



WENDY MCINDOO  
Direct (503) 290-3627  
wendy@mrg-law.com

June 11, 2019

**VIA ELECTRONIC FILING**

PUC Filing Center  
Public Utility Commission of Oregon  
PO Box 1088  
Salem, OR 97308-1088

**Re: Docket UM 2009: In the Matter of the Complaint of Madras PV1, LLC, against  
Portland General Electric Company.**

Attention Filing Center:

Attached for filing in the above-captioned docket is Portland General Electric Company's Answer and Counterclaim. The CONFIDENTIAL Attachments will be sent to the parties on the service list who have signed the Protective Order via U.S. Mail.

Please contact this office with any questions.

Sincerely,

A handwritten signature in blue ink that reads 'Wendy McIndoo'.

Wendy McIndoo  
Office Manager

Attachment

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON  
UM 2009**

Madras PV1, LLC,  
Complainant,

v.

Portland General Electric Company,  
Respondent.

---

**PORTLAND GENERAL ELECTRIC COMPANY  
ANSWER AND COUNTERCLAIM**

June 11, 2019

## TABLE OF CONTENTS

I.	Introduction.....	1
II.	Summary .....	2
III.	Answer .....	8
	A. Identity of Parties .....	8
	B. Applicable Statutes and Regulations .....	8
	C. Jurisdiction.....	8
	D. Madras’s Factual Allegations .....	8
	E. Madras’s Proposed PPA Terms .....	13
	F. Madras’s Legal Claims .....	17
	G. Madras’s Prayers for Relief .....	19
IV.	PGE’s Counterclaim .....	19
	A. PGE’s Factual Allegations .....	19
	B. PGE’s Claim for Relief—Proposed PPA.....	31
V.	PGE’s Prayers for Relief.....	35

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON  
UM 2009**

Madras PV1, LLC,  
Complainant,

v.

Portland General Electric Company,  
Respondent.

**PORTLAND GENERAL ELECTRIC  
COMPANY'S ANSWER AND  
COUNTERCLAIM**

**I. INTRODUCTION**

Madras PV1, LLC, (Madras) asks for a Schedule 202 power purchase agreement (PPA) with avoided cost prices that are based on the assumption that it will pay for Network Resource Interconnection Service (NRIS), which ensures adequate transmission capacity for the project's output to reach load. At the same time, Madras refuses to commit to obtaining that interconnection service or paying for the associated network upgrades. Madras seeks to avoid paying for interconnection upgrades under the creative fiction that its interconnection falls within the Federal Energy Regulatory Commission's (FERC) jurisdiction. Madras attempts to invoke FERC's jurisdiction and avoid paying for the necessary interconnection service by asking the Public Utility Commission of Oregon (Commission) to insert into the PPA a right for Madras to sell its relatively miniscule amount of pre-commercial operation date (COD) test energy to a purchaser other than Portland General Electric Company (PGE)—even though Madras will then sell the entirety of its net output to PGE for at least the next fifteen years. To protect PGE's customers from bearing the costs for which Madras is properly responsible, the Commission should deny Madras's claims and grant PGE's counterclaim, which properly (and fairly) allocates costs caused by a qualifying facility's (QF) siting decision.

## II. SUMMARY

On April 22, 2019, Madras filed a complaint with the Commission against PGE, pursuant to both the Commission's dispute resolution rules for negotiated PPAs under the Public Utilities Regulatory Policies Act of 1978 (PURPA)<sup>1</sup> and the Commission's standard complaint rules.<sup>2</sup>

Madras is a solar project with a nameplate capacity of approximately 66 megawatt (MW) planned for development by Ecoplexus, Inc. (Ecoplexus) in Jefferson County, Oregon, on a site approximately 100 miles east of PGE's service territory. Once Madras begins commercial operations, it seeks to sell the entirety of its net available capacity to PGE as a QF under PURPA. Madras seeks to interconnect to PGE's system on the generation lead line for the Pelton-Round Butte Hydroelectric Project (PRB or Project). The sole path to PGE's load from this location over PGE's system is via PGE's Bethel-to-Round Butte 230 kV transmission line—a line that is already fully committed to carrying PRB's output. While Madras claims that the dispute between the parties presents a narrow question of what terms and prices to include in its negotiated PPA, this proceeding actually presents critical issues regarding the allocation of costs associated with required network upgrades caused by a QF's siting decision, where that QF attempts to exclude those costs from both its avoided cost prices *and* from its interconnection process.

In Oregon, the interconnection and network upgrade costs associated with a large QF siting in a transmission-constrained area are not directly incorporated into a utility's avoided cost prices, but are instead allocated pursuant to the Commission's QF Large Generator Interconnection Procedures (QF LGIP). Specifically, the QF LGIP requires a QF to obtain NRIS, as defined by FERC.<sup>3</sup> NRIS ensures that a generator can deliver its output to the interconnecting utility's load on a firm basis, by establishing that the aggregate of generation in the area where the interconnection customer is siting can successfully reach the aggregate of load over the utility's system during peak conditions.<sup>4</sup> By comparison, Energy Resource Interconnection Service (ERIS)

---

<sup>1</sup> OAR 860-029-0100.

<sup>2</sup> OAR 860-001-0400. Both OAR 860-029-0100 and 860-001-0400 are promulgated pursuant to ORS 756.500, which authorizes the Commission to dispose of complaints within the Commission's jurisdiction.

<sup>3</sup> Order No. 10-132, Appendix A at 15 (requiring the QF interconnection customer to obtain NRIS).

<sup>4</sup> FERC Order 2003-A at ¶ 500.

1 is a basic interconnection service that makes a generator eligible to deliver its output on an “as-  
2 available” basis, but does not ensure that a project’s output can reach load. The QF LGIP further  
3 establishes the presumption that the QF will bear responsibility for the costs of obtaining NRIS,  
4 including any necessary network upgrades. The QF LGIP is applicable to QFs with state-  
5 jurisdictional interconnections—that is, where the QF intends to sell the entirety of its net output  
6 to the interconnecting utility.

7 A QF’s interconnection process is explicitly incorporated into PGE’s PURPA PPA  
8 negotiation process for QFs larger than 10 MW, as codified in PGE’s Commission-approved  
9 Schedule 202. Under Schedule 202, a QF is entitled to a draft PPA only after the QF provides  
10 “[e]vidence that any necessary interconnection studies have been completed and assurance that the  
11 necessary interconnection arrangements have been executed or are under negotiation.”<sup>5</sup> Ensuring  
12 that a QF is obtaining adequate interconnection service is critical because a project’s avoided cost  
13 pricing may differ significantly depending on whether the upgrades necessary to ensure  
14 deliverability of the facility’s output are captured in the interconnection process or need to be  
15 folded into the facility’s avoided cost prices. The facility’s interconnection arrangements are also  
16 relevant to determine whether the project’s proposed COD is feasible.

17 Here, Ecoplexus was cautioned from the outset of negotiations by both PGE’s Merchant  
18 Function (PGEM) and PGE’s Transmission Function (PGET) that an interconnection near PRB  
19 would likely require substantial and costly network upgrades. Indeed, due to the lack of  
20 transmission capacity on PGE’s system in that area, PGE’s Open Access Same-Time Information  
21 System (OASIS) website has specifically designated the Round Butte substation as physically  
22 constrained from the rest of PGE’s system, with no available capacity to reach PGE’s load.

23 Nonetheless, Ecoplexus not only proceeded with its efforts to interconnect Madras on the  
24 PRB generation lead line, but has since sought to avoid responsibility for Madras’s  
25 interconnection-related costs. Specifically, despite intending to sell the entirety of Madras’s

---

<sup>5</sup> PGE’s Schedule 202, Section 4.

1 commercial net output to PGE, Ecoplexus claims that its interconnection is nonetheless FERC-  
2 jurisdictional because it intends to preserve the right to sell its pre-COD energy to a third party as  
3 a wholesale sale. Ecoplexus has claimed that, because Madras's interconnection is FERC-  
4 jurisdictional, Madras is therefore entitled to seek ERIIS only or to receive refunds for any network  
5 upgrades necessary to obtain NRIS.<sup>6</sup>

6 Despite refusing to commit to obtaining NRIS, Ecoplexus claims that it is entitled to  
7 execute a PPA—and thereby fix its project's avoided cost prices—on the *assumption* that Madras  
8 will obtain and pay for NRIS. Specifically, Ecoplexus directed PGE's QF-contracting personnel  
9 *to assume, for purposes of developing the PPA*, that Madras will request NRIS as a state-  
10 jurisdictional interconnection. However, once PGEM drafted a PPA to this effect, specifically  
11 assuming that the project would obtain NRIS, Ecoplexus proceeded to modify the PPA provisions  
12 to undermine that very assumption. Indeed, even after directing PGEM to draft a PPA assuming  
13 that Madras would obtain NRIS under the QF LGIP, Ecoplexus has continued to pursue  
14 interconnection studies for both NRIS *and ERIIS* with PGET. Ecoplexus has further insisted that  
15 PGET undertake FERC-jurisdictional (rather than state-jurisdictional) interconnection studies by  
16 refusing to confirm that its project is a QF, even while simultaneously pursuing QF negotiations  
17 with PGEM. In the face of such glaring inconsistencies regarding Madras's interconnection  
18 process, Ecoplexus has undermined its own right to receive even a *draft* PPA—let alone a final  
19 and executable contract.

