2006 contract form, and the  
13 Commission had not ordered PGE to change that approach before PGE filed its  
14 2014 contract forms or 2014 Schedule 201. Further, the addition of section 4.6  
15 did not occur in the non-renewable PPAs that PGE proposed and the Commission  
16 approved, and PGE did not have the intent to have one type of PPA (when the QF  
17 is selling RECs to PGE) have one set of rules for the start of the fixed price  
18 period, and a different set of rules for the other PPAs (when the QF is not selling  
19 RECs to PGE).

20 **Q. Does this conclude your testimony?**

21 **A. Yes.**

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<sup>20</sup> CREA-NIPPC-REC/200, Sanger/15-16.

<sup>21</sup> Order No. 14-058 at 1-3 (Feb. 24, 2014), Docket No. UM 1610.

**UM 1931 / PGE / 500  
True**

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF THE STATE OF OREGON**

**UM 1931**

**PORTLAND GENERAL ELECTRIC COMPANY**

**v.**

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

**PORTLAND GENERAL ELECTRIC COMPANY**

Reply Testimony and Exhibits of

*Bruce True*

January 11, 2019

1 **Q. Please state your name and position.**

2 A. My name is Bruce True. I am an energy economist and I work in contract  
3 management in the Wholesale Power Operations group at Portland General Electric  
4 Company (“PGE”).

5 **Q. What is the purpose of your testimony?**

6 A. The purpose of my testimony is to support PGE’s January 25, 2018, complaint  
7 against the following ten qualifying facilities (“QFs”): Alfalfa Solar I, LLC; Dayton  
8 Solar I, LLC; Fort Rock Solar I, LLC; Fort Rock Solar II, LLC; Fort Rock Solar  
9 IV, LLC; Harney Solar I, LLC; Riley Solar I, LLC; Starvation Solar I, LLC; Tygh  
10 Valley Solar I, LLC; and Wasco Solar I, LLC (collectively, the “NewSun Parties”).

11 **Q. Have you testified before in this matter?**

12 A. Yes. My testimony was filed in this matter as PGE Exhibit 200 on December 7,  
13 2018.<sup>1</sup> My qualifications are described in that testimony.<sup>2</sup>

14 **Q. What is the scope of your new testimony?**

15 A. My testimony is in reply to the testimony filed by the NewSun Parties and by the  
16 Intervenors, and my testimony separately addresses a few issues raised in the  
17 response testimony that they filed.

18 **Q. Have you reviewed that response testimony?**

19 A. Yes, I have.

20 **Q. Is there anything concerning Mr. Thomas Harnsberger’s testimony that you**  
21 **wish to respond to?**

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<sup>1</sup> PGE/200, True.

<sup>2</sup> *Id.* at 12-13.

1 A. Yes. Mr. Harnsberger states that “an industry participant would ordinarily  
2 understand that the fixed price term of 15 years applicable to paying for electricity  
3 reference in the Schedule 201 should be measured from the operation date[.]”<sup>3</sup>

4 **Q. What is your reply to that testimony?**

5 A. I have managed the QF standard contracts for PGE for nearly a decade and have  
6 worked on scores of these standard Power Purchase Agreements (“PPAs”) with  
7 many QF developers. His statement is not my practice in this industry. With all  
8 developers who asked, before the forms changed in 2017 I made it clear that the 15  
9 years of fixed payments in Schedule 201 started at the commencement of the term  
10 of the PPA. As the testimony of Robert Macfarlane describes, that was PGE’s  
11 practice since at least 2005 until 2017.<sup>4</sup> And, obviously, PGE is an industry  
12 participant as are the QFs that signed standard PPAs with PGE prior to the NewSun  
13 Parties.

14 **Q. Is there anything concerning Mr. John Lowe’s testimony that you wish to  
15 respond to?**

16 A. Yes. Mr. Lowe states that “industry participants refer to the length of the agreement  
17 with reference to the ‘term’ or the ‘length of contract’ after the point of operations  
18 or expected schedule of power deliveries or operations.”<sup>5</sup>

19 **Q. What is your reply to that testimony?**

20 A. Jake Stephens for the NewSun Parties initially inserted into the standard PPA for  
21 the Wasco Solar LLC project that the PPA terminated at the end of the twentieth

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<sup>3</sup> NewSun Parties/200, Harnsberger/6.

<sup>4</sup> The Commission ordered PGE to change its Schedule 201 to indicate that the 15-years starts from the delivery of power. Docket No. UM 1805, Order No. 17-256 at 4 & 5 (July 13, 2017).

