

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1987

In the Matter of

Portland General Electric Company,

Request to Update Schedule 201 and
Standard Power Purchase Agreements.

NEWSUN ENERGY LLC'S
RESPONSE TO PORTLAND
GENERAL ELECTRIC
COMPANY'S MOTION TO LIFT
SUSPENSION

Pursuant to OAR 860-001-0420 and Administrative Law Judge Allan J. Arlow's Ruling dated January 7, 2021, NewSun Energy LLC (NewSun) respectfully responds to Portland General Electric Company's (PGE) Motion to Lift Suspension filed December 31, 2020 (Motion) as follows. The Public Utility Commission of Oregon (PUC) should deny PGE's Motion (1) because there is no pressing need to do so given that PGE's current Public Utility Regulatory Policies Act (PURPA) standard contract is financeable and PGE has very few new complaints against it; and (2) because lifting the stay will waste resources and distract from other PUC priorities.

First, there is no pressing need to resolve PGE's contract concerns now because PGE's current standard contract is financeable and PGE is not experiencing a large volume of new QF complaints. The standard power purchase agreement (PPA) PGE proposed in this docket is a substantial rewrite, which was highly contested among stakeholders (including hundreds of pages of redlines exchanged and little convergence of the parties) and does not simply resolve "unclear and ambiguous" contract language as

PGE indicates in its Motion.¹ Rather it goes beyond that and includes “substantive and numerous changes to the status quo” and in many cases changes that were “radically different, from existing [PUC] policies or substantive provisions of PGE’s currently effective standard PPA.”² Even more, these substantive and numerous provisions are untested in the market.³ QFs currently benefit from a relatively simple, straight-forward “fill-in-the-blank” type contract, which has been successfully used for dozens of projects, would be unknown. The consequences of the revised PPA on QFs could be substantial, particularly if the myriad of issues and additional, unnecessary complexity stakeholders identified in the contract were not resolved. Indeed, NewSun has experience with PGE’s *currently* effective standard form PPA, and while there may be some tweaks that could resolve ambiguity, improve financeability, and mitigate utility performance risks, NewSun has been able to finance, build, and commission four 10 MW contracts in 2020 using this form.⁴ Further, while PGE notes that it had 60 complaints filed against it in the time leading up to the initial filing in December 2018,⁵ it has not articulated any pressing need to avoid further complaints. Notably, PGE’s Motion updated this number to 70

¹ PGE Motion to Lift Suspension at 3 (Dec. 31, 2020).

² Motion to Stay of Northwest & Intermountain Power Producers Coalition (NIPPC), Renewable Energy Coalition (REC), and Community Renewable Energy Association (CREA) at 2, 6 (Nov. 12, 2019).

³ NewSun understands that the standard PPA PGE proposes in this docket is not even the same contract form PGE uses for its non-standard QF PPAs.

⁴ While issues arose, they were mostly around PGE’s actions or inactions under the contract, not problems that require a radical rewrite into a previously unused and unproven form—and contested changes to the contracting process itself—that NewSun reasonably believes could undermine not only the ability to secure a PPA at all but also adversely affect QF financing and viability of related investments.

⁵ PGE Motion to Lift Suspension at 3.

complaints since 2017,⁶ which means that only 10 have been filed in the two years since PGE made its initial filing. Therefore, because the current standard PPA is financeable, and the complaints have dropped off significantly, there is no pressing need to resolve this docket expeditiously.

Second, not only is it not urgent to proceed forward, but it would be counter-productive. Moving forward with this docket now will simply waste valuable Staff resources and the resources of other stakeholders by duplicating efforts and distracting from the PUC's other priorities. Many of the issues in the wholesale PPA revision PGE presented as minor clean-ups and changes are policy changes and matters subject to ongoing dockets currently at the Commission, not to mention they are also affected by Federal Energy Regulatory Commission orders issued since the original opening of this docket. It would be inappropriate to force these highly contested revisions through, even without that backdrop, but especially given the shift of backdrop since this case was opened, and since the stay was ordered.