20 Apart from Ecoplexus's ongoing equivocation regarding its willingness to pursue and pay  
21 for NRIS, PGEM's negotiations have been systematically undermined by Ecoplexus's numerous  
22 changes to its project's basic characteristics—including Madras's generation technologies, net  
23 output, and nameplate capacity. Indeed, Ecoplexus recently indicated that it still had only a  
24 "reasonable best guess" as to what its project will look like.<sup>7</sup> As shown in Table 1, these significant

---

<sup>6</sup> Madras seems to assume that a QF with a FERC-jurisdictional interconnection may choose either ERIIS or NRIS—a claim that PGE would dispute. On the contrary, it is PGE's position that all QF's are obligated to pursue and pay for interconnection that ensures the deliverability of their output, which is only achieved by obtaining NRIS

<sup>7</sup> See Testimony of John Morton (PGE/100, Morton/25).

changes continued through March of 2019, and required PGEM to continually recalculate the project's avoided cost prices.

**Table 1: Chart of Madras Size Changes<sup>8</sup>**

<b>Date of Change</b>	<b>Net Dependable Capacity</b>	<b>Nameplate Capacity</b>
Oct. 17, 2017	79.7 MW	80.0 MW
Oct. 8, 2018 (letter)	<i>unstated</i>	65 MW-AC
Oct. 8, 2018 (PPA)	65 MW-AC	80 MW-DC
Nov. 7, 2018	<i>unstated</i>	63 MW-AC
Jan.22, 2019	63 MW-AC	75 MW-DC
Mar. 29, 2019	63 MW-AC	65.784 MW-DC

Despite these ongoing problems, PGEM has remained committed to attempting to find a reasonable solution and to establishing a fairly negotiated PPA for Madras. For instance, despite Ecoplexus's ongoing refusal to clarify which form of interconnection service it seeks to pursue, and despite the fact that such clarity is critical to solidifying Madras's avoided cost prices, PGEM offered to prepare a draft PPA with extensive placeholders, until such time as Ecoplexus could commit to the necessary interconnection service, as required by Schedule 202.

Now, in its Complaint, Madras asks the Commission to conclude that Madras is both entitled to an executable PPA, and that this PPA (and the accompanying avoided cost prices) can remain in effect even if Madras successfully avoids responsibility for obtaining and paying for NRIS. Towards this end, Madras seeks Commission resolution of both the PPA's terms and conditions, as well as various claimed violations of rule and law in the negotiation process. Specifically, Madras asks the Commission to resolve six discrete PPA terms, as presented in its attached PPA (Madras's Proposed PPA): (a) the applicable avoided cost prices; (b) the project's nameplate capacity; (c) metering requirements; (d) a price-adjustment provision in case Madras refuses to pay for obtaining NRIS; (e) the project's COD, as it relates to executing an Interconnection Agreement; and (f) providing for the sale of Madras's test energy. In addition, Madras presents the following legal claims: (1) that Madras has established a legally enforceable

---

<sup>8</sup> Table 1 summarizes Madras's size changes, described in detail in Section III.A, below.

1 obligation (LEO) either to the avoided cost prices in effect on May 4, 2018 (by unilaterally  
2 executing a modified version of PGE's Standard, Schedule 201 PPA), or to the avoided cost prices  
3 in effect on or before April 22, 2019 (by committing to sell the project's output to PGE during  
4 PPA negotiations); (2) that PGE inappropriately delayed the negotiation process; and (3) that PGE  
5 failed to negotiate in good faith by rejecting Madras's proposed PPA terms and by insisting on  
6 unreasonable terms in return.

7 Madras's legal claims are meritless for the following reasons:

- 8 • **First**, Madras has not established a LEO either by executing a modified Standard  
9 PPA or during the negotiation process. A QF larger than 10 MW cannot establish  
10 a LEO by unilaterally signing a Schedule 201 PPA to which that QF is not entitled.  
11 Madras has also failed to establish a LEO during the project's PPA negotiations  
12 because it has yet to provide adequate assurances regarding its interconnection  
13 arrangements, and has repeatedly changed both its nameplate capacity and net  
14 output.
- 15 • **Second**, the parties' protracted negotiation timeline was not caused by  
16 unreasonable delays on the part of PGE, but instead was the result of Ecoplexus's  
17 unwillingness to clarify its intent to accept responsibility for network upgrades  
18 caused by its interconnection, or to finalize its project's basic size and output  
19 parameters.
- 20 • **Third**, contrary to Madras's claims, PGE acted in good faith at all times during the  
21 negotiations and was entitled to insist on commercially reasonable terms to protect  
22 its customers—particularly given Ecoplexus's unwillingness to commit to a clear  
23 interconnection process for Madras.

24 Despite the fact that Ecoplexus does not yet have the right to an executable PPA for its Madras  
25 project, PGE nonetheless asks the Commission to assist the parties in resolving their  
26 disagreements. Through its separate counterclaim, PGE asks that the Commission find that any

1 PPA for the Madras project affirmatively include the following terms, which are incorporated into  
2 the draft proposed PPA attached to this Answer as Exhibit A (PGE's Proposed PPA):

3 (a) Two "whereas" clauses reflecting the specific factual circumstances in which this  
4 PPA is being drafted—namely, Ecoplexus's direction to assume that its project will  
5 obtain NRIS. (PGE's Proposed PPA, page 1)

6 (b) A revised definition of "Fixed Price" clarifying that the project's avoided cost  
7 prices are explicitly contingent on Madras obtaining NRIS under this  
8 Commission's QF LGIP. (PGE's Proposed PPA, Section 1.32)

9 (c) An explicit obligation for Madras to obtain NRIS. (PGE's Proposed PPA,  
10 Section 3.9)

11 (d) Milestones associated with Madras's Interconnection Agreement, including  
12 concrete timelines consistent with a date certain for the project's COD. (PGE's  
13 Proposed PPA, Sections 2.1(f) and (g))

14 (e) A COD that conforms to the project's SIS, including the time to develop necessary  
15 interconnection-related network upgrades. (PGE's Proposed PPA, Section 2.4)

16 (f) A test energy provision providing that such incidental output will be sold to PGE—  
17 the sole purchaser of Madras's operational net output—at the Market Settlement  
18 Index Price. (PGE's Proposed PPA, Section 2.3)

19 In the interest of clarity, PGE has organized this Answer by first responding to each of  
20 Madras's numbered allegations and claims, including disputed PPA terms, before turning to PGE's  
21 own counterclaim, including substantial additional alleged facts, proposed PPA terms, and prayers  
22 for relief. Also attached are three pieces of testimony that provide (1) a detailed discussion of  
23 PGEM's experience attempting to negotiate a PPA for Madras with Ecoplexus,<sup>9</sup> (2) an overview

---

<sup>9</sup> Testimony of John Morton (PGE/100).

1 of the transmission constraints and interconnection issues provided by PGET,<sup>10</sup> and finally (3) a  
2 high-level background on PRB, as relevant to the parties' negotiations and legal disputes.<sup>11</sup>

### III. ANSWER

3 PGE hereby answers Madras's Complaint. PGE denies any allegation not specifically  
4 admitted herein and reserves the right to supplement this Answer if Madras amends its Complaint.  
5 As for the introductory portion of Madras's Complaint, entitled "Introduction," this section simply  
6 restates facts and arguments alleged later in the Complaint, nor are the paragraphs in this section  
7 enumerated. For these reasons, PGE is not required to respond to the assertions contained in this  
8 section. To the extent a response is necessary, PGE denies the allegations in the "Introduction"  
9 section. With respect to the particular numbered paragraphs of the Complaint, PGE answers as  
10 follows:

#### A. Identity of Parties

- 12 1. PGE admits the allegations in paragraph 1.
- 13 2. PGE has insufficient information or knowledge to admit or deny the truth of the  
14 allegations in paragraph 2 of the Complaint, which relate to the identity and corporate structure of  
15 Madras, as well as Madras's status as a QF.

#### B. Applicable Statutes and Regulations

- 17 3. Paragraph 3 contains statements and conclusions of law, which require no response.
- 18 4. Paragraph 4 contains statements and conclusions of law, which require no response.

#### C. Jurisdiction

- 20 5. Paragraph 5 contains statements and conclusions of law, which require no response.
- 21 6. Paragraph 6 contains statements and conclusions of law, which require no response.

#### D. Madras's Factual Allegations

- 23 7. PGE has insufficient information or knowledge to admit or deny the truth of the  
24 allegations in paragraph 7 as to the size of the Madras project. PGE admits that Ecoplexus most

---

<sup>10</sup> Testimony of Shaun Foster and Sean Larson (PGE/200).

<sup>11</sup> Testimony of Megan Hill, Chad Croft, and Ryin Khandoker (PGE/300).

1 recently represented to PGEM that its project has a 63 MW alternating current (AC) net available  
2 capacity and a 65.784 MW direct current (DC) nameplate capacity rating. PGE admits that  
3 Ecoplexus has represented that the Madras project will be located in Jefferson County, Oregon.