<sup>5</sup> CREA-NIPPC-REC/100 Lowe/7.

1 contract year, in other words, 20 years after commercial operation just like Mr.  
2 Lowe says is supposedly what others believe “term” to mean.<sup>6</sup> In response to Mr.  
3 Stephen’s initial draft of a PPA for the Wasco Solar I LLC project, I told Mr.  
4 Stephens verbally and in writing that PGE’s standard PPA ends no later than 20  
5 years after execution.<sup>7</sup>

6 **Q. Do you recall your conversations with Mr. Stephens on that point?**

7 A. Mostly. There were many.

8 **Q. Did Mr. Stephens make the argument that is in Mr. Lowe’s testimony about  
9 industry standard expectations?**

10 A. Not to my memory. And he does not mention it in his testimony that he said  
11 anything to me about it.<sup>8</sup> Instead, I remember that he responded that PGE has on  
12 one occasion over the last decade modified its standard PPA to “expressly state[]  
13 PGE would pay the fixed prices for fifteen years after the Commercial Operation  
14 Date.”<sup>9</sup>

15 **Q. Did he ask you to change the PPA for the NewSun Parties to allow for that  
16 result?**

17 A. Yes. I told him, the contract did not provide for that and I could not do so. I did  
18 not make the changes that Mr. Stephens requested, and he signed the PPAs anyway.

19 **Q. Is there anything else about Mr. Lowe’s testimony that you wish to respond  
20 to?**

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<sup>6</sup> PGE/205, True/7, § 2.3.

<sup>7</sup> NewSun Parties/100, Stephens/17-18.

<sup>8</sup> *Id.* at 17-20.

<sup>9</sup> *Id.* at 18.

1 A. Yes. He states that PGE signed a PPA with PáTu Wind Farm that provided for a  
2 21-year total term.<sup>10</sup> He omits that the PPA actually states that it “shall terminate  
3 on 5/31/2031 [date to be chosen by Seller], **up to 20 years from the Effective Date**  
4 **... whichever is earlier[.]**”<sup>11</sup> PGE’s form PPA unambiguously stated that the  
5 maximum term was 20 years from the Effective Date, which was the execution date  
6 (May 2010). Mr. Lowe didn’t mention that in his testimony.

7 **Q. Is there anything concerning Mr. Jake Stephens’s testimony that you wish to**  
8 **respond to?**

9 A. Yes, a few things. First, Mr. Stephens states that he was “shocked that PGE did not  
10 even mention to me that it planned to propose a major change to its QF contracts,  
11 particularly given the significance of the rate changes PGE proposed to make.”<sup>12</sup>

12 **Q. What is your reply to that testimony?**

13 A. It is not my practice, and I believe it is not PGE’s practice, to tell one developer  
14 privately what PGE is planning to tell the entire industry in a public filing before  
15 making that filing. I don’t know why Mr. Stephens expected preferential treatment  
16 compared to all other QF developers and industry participants.

17 **Q. What else do you want to reply to?**

18 A. Mr. Stephens writes that PGE and I were not accommodating to him in the process,  
19 particularly about locking in the fixed rates before the January 2016 proposed  
20 change in the rates.<sup>13</sup> To the contrary, I told him that even though the Wasco Solar  
21 PPA was not signed by PGE, “our view is that we reached agreement on terms and

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<sup>10</sup> CREA-NIPPC-REC/100, Lowe/16.

<sup>11</sup> PGE/213, True/6 (emphasis added).

<sup>12</sup> NewSun Parties/100, Stephens/24.

<sup>13</sup> *Id.* at 27.

1           you've locked in the pricing in our 8/26/15 tariff filing, even if our new prices go  
2           into effect on January 13.”<sup>14</sup> He replied expressing thanks that Wasco and five  
3           other projects would receive the 2015 rate schedule even if PGE did not sign the  
4           final version of the PPAs until a few days after the rates changed.<sup>15</sup>

5           **Q.    Is there anything else that Mr. Stephens said that you would like to provide**  
6           **the context to?**

7           A.    Yes. Mr. Stephens states repeatedly that PGE is attempting to dissuade QFs from  
8           signing standard PPAs.<sup>16</sup> PGE has signed scores of PPAs. As Mr. Khandoker  
9           stated in his testimony, in addition to the 10 PPAs with the NewSun Parties, PGE  
10          entered into 52 similar PPAs.<sup>17</sup> Further, PGE has entered into many more standard  
11          PPAs both before and after those similar PPAs were in use. Although a few  
12          developers have chosen to bring complaints to the Commission, the larger context  
13          is that many QF developers have signed standard PPAs with PGE and the total  
14          volume of standard PPAs executed by QFs is considerable, totaling well over 100.