Other dockets, including in particular Docket No. AR 631, are the best place to resolve the issues in this docket as they will consider the issues with a broader stakeholder group and holistically resolve the same issues raised by PGE for all Oregon utilities including by considering how various contract terms may interact with the contracting process. PGE is overly critical of Staff for not moving forward on AR 631 more quickly. It is NewSun's understanding that Staff has been working on a proposal for AR 631. Further, many matters have transpired since, including new matters that

⁶ *Id.* at 1.

caused new Staff burdens, but also dockets which are critical inputs to any future revision of the standard PPA. The standard PPA should not be broadly revised until those policy inputs are available, and until the full suite of matters in process are properly engaged.

For example, in March 2020, just a few months after the stay in this proceeding, Governor Brown issued Executive Order 20-04 directing state agencies to prioritize actions that reduce greenhouse gas emissions (GHG). Within days after issuing that order, Governor Brown then issued a stay-home order to protect Oregonians from the coronavirus pandemic, impeding the productivity of all walks of people and profession, including stakeholders, PUC Staff, and a myriad of Oregonians, including those Staff working on surrounding GHG and PURPA matters. This GHG reduction effort underway at the PUC has, no doubt, taken considerable thought and effort on the part of Staff,⁷ and as PGE is well aware, everyone has over the last year struggled to adjust to the new realities of working from home and engaging in business remotely resulting in many people being overworked and both mentally and physically exhausted. As it relates to PURPA, the PUC's draft GHG reduction plan (including due to stakeholder comments) prioritizes resolving interconnection issues and incorporating the social cost of carbon in avoided costs.⁸ Ironically, in comments submitted on October 28, 2020 just two months prior to this Motion, PGE makes no argument that the PUC should prioritize resolving

⁷ See Public Utility Commission Executive Order 20-04 Work Plans (Draft) (Nov. 12, 2020) available at <https://www.oregon.gov/puc/utilities/Pages/ExecutiveOrder20-04.aspx>.

⁸ *Id.*

AR 631.⁹ Rather, PGE’s request to lift the suspension in this case appears geared more towards adding additional work for Staff and stakeholders rather than a genuine interest in seeing progress being made.

This is particularly imprudent and inappropriate given how extensively contentious and burdensome PGE’s UM 1987 PPA rewrite effort was from the beginning—ultimately resulting in a stay to provide relief until other matters progressed at which time an appropriate path could be reconsidered.¹⁰ Those circumstances and backdrop have not changed but have only increased in relevance given the coronavirus’s impact on productivity, shifts in underlying policy inputs, and the still remaining need for AR 631 and other PURPA policy dockets to meaningfully progress before major changes occur. PGE’s revisions would likely conflict with these other policy changes, and the PUC is working on resolving those other matters in the months ahead.

Finally, should this docket move forward at all, it should be scaled down. PGE claims that the impetus of this docket is to provide clarity and resolve ambiguities in its standard contracts which were brought to light due to specific complaints made by QFs. If that is truly the only need for this docket, then PGE should scale back its revisions to a few simple redlines to the existing contract and point to specific complaints that

⁹ See PGE Comments in Response to the PUC’s Draft Work Plan on Governor Browns Executive Order 20-04 (Oct. 28, 2020) available at <https://www.oregon.gov/puc/utilities/Pages/ExecutiveOrder20-04.aspx>. NewSun, on the other hand, explicitly requested that the Commission prioritize AR 631 in its GHG reduction work plans. Special Public Meeting re Adoption of Workplans related to the Governor’s Executive Order 20-04 on Climate Change at 1:38:22 (Nov. 19, 2020).

¹⁰ See Ruling (Dec. 23, 2019).

necessitate each revision. The focus should be on discrete, known issues. However, NewSun continues to believe that even this is unnecessary because PGE's current standard PPA is financeable, PGE is not experiencing a large volume of new complaints, and AR 631 is the more appropriate venue to resolve PURPA contracting issues more holistically. What is not appropriate is a wholesale rewrite that could destabilize the status quo with an unproven, highly disputed, and fundamentally different agreement, which is exactly what PGE proposes here. That approach is inconsistent with the actual, limited issues that may need changes. PPA revisions should be kept limited and discrete, and should not reopen large interactive and procedurally intensive and burdensome rewrites.

NewSun Energy LLC therefore respectfully requests that the PUC deny PGE's Motion.

Dated this 13th day of January 2021.

Respectfully submitted,

NewSun Energy LLC

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