4 8. PGE admits the allegations in paragraph 8. However, PGE adds that Ecoplexus  
5 also seeks to establish sales to PGE for the Madras project under a modified version of PGE's  
6 Schedule 201, which Ecoplexus submitted to PGEM on May 4, 2018, and which applies to QFs  
7 with an aggregate nameplate capacity equal to or less than 10 MW.

8 9. PGE admits the allegations in paragraph 9.

9 10. PGE admits the allegations in paragraph 10.

10 11. PGE admits the allegation in paragraph 11 that, on November 10, 2017, PGEM  
11 requested additional or clarifying information regarding the facility's intended point of delivery  
12 (POD), as well as other project attributes. PGE further admits that, on November 14, 2017,  
13 Ecoplexus responded to clarify that the Madras project would be an on-system QF—requiring a  
14 point of interconnection (POI), not a POD—by seeking to interconnect directly to PGE's  
15 generation lead line connecting PRB to the Round Butte substation.

16 12. PGE denies the allegation in paragraph 12 that, on December 19, 2017, PGEM  
17 stated without qualification that it could not accept deliveries at the Round Butte POD. Rather,  
18 PGEM explained that Madras could either request a study that would evaluate the costs associated  
19 with interconnecting at the chosen location, or could choose to deliver at a different location.  
20 However, given that Ecoplexus had requested only ERIS, and given that no capacity existed at the  
21 proposed delivery point, PGEM was unable to evaluate the project or provide indicative prices.

22 13. PGE admits the allegations in paragraph 13.

23 14. PGE admits the allegations in paragraph 14.

24 15. PGE admits the allegations in paragraph 15.

25 16. PGE admits the allegations in paragraph 16, but clarifies that PGEM provided  
26 indicative pricing under the explicit assumption that Ecoplexus would obtain and pay for NRIS.

27 17. PGE admits the allegations in paragraph 17.

1           18.     PGE admits the allegations in paragraph 18.

2           19.     PGE admits the allegations in paragraph 19, insofar as these allegations reflect the  
3 assertions made by Ecoplexus.

4           20.     PGE admits the allegation in paragraph 20 that, also on May 4, 2018, Ecoplexus  
5 informed PGE that it had established a LEO for the 80 MW Madras project pursuant to a modified  
6 version of PGE's Schedule 201 PPA. PGE admits that, notwithstanding Ecoplexus's claim to have  
7 established a LEO pursuant to this modified Standard PPA, Ecoplexus asked PGEM to provide a  
8 draft negotiated PPA. PGE denies that Ecoplexus committed itself to selling the energy and  
9 capacity of the Madras facility in accordance with the Schedule 201 PPA.

10          21.     PGE admits the allegations in paragraph 19, insofar as these allegations reflect the  
11 assertions made by Ecoplexus.

12          22.     PGE admits the allegations in paragraph 22.

13          23.     PGE admits the allegations in paragraph 23.

14          24.     PGE admits the allegations in paragraph 24.

15          25.     PGE admits the allegations in paragraph 25.

16          26.     PGE admits the allegations in paragraph 26.

17          27.     PGE admits the allegations in paragraph 27.

18          28.     PGE admits the allegations in paragraph 28.

19          29.     PGE admits the allegations in paragraph 19 except, insofar as these allegations  
20 describe assertions made by Ecoplexus, PGE admits only that these allegations reflect Ecoplexus's  
21 assertions.

22          30.     PGE admits the allegations in paragraph 30.

23          31.     PGE denies the allegation in paragraph 31 that, on November 14, 2018, PGEM  
24 responded without qualification that it would not be able to provide an executable PPA. PGE  
25 clarifies that, on November 14, 2018, PGEM responded that it would not be able to provide an  
26 executable PPA by November 16, 2018, because significant terms were still being negotiated and  
27 because key project attributes were continuing to change.

1           32.     PGE admits the allegation in paragraph 32 that, on November 26, 2018, Ecoplexus  
2 responded to PGEM and requested that PGE provide an executable draft PPA. PGE denies that  
3 Ecoplexus asked PGE to propose a date and time for in-person negotiations. PGE admits the  
4 remainder of the allegations in paragraph 32, insofar as these allegations reflect Ecoplexus's  
5 assertions.

6           33.     PGE admits the allegations in paragraph 33.

7           34.     PGE admits the allegations in paragraph 34.

8           35.     PGE admits the allegations in paragraph 35.

9           36.     PGE admits the allegations in paragraph 36.

10          37.     PGE admits the allegations in paragraph 37.

11          38.     PGE admits the allegations in paragraph 38.

12          39.     PGE admits the allegations in paragraph 39.

13          40.     PGE admits the allegations in paragraph 40.

14          41.     PGE admits the allegations in paragraph 41.

15          42.     PGE admits the allegations in paragraph 42.

16          43.     PGE admits the allegations in paragraph 43.

17          44.     PGE admits the allegations in paragraph 44, to the extent that the allegations  
18 describe the representations made by Ecoplexus.

19          45.     PGE admits the allegations in paragraph 45, subject to the clarification that PGEM  
20 informed Ecoplexus that the parties—not merely PGEM—had not reached agreement as to the  
21 draft PPA's terms and conditions, and therefore providing an executable PPA would be  
22 inappropriate.

23          46.     PGE admits the allegations in paragraph 46.

24          47.     PGE has insufficient information or knowledge to admit or deny the truth of the  
25 allegations in paragraph 47, which relate to Ecoplexus's assessment and opinions of the PPA  
26 provided by PGEM, and therefore PGE denies the same.

1           48.     PGE admits the allegations in paragraph 48, to the extent that the allegations  
2 describe the representations made by Ecoplexus.

3           49.     PGE has insufficient information or knowledge to admit or deny the truth of the  
4 allegations in paragraph 49, which describe Ecoplexus's understanding and belief, and therefore  
5 denies the same.

6           50.     PGE denies the allegation in paragraph 50 that it failed to timely respond to requests  
7 for information and documents. PGE denies Ecoplexus's characterization of the time periods  
8 associated with providing both indicative prices and a draft PPA, as the characterization  
9 presupposes that Ecoplexus had provided sufficient information to be entitled to receive such  
10 information and documents.

11          51.     PGE denies Ecoplexus's characterization in paragraph 51 that it "finally" provided  
12 indicative pricing and a draft PPA to the extent that this characterization suggests that PGE's  
13 provision of indicative pricing and a draft PPA was less than timely. PGE denies that it "delayed"  
14 responding to Ecoplexus's questions or that it failed to timely return documents, including PPA  
15 redlines.

16          52.     PGE denies the allegations in paragraph 52 that it imposed unreasonable restrictions  
17 on the contracting process. PGE denies that the constraints at the Round Butte POD are "alleged."  
18 PGE denies that it inappropriately delayed providing Ecoplexus with a draft PPA when Ecoplexus  
19 refused, and still refuses, to commit to seeking and paying for the necessary interconnection  
20 service.

21          53.     With respect to the allegations in paragraph 53, PGE admits that, with the stated  
22 assumption that Ecoplexus would agree to seek NRIS, PGEM agreed that Ecoplexus could attempt  
23 to provide for deliveries at the Round Butte POD. PGE denies that it agreed that interconnection  
24 studies need not be completed prior to PPA execution to the extent this allegation suggests either  
25 that PGEM had previously required *all* interconnection studies to be completed prior to PPA  
26 execution or that *no* interconnection arrangements needed to be completed prior to PPA execution.  
27 Rather, PGE informed Ecoplexus that it would need to request a study for NRIS.

1           54.     PGE denies the allegation in paragraph 54 that it has delayed the negotiation  
2 process. PGE has insufficient information or knowledge to admit or deny the truth of the allegation  
3 that Ecoplexus has been unable to develop its project due to any delays in the negotiations, and  
4 therefore denies the same.

5           55.     PGE denies the allegation in paragraph 55 that Ecoplexus is ready, willing, and able  
6 to abide by the PPA that it executed on May 4, 2018, given that it has already materially and  
7 repeatedly revised its project's size and planned output in a manner that fails to conform to that  
8 PPA.

9           56.     PGE has insufficient information or knowledge to admit or deny the truth of the  
10 allegation in paragraph 56 that Ecoplexus is ready, willing, and able to abide by the PPA that  
11 Ecoplexus attached to its Complaint, and therefore denies the same.

12          57.     PGE admits the allegations in paragraph 57.

13                           **E. Madras's Proposed PPA Terms**

14          58.     PGE admits that Madras's developer, Ecoplexus, provided written comments on  
15 PGEM's draft PPA on October 8, 2018, and that this is more than 60 days before Madras filed this  
16 Complaint. The remaining allegations in paragraph 58 are legal conclusions which require no  
17 response.

18          59.     PGE admits the allegation in paragraph 59 that Ecoplexus conducted negotiations  
19 with PGEM. PGE denies that Ecoplexus conducted other methods of informal dispute resolution  
20 over the matters addressed in this complaint. PGE admits that Ecoplexus and PGEM exchanged  
21 information and held discussions. To the extent that paragraph 59 realleges factual assertions in  
22 the preceding paragraphs, PGE refers to and incorporates its admissions and denials in the  
23 preceding paragraphs.

24          60.     PGE admits the allegation in paragraph 60 that Madras has provided a proposed  
25 PPA, including those terms on which the parties have reached agreement. PGE denies that  
26 Madras's proposed agreement encompasses all matters that are in dispute. PGE responds to the

1 matters that Madras claims are disputed, below, and then describes those matters that PGE believes  
2 are disputed.