15          **Q.    To your knowledge, did the NewSun Parties have a preference between**  
16          **standard PPAs and bilaterally negotiated PPAs?**

17          A.    I can't speak for the NewSun Parties' preferences, but Mr. Stephens stated that he  
18          “hope[d]” going forward, after the QF PPAs were signed, that “rather than QFs, I  
19          can propose bilateral opportunities to PGE which might advantage PGE's  
20          ratepayers over the standard contract pricing. . . . This was, of course, my stated

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<sup>14</sup> PGE Exhibit 501 at 1 (January 7, 2016, email from Bruce True to Jake Stephens).

<sup>15</sup> PGE Exhibit 502 at 1 (January 8, 2016, email from Jake Stephens to Bruce True).

<sup>16</sup> See NewSun Parties/100, Stephens/20 and 27.

<sup>17</sup> PGE/300, Khandoker/1-2.

1 intention from the outset.”<sup>18</sup> I don’t know which company he was speaking on  
2 behalf of, but Mr. Stephens is clearly stating that, in his view, bilateral contracts are  
3 better for ratepayers than standard contract pricing.

4 **Q. Do you have any reply to Mr. Stephens’s statements about the contract terms?**

5 A. The terms in the standard PPA are what they are and I am not going to interpret  
6 them. But, during our discussions before he signed them, he did not, to the best of  
7 my recollection, state that the PPA had to be interpreted to provide for 15 years of  
8 fixed prices starting from commercial operation based on “conventional  
9 understanding” or industry standards. He now testifies that based on “conventional  
10 understanding” PGE should pay at the fixed rate for up to three more years,<sup>19</sup> but  
11 to the best of my recollection he never made that argument to me. And in his  
12 testimony he never says that he raised “conventional understanding” or industry  
13 standards with me.

14 **Q. Is there anything else that Mr. Stephens now testifies to that he did not state  
15 to you during the discussions about the PPAs in 2015 and 2016?**

16 A. Yes. He testifies that the word “term” in the Schedule 201 is lower case and that  
17 the word “term” in the PPA is capitalized, and because of that difference in  
18 capitalization he did not understand that the word “term” as used “in the Schedule  
19 201 to refer to a defined term in the standard PPA contract forms.”<sup>20</sup> He never  
20 discussed that with me.

21

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<sup>18</sup> PGE Exhibit 502 at 1.

<sup>19</sup> NewSun Parties/100, Stephens/35.

<sup>20</sup> *Id.*



1 **Q. It there anything else about Mr. Stephens's testimony to which you reply?**

2 A. Yes, I wish to respond to Mr. Stephens's testimony concerning the supposed  
3 "reprimand" I received.<sup>21</sup> The point I conveyed to Mr. Stephens was that I had  
4 been directed by PGE management to not vary the terms of the standard PPAs that  
5 the Commission had approved to protect our customers. Regardless of whether I  
6 was easy to work with or hard to work with, PGE's instructions were to not vary  
7 from the terms of the Commission-approved standard PPA.

8 **Q. Does this conclude your testimony?**

9 A. Yes.

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<sup>21</sup> *Id.* at 27.

**List of Exhibits**

<b><u>PGE Exhibit</u></b>	<b><u>Description</u></b>
501	January 7, 2016, email from Bruce True to Jake Stephens
502	January 8, 2016, email from Jake Stephens to Bruce True

Message

**From:** Bruce True [Bruce.True@pgn.com]  
**Sent:** 1/7/2016 6:37:37 PM  
**To:** Jake Stephens [jstephens@newsunenergy.net]  
**Subject:** RE: Wasco Solar I

It will take longer than that. I have to get an approval memo signed by several parties.

However, our view is that we reached agreement on terms and you've locked in the pricing in our 8/26/15 tariff filing, even if our new prices go into effect on January 13. That looks not at all certain either, for reasons you're well aware of.

**From:** Jake Stephens [mailto:jstephens@newsunenergy.net]  
**Sent:** Thursday, January 07, 2016 4:02 PM  
**To:** Bruce True  
**Subject:** Wasco Solar I

Bruce,

Per my separate response e-mail to your January 5th "Drafts - Ahead of 1/12 due date" e-mail, containing PGE's January 5th PPA draft for Project and Seller below, confirming PGE's agreement to Seller's 12/18/2015 PPA submission and obligation, please find attached Seller's response documents as enumerated below, for PGE's countersignature as final executable.