3 61. PGE has insufficient information or knowledge to admit or deny the truth of the  
4 allegation that Madras's testimony supports Madras's complaint.

5 62. PGE admits that the parties dispute:

- 6 a. the applicable avoided cost prices;
- 7 b. provisions ensuring that PGE will not be required to back down PRB due to  
8 Madras refusing to obtain NRIS (Madras's Proposed PPA, Section 6.10);
- 9 c. the project's COD milestone related to executing an Interconnection Agreement  
10 (Madras's Proposed PPA, Section 2.1(g)); and
- 11 d. the sale of test energy to a third party (Madras's Proposed PPA, Section 2.3).

12 PGE denies that the parties dispute:

- 13 e. the project's nameplate capacity (Madras's Proposed PPA, Exhibit E and page  
14 1);
- 15 f. metering (Madras's Proposed PPA, Section 3.6)

16 63. The allegations in paragraph 63 set forth Madras's position as to the appropriate  
17 terms for each of the above PPA provisions. As required by OAR 860-029-0100(7), PGE responds  
18 to each of Madras's positions on the provisions in the order presented by Madras.

19 a. Avoided Cost Price.

20 Madras is not entitled to sell power to PGE at the avoided cost prices applicable in  
21 the modified Schedule 201 PPA that Ecoplexus unilaterally revised and executed  
22 on May 4, 2018. A Schedule 201 PPA applies only to a project with a nameplate  
23 capacity equal to or less than 10 MW—substantially less than any of the nameplate  
24 capacities offered for the Madras project. Madras is also not entitled to sell power  
25 to PGE at the avoided cost prices in effect prior to April 23, 2019, because the  
26 facility's draft PPA was still under negotiation and key aspects of the facility—  
27 including nameplate capacity, net output, and interconnection status—have

1 continued to change in the weeks prior to Madras filing its Complaint. Pursuant to  
2 PGE's Schedule 202, PGEM is responsible for providing an executable PPA with  
3 final fixed avoided cost prices only after both parties have come to full agreement  
4 as to the appropriate terms and conditions.

5 b. Nameplate Capacity.

6 PGE has no objection to the most recent change in the Madras facility's nameplate  
7 capacity, but merely notes that such changes require PGEM to conduct additional  
8 analysis to determine whether the new generation profile requires an adjustment to  
9 the project's avoided cost prices. For instance, Madras's most recent nameplate  
10 capacity change from 75 MW-AC to 65.784 MW-AC, while leaving the net output  
11 unchanged, means that the project will meet its net output less often, resulting in a  
12 different—and potentially less favorable—generation profile.

13 c. Metering.

14 While PGE had initially flagged this provision for review as part of its due  
15 diligence, PGE has no objection to the metering language in Section 3.6.

16 d. Price Adjustment for Backing Down Pelton-Round Butte.

17 Madras opposes Section 6.10, initially offered by PGE, that would have allowed  
18 PGE to adjust avoided cost prices if it were required to back down or redispatch its  
19 other generation facilities—and, specifically, PRB—in order to accommodate the  
20 delivery of Madras's output. PGE initially proposed this provision in an abundance  
21 of caution, given the fact that Ecoplexus refused to commit to obtaining NRIS, and  
22 repeatedly indicated its belief that PGE was obligated to back down PRB if  
23 necessary to accommodate Madras's output. However, PGE has since determined  
24 that the proposed language need not be included because (a) the PPA should require  
25 NRIS, which would make the provision unnecessary; (b) PGE has no legal  
26 obligation to back down its own generation to accommodate a QF's  
27 interconnection, which fact renders the proposed language superfluous; and

1 (c) PGE has since concluded that it would be entirely infeasible to attempt to adjust  
2 avoided cost prices to reflect the costs associated with backing down the PRB dams,  
3 as such a scenario involves likely violations of both legal and contractual  
4 obligations and associated penalties and damages.<sup>12</sup> Thus, PGE no longer seeks to  
5 include this language, and has instead proposed alternative provisions to clarify  
6 Madras's responsibility for obtaining and paying for NRIS.

7 e. Commercial Operation Date & Interconnection Agreement.

8 Madras claims that it needs to be allowed an indefinite extension from the  
9 requirement to sign an Interconnection Agreement in order to allow time for  
10 Ecoplexus to dispute before FERC the cost and need for network upgrades and  
11 interconnection facilities. There are four problems with this proposal. **First**, the  
12 PPA's COD must be a date certain to allow PGEM to accurately calculate the  
13 project's applicable avoided cost prices. The COD's fixed date would be  
14 undermined by allowing for an indefinite extension for one of the COD's  
15 milestones—signing the Interconnection Agreement. **Second**, PGE disagrees that  
16 the need for network upgrades associated with Madras's interconnection is a  
17 question to be resolved by FERC, as the project seeks to sell the entirety of its  
18 operational net output to PGE, and is therefore subject to the Commission's state-  
19 jurisdictional interconnection process. Thus, there is no need to allow an extension  
20 while Madras pursues FERC review. **Third**, PGE disagrees that Madras is entitled  
21 to execute a PPA without committing to seek and pay for a specific type of  
22 interconnection service, where such interconnection service would significantly  
23 impact the prices and terms of the PPA. **And fourth**, the PPA was specifically  
24 drafted, at Ecoplexus's direction, with the assumption that Madras will seek and

---

<sup>12</sup> For an overview of the limitations on PRB's operations, see the accompanying testimony of Megan Hill, Chad Croft, and Ryn Khandoker (PGE/300).

1 pay for NRIS. As a result, it would be inconsistent to include an unlimited  
2 extension while Ecoplexus attempts to avoid this central assumption of the PPA.

3 f. Test Energy.

4 Madras's proposed test energy provision is commercially unreasonable and is  
5 included solely as an attempt to evade the Commission's carefully crafted  
6 interconnection policies, which are designed to protect customers from  
7 unreasonable costs imposed by a QF's unilateral decision to site in transmission-  
8 constrained areas. Attempts at jurisdictional gaming do not constitute a  
9 commercially reasonable basis for including a term in a negotiated PURPA PPA,  
10 particularly given that such efforts would harm PGE's customers. While Madras  
11 is correct that it is entitled to insist upon *reasonable* PPA terms and conditions, a  
12 term that seeks to exploit jurisdictional fissures at customers' expense is manifestly  
13 unreasonable and should be denied.

14 64. The allegations in paragraph 64 attempt to characterize PGE's position with respect  
15 to the disputed PPA provisions. PGE denies Madras's allegations to the extent that they differ  
16 from the discussion of PGE's position stated above, in paragraph 63.

17 **F. Madras's Legal Claims**

18 1. Madras's First Claim for Relief

19 65. In response to paragraph 65, PGE refers to and incorporates herein all preceding  
20 paragraphs.

21 66. The allegations in paragraph 66 are legal conclusions and require no response.

22 67. PGE denies the allegations in paragraph 67.

23 68. The allegations in paragraph 68 are legal conclusions and require no response.

24 69. The allegations in paragraph 69 are legal conclusions and require no response.

25 70. PGE denies the allegations in paragraph 70.

26 71. The allegations in paragraph 71 are legal conclusions and require no response.

72. PGE denies the allegations in paragraph 72.

73. PGE denies the allegations in paragraph 73.

74. The allegations in paragraph 74 are legal conclusions and require no response.

2. Madras's Second Claim for Relief

75. In response to paragraph 75, PGE refers to and incorporates herein all preceding paragraphs.

76. The allegations in paragraph 76 are legal conclusions and require no response.

77. The allegations in paragraph 77 are legal conclusions and require no response.

78. The allegations in paragraph 78 are legal conclusions and require no response.

79. The allegations in paragraph 79 are legal conclusions and require no response.

80. The allegations in paragraph 80 are legal conclusions and require no response.

81. PGE denies the allegations in paragraph 81.

3. Madras's Third Claim for Relief

82. In response to paragraph 82, PGE refers to and incorporates herein all preceding paragraphs.

83. The allegations in paragraph 83 are legal conclusions and require no response.

84. PGE denies the allegations in paragraph 84.

85. PGE denies the allegations in paragraph 85.

4. Madras's Fourth Claim for Relief

86. In response to paragraph 86, PGE refers to and incorporates herein all preceding paragraphs.

87. The allegations in paragraph 87 are legal conclusions and require no response.

88. The allegations in paragraph 88 are legal conclusions and require no response.

89. The allegations in paragraph 89 are legal conclusions and require no response.

90. The allegations in paragraph 90 are legal conclusions and require no response.

91. The allegations in paragraph 91 are legal conclusions and require no response.

92. PGE denies the allegations in paragraph 92.

1                   5. Madras's Fifth Claim for Relief

2           93.     In response to paragraph 93, PGE refers to and incorporates herein all preceding  
3 paragraphs.

4           94.     PGE denies the allegations in paragraph 94.

5                   6. Madras's Sixth Claim for Relief

6           95.     In response to paragraph 95, PGE refers to and incorporates herein all preceding  
7 paragraphs.

8           96.     The allegations in paragraph 96 are legal conclusions and require no response.

9           97.     The allegations in paragraph 97 are legal conclusions and require no response.

10          98.     PGE denies the allegations in paragraph 98.

11                               **G. Madras's Prayers for Relief**

12           PGE notes that Madras's prayers for relief are numbered 1 through 7, as opposed to  
13 continuing the numeration of the preceding paragraphs. For consistency, PGE's paragraph  
14 numbering conforms to that used by Madras.

15           1. PGE denies the allegations in paragraph 1.

16           2. PGE denies the allegations in paragraph 2.

17           3. PGE denies the allegations in paragraph 3.

18           4. PGE denies the allegations in paragraph 4.

19           5. PGE denies the allegations in paragraph 5.

20           6. PGE denies the allegations in paragraph 6.

21           7. PGE denies the allegations in paragraph 7.

**IV.     PGE'S COUNTERCLAIM**

22           In support of PGE's Counterclaim, PGE alleges as follows:

23                               **A. PGE's Factual Allegations**

24           99.     PGE refers to and incorporates herein all preceding paragraphs.

1           100. The Pelton-Round Butte Hydroelectric Project is jointly owned by both PGE and  
2 the Confederated Tribes of the Warm Springs Reservation of Oregon (the Tribes), a federally  
3 recognized Indian Tribe, and occupies thousands of acres of tribal lands. The Tribes currently own  
4 approximately 33 percent of PRB,<sup>13</sup> with options to purchase additional ownership interests and  
5 eventually become the majority owner of the combined Project.

6           101. The Tribes are entitled to a third of the output from PRB operations, which serves  
7 as full compensation for the use of tribal land. PGE is obliged to attempt to maximize the Project's  
8 operations and must compensate the Tribes for operating PRB at less than peak efficiency.

9           102. PRB's output is conveyed on a generation lead line to the Round Butte substation.  
10 This generation lead line is part of the Project and is also co-owned by the Tribes.

11           103. From the Round Butte substation, a portion of PRB's output is transmitted to PGE's  
12 service territory and load on PGE's system by means of the Bethel-to-Round Butte 230 kV  
13 transmission line. This line is the sole connection between PRB and PGE's service territory over  
14 PGE's system. East-to-west capacity on the Bethel-to-Round Butte transmission segment is fully  
15 allocated to transmitting PRB's output to PGE's load. The remaining portion of PRB's output that  
16 cannot be accommodated by the Bethel-to-Round Butte line flows over Bonneville Power  
17 Administration's (BPA) system.

18           104. PRB's transmission arrangements for PRB predate the OATT and are therefore  
19 "grandfathered" transmission arrangements.

20           105. PGE's OASIS website specifically states that there is no available capacity to reach  
21 PGE's service territory from the Round Butte substation.

22           106. On October 5, 2017, Ecoplexus filed an interconnection request with PGET for  
23 ERIS. Based on this request, PGET understood that Ecoplexus intended to interconnect with  
24 PGE's system on the generation lead line from PRB to the Round Butte substation.

---

<sup>13</sup> PGE currently co-owns the Round Butte and Pelton Dams and their generators, and the Reregulating Dam, as well as associated facilities, along with the Tribes. However, the powerhouse and turbine-generator at the Reregulating Dam is entirely owned by the Tribes, but is operated by PGE.

1           107. On October 7, 2017, PGET informed Ecoplexus that it would be difficult to study  
2 Ecoplexus's interconnection service request because the project sought to interconnect on a  
3 generation lead line, and the line itself was jointly owned by a non-FERC-jurisdictional entity.  
4 Also on October 7, 2017, PGET informed Ecoplexus that there was little to no capacity available  
5 to export power from the area without substantial upgrades to transmission facilities.

6           108. On October 17, 2017, Ecoplexus requested indicative pricing for Madras from  
7 PGEM.

8           109. On October 18, 2017, Ecoplexus represented to PGEM that its project had a net  
9 dependable capacity of 79.66 MW and a nameplate capacity rating of 80 MW.

10           110. On December 19, 2017, PGEM informed Ecoplexus that it was unable to provide  
11 indicative pricing given that, by requesting only ERIS (according to the Interconnection Request  
12 Queue) the project would not be able to achieve delivery to PGE via the Round Butte substation.

13           111. On December 29, 2017, Ecoplexus responded that its request for ERIS was  
14 irrelevant, as PGEM would be responsible for obtaining additional transmission from PGET to  
15 deliver the project's output to load. Ecoplexus's response confused Madras's need to obtain  
16 adequate interconnection service with PGEM's responsibility to obtain transmission service.

17           112. On January 3, 2018, Ecoplexus informed PGET that it wanted to skip obtaining a  
18 Feasibility Study and instead wished to proceed directly to obtaining a System Impact Study (SIS)  
19 for the Madras project.

20           113. On January 4, 2018, PGET stated that it was unwilling to move directly to an SIS,  
21 ***especially given the transmission limitations in the area.*** PGET also asked Ecoplexus to clarify  
22 if the Madras project was a QF because, if so, the interconnection request would need to be  
23 evaluated as NRIS and would not be eligible for ERIS.

24           114. On January 4, 2018, Ecoplexus told PGET that it had not decided whether Madras  
25 would be a QF. Simultaneously, Ecoplexus was actively pursuing PPA negotiations with PGEM  
26 for the project as a QF. While not disclosing to PGET that the project was a QF, Ecoplexus  
27 amended the interconnection study request to include both ER and NR interconnection service. At

1 this time, PGEM was not aware of the revised study request, due to FERC's Standards of Conduct  
2 that limit communications between PGET and PGEM.

3 115. On January 19, 2018, PGEM explained why Ecoplexus's ERIS request would be  
4 insufficient to allow PGEM to proceed to negotiate a Schedule 202 PPA, given that there was no  
5 capacity from the Round Butte substation to PGE's load over PGE's system. PGEM referred  
6 Ecoplexus to PGE's OASIS website, which indicates that there is no capacity available between  
7 the Round Butte substation and the rest of PGE's system. Nonetheless, PGEM indicated that it  
8 was willing to consider an interconnection on the PRB generation lead line, with the Round Butte  
9 substation as a delivery point, but *only if Ecoplexus accepted responsibility for seeking NRIS*  
10 *and paying for associated network upgrades, pursuant to the Commission's QF LGIP*. Given  
11 that Ecoplexus was seeking to interconnect in an area from which its generation could not be  
12 exported without upgrades, while also pursuing an ERIS interconnection that would not  
13 incorporate the necessary upgrades, PGEM reiterated that it was unable to evaluate or develop  
14 indicative pricing for the Madras project at that time.

15 116. On February 8, 2018, Ecoplexus's legal counsel sent PGEM a letter demanding that  
16 PGE immediately provide indicative pricing for its 80 MW-AC facility. Responding to PGEM's  
17 concerns about Ecoplexus siting the Madras project in an area where the existing transmission was  
18 already fully committed, Ecoplexus asserted that PGEM was responsible for any delivery-related  
19 issues and costs, and that the parties did not need to resolve whether NRIS was appropriate before  
20 PGE provided indicative prices.

21 117. On February 23, 2018, PGEM provided Ecoplexus with indicative prices under the  
22 explicit assumption that Ecoplexus was required to seek NRIS in order to determine the  
23 interconnection-related upgrades necessary for the Madras project to serve PGE load. PGEM  
24 emphasized that Ecoplexus had chosen a particularly challenging siting location.

25 118. On March 5, 2018, Ecoplexus told PGEM that it neither accepted nor rejected the  
26 assertion that it must pursue NRIS, but claimed that the appropriate form of interconnection service  
27 did not need to be resolved prior to negotiating a PPA. Thus, having first claimed that the

1 appropriate form of interconnection service did not need to be established before providing  
2 indicative pricing, Ecoplexus now claimed that such clarity was similarly not relevant to  
3 negotiating a full PPA. Ecoplexus also asked PGEM whether the indicative pricing accounted for  
4 PGE needing to redispach other resources in order to accommodate the Madras project's output—  
5 thus seeming to assume that PGE would be responsible for backing down or redispaching existing  
6 output to facilitate the project's interconnection.

7 119. On March 27, 2018, PGEM explained that PGE's Commission-approved  
8 Schedule 202 procedures require a QF to provide evidence that any necessary interconnection  
9 studies have been completed and assurance that the necessary interconnection arrangements have  
10 been executed or are under negotiation. Given that Ecoplexus intended to sell the entirety of  
11 Madras's net output to PGE, this meant that Ecoplexus needed to commit to obtaining NRIS. Thus,  
12 PGEM explained that it would provide a draft PPA within 30 days of Ecoplexus confirming that  
13 it had requested a study for NRIS.

14 120. On May 4, 2018, Ecoplexus informed PGEM that it had requested an  
15 interconnection study for both NRIS and ERIS. Ecoplexus also asserted that the Madras project  
16 was not subject to state-jurisdictional interconnection procedures because Ecoplexus intended to  
17 sell some portion of the energy and/or capacity of the project to a third party. Ecoplexus did not  
18 say how much of the project's output it intended to sell to a third party.

19 121. On May 4, 2018, Ecoplexus sent PGEM a unilaterally modified and partially  
20 executed Schedule 201 PPA, which provided that the Madras project had a net dependable capacity  
21 of 79.98 MW and a nameplate capacity rating of 80 MW-AC. This modified PPA revised the  
22 Standard PPA's requirement that a QF must be responsible for network upgrades necessary to  
23 support interconnection and added a provision authorizing Ecoplexus to sell test energy to third  
24 parties.