Seller: Wasco Solar I LLC  
Project: Wasco Solar I

**NOTES: Wasco Solar I - PGE 1/5/2016 draft vs Seller's 12/18/2015 "v2" submission**

- **1.11 - The Generation Interconnection Agreement counterparty is missing in PGE Draft**, which is Wasco Electric Cooperative, as submitted by Seller in 12/18/2015 submission and confirmed as acceptable by PGE in prior correspondence. PGE missed this apparently in transcription, just left a blank. Not material as Seller-specified entry, already accepted by PGE.
- **2.3 - The termination date entry is missing/blank in PGE Draft.** Seller has corrected to be consistent with Seller's 12/18 submission which is language previously confirmed by PGE as acceptable as language is identical to language accepted by PGE for Starvation Solar I and sent by PGE in their associate Starvation Solar I PPA draft to Seller.
- **3.1.1 - The Seller-identified entries representing Seller's incorporation type and state are blank in PGE Draft.** Seller has corrected in attachments to be consistent with Seller's 12/18 submission, which is previously PGE confirmed acceptable language, and is consistent with that accepted by PGE for Starvation Solar I and sent by PGE in their draft to Seller therefor.
- **3.1.11 - The Seller-identified entries representing Seller's energy output is blank in PGE Draft.** Seller has corrected in attachments to be consistent with Seller's 12/18 submission, which is previously PGE-confirmed acceptable language for this project, per correspondence on this project.
- **Corrected Draft** equal to Seller's 12/18 submission is signed by Seller and returned, attached hereto
- **Seller obligated hereunder**

*Seller requests PGE treat signed attached copy as Final Executable and countersign within 2-3 business days*

**Documents Attached:**

- Seller's Clean 12/18/2015 PPA Submission, Word Doc
- Redline of PGE 1/5/2016 Draft vs Seller's 12/18/2015, Word Doc (administrative differences)
- Seller Signed PDF of Seller's 12/18/2015 (previously sent)
- Seller's Correction of PGE's 1/5/2016 draft (same as 12/18/15 submission)
- Seller-Signed PDF of Seller's Correction of 1/5/2016 draft, as Final Executable for countersignature by PGE.

Best regards,

Jake Stephens  
Manager  
Wasco Solar I LLC

Message

**From:** Jake Stephens [jstephens@newsunenergy.net]  
**Sent:** 1/8/2016 10:27:07 AM  
**To:** Bruce True [Bruce.True@pgn.com]  
**Subject:** Re: Wasco Solar I

Bruce, thanks for your e-mail confirming we've reached an agreement on terms, and thus LEOs, on the projects I've submitted to date and that PGE will execute these agreements. I am interpreting your comments to apply to all six projects submitted to date, as the status of each is equivalent.

That is certainly a relief. And will especially be a relief when I receive the executed documents, as each of these companies continues to make investments in these projects and move them forward. Which has remained a scary prospect in view of the timeline constraints and PGE's actions, particularly on the regulatory front.

I hope that we are able to transition to a phase in which, rather than QFs, I can propose bilateral opportunities to PGE which might advantage PGE's ratepayers over the standard contract pricing. And perhaps provides PGE with some benefits on the back of the effort involved in completing these contracts. This was, of course, my stated intention from the outset. But PGE's actions forced me away from efforts on those bilateral fronts.

Best regards,  
Jake

--  
Jake Stephens  
Principal  
NewSun Energy LLC  
520-981-7303

On Thu, Jan 7, 2016 at 7:37 PM, Bruce True <[Bruce.True@pgn.com](mailto:Bruce.True@pgn.com)> wrote:

It will take longer than that. I have to get an approval memo signed by several parties.

However, our view is that we reached agreement on terms and you've locked in the pricing in our 8/26/15 tariff filing, even if our new prices go into effect on January 13. That looks not at all certain either, for reasons you're well aware of.

**From:** Jake Stephens [mailto:[jstephens@newsunenergy.net](mailto:jstephens@newsunenergy.net)]  
**Sent:** Thursday, January 07, 2016 4:02 PM  
**To:** Bruce True  
**Subject:** Wasco Solar I

Bruce,

Per my separate response e-mail to your January 5th "Drafts - Ahead of 1/12 due date" e-mail, containing PGE's January 5th PPA draft for Project and Seller below, confirming PGE's agreement to Seller's 12/18/2015 PPA submission and obligation, please find attached Seller's response documents as enumerated below, for PGE's countersignature as final executable.