25 122. On June 16, 2018, PGET provided initial Feasibility Study results.

26 123. On July 23, 2018, PGE's legal counsel responded to Ecoplexus to explain why the  
27 Madras project had not established a LEO, to request clarification as to what portion of the

1 project's output would be sold to a third party, and to restate that NRIS was required. PGE noted  
2 that the project still appeared to be selling the entirety of its net output to PGE, and thus remained  
3 a state-jurisdictional QF for interconnection purposes. PGE's counsel explained that, by studying  
4 both NRIS *and* ERIS, PGEM could not provide a meaningful draft contract *because the avoided*  
5 *cost pricing for the project would differ greatly depending on whether the interconnection-*  
6 *related upgrades necessary to ensure deliverability of the facility's output were to be captured*  
7 *in the interconnection process or in avoided cost prices.* Nonetheless, PGEM agreed to circulate  
8 a draft PPA with placeholders for pricing and other terms, until such time as Ecoplexus clarified  
9 whether it intended to seek NRIS and what portion of the project's output it intended to sell to  
10 third parties.

11 124. On September 7, 2018, Ecoplexus told PGET that it believed there were no  
12 constraints on the Bethel-to-Round Butte 230 kV line, such that there should be no need for  
13 upgrades in the SIS.

14 125. On September 28, 2018, PGEM provided Ecoplexus with updated indicative  
15 pricing, *but reiterated that prices and terms could not be determined with any certainty given*  
16 *that Ecoplexus had not clarified that it intended to seek NRIS.* PGEM emphasized that the  
17 project's avoided cost prices would differ greatly depending on whether the interconnection-  
18 related upgrades necessary to ensure deliverability of the facility's output were captured in the  
19 interconnection process or in avoided costs. PGEM again asked Ecoplexus to clarify its intentions  
20 with respect to its dual NRIS/ERIS interconnection requests, and to confirm other project  
21 attributes, such as nameplate capacity and project output.

22 126. On October 2, 2018, PGET provided a revised Feasibility Study.

23 127. On October 8, 2018, Ecoplexus informed PGEM that its project's design capacity  
24 would be approximately 65 MW-AC, but that it would *attempt* to finalize the project's design  
25 capacity prior to executing the PPA. Thus, Ecoplexus was not only continuing to redesign  
26 Madras's basic size and output parameters, but did not believe it was necessary to complete this  
27 design process until after signing a PPA. In the same correspondence, Ecoplexus stated that it

1 intended to continue pursuing both NRIS and ERIS, and asked whether integrating battery storage  
2 into the project could increase the project's value.

3 128. On October 8, 2018, Ecoplexus provided a revised draft PPA, representing that its  
4 project had a net available capacity of 65 MW-AC (with a monthly delivery profile reflecting net  
5 available capacities of both 57 MW-AC and 66.6 MW-AC), and a nameplate capacity rating of  
6 80 MW-DC. The revised PPA also added a new provision allowing Ecoplexus to unilaterally  
7 terminate the PPA if it were unable to secure a financeable interconnection agreement, among  
8 other changes.

9 129. In two meetings in September 2018, and in writing on October 12, 2018, PGET  
10 provided Ecoplexus with additional background on the nature of the transmission limitations  
11 between the Round Butte substation and PGE's service territory. PGET also provided additional  
12 background on the limits of PRB's FERC license, water quality requirements, and Endangered  
13 Species Act-related prohibitions on spilling water over the dams outside of emergency situations.

14 130. On October 12, 2018, Ecoplexus asked PGET to revise the SIS to reflect a 65 MW-  
15 AC project with additional battery storage.

16 131. On November 2, 2018, PGEM responded to Ecoplexus's updated contract terms  
17 and reiterated that the Madras project's avoided cost prices would vary greatly depending on  
18 whether the upgrades necessary to ensure deliverability were captured in the interconnection  
19 process. In the same correspondence, PGEM suggested that Ecoplexus could consider delivering  
20 Madras's output to PGE's interface with BPA. PGEM also proposed that Ecoplexus could waive  
21 the restriction on PGET sharing information with PGEM in order to allow PGEM to better  
22 understand Madras's specific interconnection options. PGEM also asked Ecoplexus to explain  
23 inconsistencies between the project's stated nameplate capacity in the draft PPA and the  
24 accompanying delivery profiles, which suggested nameplate capacities of 66.6 MW-AC or  
25 57 MW-AC. Specifically, PGEM asked whether the project's nameplate capacity was 65 MW-  
26 AC, 80 MW-AC with 15 MW-AC sold to a third party, 66.6 MW-AC, 57 MW-AC, or some other  
27 size.

1           132. On November 7, 2018, Ecoplexus responded to PGEM, representing that it was  
2 surprised and confused that PGEM had not provided a final and executable PPA because it claimed  
3 that interconnection issues would be resolved in the interconnection process. Ecoplexus did not  
4 acknowledge that Madras's avoided cost prices depend on it obtaining NRIS. Instead, ***Ecoplexus***  
5 ***directed PGEM to assume, for purposes of the PPA, that Madras had committed to obtaining***  
6 ***NRIS and to funding network upgrades***. Ecoplexus also revised the project's nameplate capacity  
7 again to 63 MW-AC and declined to provide a waiver to authorize PGEM to communicate with  
8 PGET regarding Madras's interconnection study results. Ecoplexus also withdrew its proposal to  
9 include batteries in the project.<sup>14</sup>

10           133. On November 14, 2018, PGEM informed Ecoplexus that it could not provide an  
11 executable PPA by November 16, 2018, because significant terms were still being negotiated and  
12 key project attributes were continuing to change.

13           134. On November 14, 2018, Ecoplexus emailed PGEM to state that Ecoplexus's  
14 October 8, 2018, edits to the PPA had largely consisted of clerical edits and revisions for clarity,  
15 and thus Ecoplexus asserted that it viewed PGE's hesitance to provide an executable PPA as an  
16 attempt to delay the negotiation process.

17           135. On November 14, 2018, PGE's legal counsel contacted Ecoplexus's legal counsel  
18 to attempt to resolve the question of whether the Madras facility's interconnection was state- or  
19 FERC-jurisdictional, and thus allow the PPA negotiations to move forward. PGE highlighted that  
20 ***Ecoplexus had provided no evidence of any intent to sell a portion of its net output to third***  
21 ***parties***, meaning that the project was subject to a state-jurisdictional interconnection and was  
22 obligated to seek NRIS and to pay for identified network upgrade costs, absent a demonstration of  
23 quantifiable system-wide benefits.

---

<sup>14</sup> Note, while Ecoplexus continues to represent to PGEM that Madras does not include storage (*see, e.g.,* Madras's Proposed PPA, Exhibit E), it appears that Ecoplexus continues to seek an interconnection study from PGET that includes battery storage (*see* PGE/200, Foster-Larson/9).

1           136. On November 15, 2018, PGEM responded to Ecoplexus's November 7, 2018, letter  
2 and November 14, 2018, email and noted that, under PGE's Schedule 202, the new capacity,  
3 output, and interconnection information would normally require Ecoplexus to have returned to  
4 Step 1 of the negotiation process. However, in the spirit of cooperation, PGEM was willing to  
5 move directly back to Step 5, providing PGE 30 days to give Ecoplexus a draft PPA from the date  
6 the new project information was provided.

7           137. On November 26, 2018, Ecoplexus represented to PGEM that the negotiation  
8 process should have completed long before, that the Madras project's nameplate capacity was the  
9 same as or substantially similar to that provided by Ecoplexus over the past year, and that whether  
10 Ecoplexus pursued ERIS or NRIS was irrelevant to the PPA because the interconnection would be  
11 dealt with through the interconnection process.

12           138. On November 26, 2018, Ecoplexus provided a waiver allowing PGEM to  
13 communicate with PGET regarding the Madras facility's interconnection. In the same  
14 correspondence, Ecoplexus directed PGE to move forward with PPA negotiations ***under the***  
15 ***assumption that the Madras facility's interconnection would be state-jurisdictional***, but reserved  
16 the right to take the position that the interconnection would be FERC-jurisdictional.

17           139. On December 7, 2018, PGEM provided Ecoplexus with updated indicative prices  
18 based on changes Ecoplexus had made to the Madras project, and indicated that the revised PPA  
19 would be ready the following week.

20           140. On December 12, 2018, PGEM provided Ecoplexus with a revised PPA that  
21 included a provision requiring Ecoplexus to pay in full all amounts due under the Interconnection  
22 Agreement, including network upgrades necessary to obtain NRIS.

23           141. On January 22, 2019, Ecoplexus sent PGEM a revised PPA that included a  
24 provision allowing the remainder of the PPA to remain in effect if this Commission or FERC were  
25 to conclude that Madras was not responsible for network upgrades.

26           142. On February 4, 2019, PGET provided Ecoplexus with the initial SIS report.

1           143. On February 12, 2019, Ecoplexus sent PGEM additional proposed changes to the  
2 PPA, including a provision allowing the project to freely reduce its capacity. Ecoplexus  
3 represented that it sought more flexibility to accommodate further design changes, as it had *only*  
4 *a reasonable best guess as to what the project would look like*.

5           144. On February 13, 2019, PGEM provided Ecoplexus with a revised PPA, including  
6 a time limit on tolling Ecoplexus's obligation to execute an Interconnection Agreement.

7           145. On February 22, 2019, Ecoplexus provided PGEM with a revised PPA, which  
8 included a provision allowing Ecoplexus, in its sole discretion, to refuse to sign a Facilities Study  
9 Agreement, and capping the total costs that it could be required to pay for upgrades at \$11 million.  
10 Ecoplexus represented that its project had a net available capacity of 63 MW-AC and a nameplate  
11 capacity rating of 75 MW-DC.

12           146. On March 9, 2019, Ecoplexus represented to PGET that its interconnection was  
13 FERC-jurisdictional because Madras's output would be commingled with other energy in the  
14 stream of commerce, and *that Ecoplexus was entitled to seek refunds for the cost of any network*  
15 *upgrades required to establish its interconnection*.

16           147. On March 11, 2019, PGE's legal counsel contacted Ecoplexus's legal counsel to  
17 attempt to clarify that the project's interconnection was state-jurisdictional, given that Ecoplexus  
18 sought to sell the entirety of its net output to PGE.

19           148. On March 12, 2019, Ecoplexus told PGET that it had never represented that it either  
20 believed or agreed that the project's interconnection was state-jurisdictional, and that FERC would  
21 resolve any jurisdictional questions.

22           149. On March 25, 2019, PGEM provided Ecoplexus with a revised PPA, which  
23 required that the project achieve interconnected operations using NRIS.

24           150. On March 29, 2019, Ecoplexus provided PGEM with a revised PPA, which *reduced*  
25 *Madras's nameplate capacity rating from 75 MW-DC to 65.784 MW-DC* and reinserted the  
26 allowance for Ecoplexus to sell test energy to a third party, among other changes.

1           151. On April 9, 2019, PGEM provided Ecoplexus with a revised PPA and inquired as  
2 to why Ecoplexus had again changed the Madras facility's nameplate capacity rating.

3           152. On April 14, 2019, PGEM provided Ecoplexus with an updated PPA, which  
4 included an explanation that a price adjustment if PGE were obligated to back down existing  
5 generation should not be an issue because Ecoplexus was required to obtain NRIS.

6           153. On April 19, 2019, Ecoplexus demanded that PGEM execute the attached PPA,  
7 including Ecoplexus's changes, by the following business day. Ecoplexus explained that it  
8 rejected limiting the sale of test energy to PGE because Ecoplexus intended to sell this test energy  
9 as a FERC-jurisdictional wholesale sale. Ecoplexus stated that PGEM's deliverability-related  
10 revision to the PPA addressed an entirely new concept never previously discussed, and that any  
11 deliverability issues would be addressed in the interconnection process.

12           154. At Ecoplexus's request, PGET continues to process Ecoplexus's interconnection  
13 request for both NRIS and ERIS as a FERC-jurisdictional non-QF; PGET has offered to transition  
14 Ecoplexus's interconnection request to the QF LGIP. Ecoplexus's FERC-jurisdictional  
15 interconnection request is inconsistent with its direction to PGEM to draft a PPA that assumes that  
16 the Madras interconnection is state-jurisdictional.

17           155. Ecoplexus's refusal to provide key project information—such as the amount of the  
18 project's net output that Ecoplexus intends to sell to third parties and the project's intended  
19 interconnection service—as well as Ecoplexus's inconsistency regarding the project's basic size  
20 and output information, delayed the negotiation process for many months.

21           156. Ecoplexus's inconsistency regarding its intended interconnection service, as well  
22 as other assertions regarding PGE's responsibility to ensure the deliverability of Madras's output,  
23 suggest that Ecoplexus anticipates PGE being required to back down the output of PRB to  
24 accommodate Madras's interconnection.

25           157. While PGE is not obligated to back down existing generation to accommodate a  
26 QF's interconnection, displacing PRB generation would be particularly harmful to PGE and its  
27 customers because it would increase the likelihood of forced spill events and associated mortality

1 of fish species protected by the Endangered Species Act. Backing down PRB could also violate  
2 PGE's obligations under the Ownership and Operation Agreement with the Tribes.

3 158. Madras is unable to perform according to the Schedule 201 PPA unilaterally  
4 modified and executed on May 4, 2018, because Ecoplexus has since represented that the Madras  
5 project does not have a nameplate capacity of 80 MW.

6 159. Madras is not entitled to perform pursuant to a Schedule 201 PPA because all of  
7 the sizes claimed for the Madras project are more than 10 MW.

8 160. Given that Ecoplexus's initial ERIS study request would have entitled the Madras  
9 project to only existing firm or non-firm capacity, and given that the sole PGE transmission line  
10 from Madras's chosen interconnection to PGE's load across PGE's system lacks available  
11 transmission capacity, PGEM appropriately declined to provide indicative prices until Ecoplexus  
12 had informed PGEM that Ecoplexus requested that PGET study NRIS.

13 161. PGEM explicitly and repeatedly stated that it could not finalize either the Madras  
14 project's avoided cost prices or the PPA without assurance that Ecoplexus would obtain the  
15 necessary interconnection arrangements.

16 162. Ecoplexus has declined to commit to seeking and paying for a particular  
17 interconnection service, which would allow PGEM to finalize the Madras project's avoided cost  
18 prices and PPA terms.

19 163. Ecoplexus specifically directed PGEM to assume, for purposes of preparing a draft  
20 PPA, that Ecoplexus would seek a state-jurisdictional interconnection, which requires a QF to  
21 obtain and pay for NRIS. However, in subsequent communications, Ecoplexus disclaimed that its  
22 project's interconnection is state-jurisdictional, continued to seek ERIS, and indicated that it  
23 intended to seek refunds for any upgrades required to accommodate its project siting decision.

24 164. Madras has not demonstrated that the necessary interconnection studies have been  
25 completed and has not provided adequate assurance that the necessary interconnection  
26 arrangements have either been executed or are under negotiation. As a result, Madras is not  
27

entitled to a draft—let alone an executable—PPA because it has failed to meet the requirements of Schedule 202.

165. In light of Ecoplexus’s refusal to provide assurance that it will obtain and pay for the necessary interconnection arrangements, and further given Ecoplexus’s stated intent to avoid this obligation by attempting to transfer these costs to PGE’s customers, PGE properly declined to provide Madras with an executable PPA.

**B. PGE’s Claim for Relief—Proposed PPA**

166. PGE requests that this Commission order that any executable PPA provided to Ecoplexus reflect the terms and conditions set forth in the draft PPA attached to this Answer as confidential Attachment A.<sup>15</sup> Specific provisions differing from or not contained in Madras’s Proposed PPA are detailed below.

a. Whereas Clauses (PGE’s Proposed PPA, page 1).

167. In the interests of clarity, PGE asks the Commission to approve the inclusion of two additional whereas clauses that reflect the specific factual circumstances of this PPA, as well as the applicable Commission rules:

WHEREAS, the Seller has directed Buyer to assume for purposes of this Agreement that Seller will seek Network Resource Interconnection Service through a state-jurisdictional interconnection; and

WHEREAS, the Public Utility Commission of Oregon has promulgated Large Generator Interconnection Procedures, as adopted in Order No. 10-132, that direct Qualifying Facilities to obtain Network Resource

---

<sup>15</sup> A redlined version of the same PPA, showing changes as compared to Madras’s Proposed PPA, is attached to this Answer as confidential Attachment B. In addition to the substantive provisions discussed below, this redlined PPA also shows minor corrections for errors contained in Madras’s Proposed PPA. Minor errors corrected in PGE’s Proposed PPA include ensuring that exhibit references point to the correct exhibits (e.g., Sections 1.50 and 1.94) and that defined terms are referred to by their proper names (e.g., Sections 2.2 and 3.2(f)), among other minor edits for clarity.

1 Interconnection Service and to pay for all network upgrades required to  
2 receive such service; and

3 These provisions are appropriate because Ecoplexus specifically directed PGE to assume, for  
4 purposes of drafting the Madras project's PPA, that Madras would seek NRIS under this  
5 Commission's QF LGIP. However, Ecoplexus has also indicated that it does not agree with, and  
6 intends to challenge, this very assumption. Given the uncertainty created by Ecoplexus's  
7 inconsistent positions, and further given that the project's avoided cost prices would be  
8 dramatically different if Madras were not required to obtain and pay for NRIS, PGE proposes  
9 incorporating this critical context into the PPA itself.

10 b. "Fixed Price" (PGE's Proposed PPA, Section 1.32):

11 168. PGE proposes revising the definition of "Fixed Price" as follows (with proposed  
12 new language italicized):

13 "Fixed Price" means the respective monthly On-Peak and Off-Peak prices  
14 per MWh to be paid by Buyer to Seller for Specified Energy scheduled and  
15 delivered during each month of the Delivery Period as set forth in the price  
16 schedule attached to this Agreement as Exhibit C. *The prices contained in*  
17 *Exhibit C are expressly contingent on Seller paying for all interconnection*  
18 *costs, as required by Section 3.9, as necessary for the provision of Network*  
19 *Resource Interconnection Service, including any required network*  
20 *upgrades, as determined in the Facilities Study conducted by PGE pursuant*  
21 *to Large Generator Interconnection Procedures adopted by the Public*  
22 *Utility Commission of Oregon in Order No. 10-132.*

23 PGE proposes this revision because Madras's avoided cost prices would vary significantly if  
24 Madras were not required to pay for system upgrades associated with NRIS, and the price paid  
25 under the contract assumes and is expressly contingent upon Madras accepting responsibility for  
26 interconnection costs and related upgrades.