Seller: Wasco Solar I LLC

Project: Wasco Solar I

**NOTES: Wasco Solar I - PGE 1/5/2016 draft vs Seller's 12/18/2015 "v2" submission**

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Best regards,

Jake Stephens

Manager

Wasco Solar I LLC

**UM 1931 / PGE / 600  
Morton**

BEFORE THE PUBLIC UTILITY COMMISSION  
OF THE STATE OF OREGON

**UM 1931**

**PORTLAND GENERAL ELECTRIC COMPANY**

**v.**

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

PORTLAND GENERAL ELECTRIC COMPANY

Reply Testimony of

*John Morton*

January 11, 2019



1 **Q. Please state your name, position and qualifications.**

2 A. My name is John Morton. I work in Power Structuring and Origination at Portland  
3 General Electric Company (“PGE”). I have worked at PGE almost continuously  
4 since 2003 after working for two years at Dynegy. At PGE, initially I worked for  
5 two years in Risk Management, followed by three years in real-time and day-ahead  
6 trading. I then worked for three years as a Project Manager in Merchant  
7 Transmission & Resource Integration before moving to Structuring and Origination  
8 in 2012. I have a Bachelor of Science degree in accounting from Oklahoma State  
9 University.

10 **Q. What is the purpose of your testimony?**

11 A. The purpose of my testimony is to support PGE’s January 25, 2018, complaint  
12 against the following ten qualifying facilities (“QFs”): Alfalfa Solar I, LLC; Dayton  
13 Solar I, LLC; Fort Rock Solar I, LLC; Fort Rock Solar II, LLC; Fort Rock Solar  
14 IV, LLC; Harney Solar I, LLC; Riley Solar I, LLC; Starvation Solar I, LLC; Tygh  
15 Valley Solar I, LLC; and Wasco Solar I, LLC (collectively, the “NewSun Parties”).

16 **Q. What is the scope of your testimony?**

17 A. I am testifying with regard to my interaction with Jake Stephens when I first met  
18 him in 2015 at a conference in Tucson, Arizona. Mr. Stephens testified concerning  
19 our discussion without providing the necessary context to that conversation,<sup>1</sup> and  
20 his testimony misstates PGE’s position concerning standard PURPA contracts with  
21 Qualifying Facilities (“QFs”).

22

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<sup>1</sup> NewSun Parties/100, Stephens/20.

1 **Q. Had you met Mr. Stephens before?**

2 A. No. He initiated a conversation with me and launched a discussion concerning his  
3 various business ventures, including renewable, biofuels and natural gas energy  
4 projects.

5 **Q. Did you state that PGE does not prefer that QF developers exercise their rights  
6 under PURPA as Mr. Stephens testifies?**

7 A. No. When he identified himself as a developer, he did not specify whether he was  
8 a developer of QF or non-QF projects. I remember that Mr. Stephens described  
9 himself as a businessman and a developer of projects and that his background and  
10 funding enables him to identify and capture opportunities around the world, and  
11 that he was exploring options in Oregon. In response, I stated that PGE looks  
12 forward to building relationships with developers and negotiating bilaterally  
13 because there is more contract flexibility for both sides to provide mutually  
14 beneficial outcomes for PGE's customers and the developer. That conversation  
15 was not specifically about QFs or standard contracts, but rather business  
16 relationships in general.

17 **Q. Does PGE attempt to dissuade QFs from entering into standard PPAs by  
18 telling them that the 15-years of fixed prices begins at execution, as he testifies  
19 is his belief?**

20 A. No. Mr. Stephens's statement of his belief is unconnected with my statements to  
21 him or to PGE policy. PGE has been and is compliant with PURPA requirements,  
22 has signed numerous standard PPAs, and has participated in-depth in numerous  
23 Commission proceedings to provide PURPA-compliant PPAs that meet the goal of

1 providing energy on terms that are reasonable for PGE's customers. While standard  
2 PPAs use text that is Commission-approved and not negotiated, bilateral contracts  
3 that result from negotiation provides for mutually beneficial contractual flexibility  
4 in terms and conditions. As Mr. Stephens himself stated in an email to Mr. True,  
5 bilateral agreements can provide better value for utility customers. He told Mr.  
6 True that after signing the PPAs, he "can propose bilateral opportunities to PGE  
7 which might advantage PGE's ratepayers over the standard contract pricing. . . .  
8 This was, of course, my stated intention from the outset."<sup>2</sup>

9 **Q. Does this conclude your testimony?**

10 A. Yes.

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<sup>2</sup> PGE 502, True/1.