1 c. Seller's Obligation to Obtain NRIS (PGE's Proposed PPA, Section 3.9).

2 169. PGE asks that the Commission approve the following language specifically  
3 requiring Ecoplexus to obtain and pay for NRIS, consistent with this Commission's QF LGIP:

4 Seller is obligated to pay in full all costs determined by PGE to be required  
5 for the provision of Network Resource Interconnection Service, including  
6 any required network upgrades, as determined in the Facilities Study  
7 conducted by PGE pursuant to Large Generator Interconnection Procedures  
8 adopted by the Public Utility Commission of Oregon in Order No. 10-132.

9 This proposed language is appropriate because Ecoplexus specifically directed PGE to draft the  
10 PPA under the assumption that the Madras project's interconnection would be state-jurisdictional,  
11 requiring the project to seek and pay for NRIS,<sup>16</sup> and the avoided cost prices included in the PPA  
12 assume that Madras will obtain such interconnection service and therefore do not account for any  
13 required upgrades. As offered here, the language reaffirms the central assumption of this PPA,  
14 which is that Madras will pursue a state-jurisdictional interconnection and receive NRIS.<sup>17</sup>

15 d. Interconnection Milestones (PGE's Proposed PPA, Sections 2.1(f) and (g)).

16 170. PGE asks the Commission to approve the following language for two Project  
17 Milestones associated with Madras's interconnection:

18 (f) Seller shall execute the Facilities Study Agreement no later than 60 days  
19 following receipt of the System Impact Study.

20 (g) Seller shall execute the Interconnection Agreement no later than  
21 September 1, 2020.

22 These provisions are appropriate because they provide clear timelines for the achievement of  
23 critical project milestones—as opposed to whenever Madras and PGET reach some “mutual

---

<sup>16</sup> PGE also proposes moving the relevant NRIS language from Section 10.1(a) (“Buyer Condition Precedent”) to Section 3.9 (“Seller's Obligations”). This move reflects the fact that obtaining and paying for NRIS, pursuant to this Commission's Large Generator Interconnection Procedures, is the Seller's affirmative obligation under the PPA.

<sup>17</sup> Note, to clarify that the obligation to obtain and pay for NRIS is not severable, Section 10.8 (“General”), which generally states that a provision found to be unenforceable by a reviewing governmental authority will not cause the remainder of the PPA to be terminated, does not apply to Section 3.9's requirement to obtain NRIS.

1 agreement” regarding the form and cost of the project’s interconnection, as Madras proposes.  
2 While PGE is amenable to including milestones with reasonably generous timelines, it would be  
3 unreasonable to establish a date certain for the project’s COD without establishing clear deadlines  
4 for the subsidiary project milestones. If Madras is not willing to timely commit to pursuing the  
5 appropriate interconnection service consistent with these provisions, then it should not enter a PPA  
6 at this time.<sup>18</sup>

7 e. Commercial Operation Date (PGE’s Proposed PPA, Section 2.4)

8 171. Once Madras has received a revised SIS, PGE proposes updating Madras’s COD  
9 to conform to the project’s SIS results, so as to allow for the development of any necessary  
10 upgrades:

11 Seller shall place the Project in commercial operation on \_\_\_\_\_ (the  
12 “Commercial Operation Date”).<sup>19</sup>

13 Given the likely need for network upgrades to accommodate the project’s siting decision, PGE  
14 believes the precise COD should be determined after the revised SIS has been issued. PGE  
15 proposes this change with the understanding that PGE is not required to execute a PURPA PPA  
16 where the COD is more than 3 years in the future.<sup>20</sup>

17 f. Project Test Energy (PGE’s Proposed PPA, Section 2.3).

18 172. PGE asks the Commission to approve the following provision for Madras’s sale of  
19 test energy output:

20 If and to the extent that the Project generates Test Energy, the price for such

21 Test Energy received by Buyer shall be the Market Index Settlement Price.

22 Seller shall reimburse PGE for any commercially reasonable incremental

---

<sup>18</sup> Note, the PPA’s Exhibit D requires the Seller to include the project’s interconnection and transmission agreements. However, the PPA that Madras filed with the Commission includes a placeholder stating that these agreements are to be included prior to execution “as applicable.” PGE disagrees with the implication that some of the project’s interconnection and transmission agreements need not be provided prior to the PPA’s execution.

<sup>19</sup> The remainder of this section is unchanged. Note, Sections 1.21 (“Delivery Period”), 1.33 (“Fixed Price Term”), and 10.1 (“Term of Agreement”) are revised to conform to the placeholder included in Section 2.4, as the project’s delivery period, fixed price term, and agreement term are tied to the COD.

<sup>20</sup> OAR 860-029-0130(3).

1 costs or expenses that are required for Buyer to receive such Test Energy,  
2 including but not limited to reimbursement for negative pricing and any  
3 necessary capacity costs, reserves costs, and imbalance costs necessary to  
4 make Buyer whole (“Test Energy Integration Cost”). Seller shall schedule  
5 Test Energy according to the Scheduling Procedure in Section 3.10.

6 The proposed language directs PGE to purchase the Madras project’s test energy at the Market  
7 Index Settlement Price. Madras cannot reasonably expect to exceed the market price by first  
8 wheeling its unpredictable test output and then selling it into the market, and therefore any  
9 provision that it be allowed to do so is commercially unreasonable. This provision is also  
10 consistent with the fact that, once Madras is operational, it seeks to sell the entirety of its net output  
11 to PGE.<sup>21</sup>

## **V. PGE’S PRAYERS FOR RELIEF**

12 PGE respectfully requests that the Commission:

13 173. Deny Madras’s Claims for Relief;

14 /////

15 /////

16 /////

17 /////

18 /////

19 /////

20 /////

21 /////

22 /////

23 /////

24 /////

---

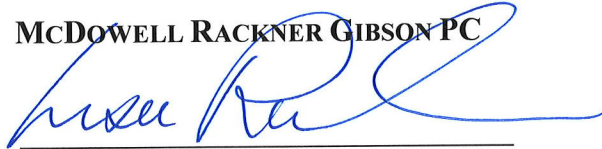
<sup>21</sup> Note, PGE’s Proposed PPA includes a separate Exhibit J for start-up test information. While Madras’s Proposed PPA’s Section 1.94 indicates that start-up tests are to be set forth in Exhibit I, that exhibit is instead labeled “Examples” and is left blank. In PGE’s Proposed PPA, Exhibit I is “Examples” and Exhibit J sets forth the requirements for start-up tests.

1        174.    Grant PGE's Counterclaim; and

2        175.    Grant any other such relief as the Commission deems necessary and appropriate.

3  
4        Dated: June 11, 2019.

**MCDOWELL RACKNER GIBSON PC**



Lisa F. Rackner  
Shoshana J. Baird  
419 SW 11<sup>th</sup> Avenue, Suite 400  
Portland, Oregon 97205  
Telephone: (503) 595-3925  
Facsimile: (503) 595-3928  
[dockets@mrg-law.com](mailto:dockets@mrg-law.com)

**PORTLAND GENERAL ELECTRIC COMPANY**

Donald J. Light  
Assistant General Counsel  
121 SW Salmon Street, 1WTC1301  
Portland, Oregon 97204  
Telephone: (503) 464-8315  
[donald.light@pgn.com](mailto:donald.light@pgn.com)

Attorneys for Portland General Electric  
Company

### CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of PGE's Answer and Counterclaim in Docket UM 2009 on the following named person(s) on the date indicated below by first-class mail addressed to said person(s) at his or her last-known address(es) indicated below.

BRITTANY ANDRUS (C)  
PUBLIC UTILITY COMMISSION OF OREGON  
PO BOX 1088  
SALEM OR 97308-1088  
brittany.andrus@state.or.us

STEPHANIE S ANDRUS (C)  
PUC STAFF--DEPARTMENT OF JUSTICE  
BUSINESS ACTIVITIES SECTION  
1162 COURT ST NE  
SALEM OR 97301-4096  
stephanie.andrus@state.or.us

NATHAN ROGERS  
ECOPLEXUS INC  
650 TOWNSEND ST STE 315  
SAN FRANCISCO CA 94103  
nrogers@ecoplexus.com

DONALD LIGHT (C)  
PORTLAND GENERAL ELECTRIC  
121 SW SALMON ST, 1 WTC-1301  
PORTLAND OR 97204  
donald.light@pgn.com

MARK R THOMPSON (C)  
SANGER THOMPSON PC  
1041 SE 58TH PLACE  
PORTLAND OR 97215  
mark@sanger-law.com

IRION A SANGER (C)  
SANGER THOMPSON PC  
1041 SE 58TH PLACE  
PORTLAND OR 97215  
irion@sanger-law.com

DATED: June 11, 2019

  
\_\_\_\_\_  
Wendy McIndoo  
Office Manager

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UM 2009**

**Portland General Electric Company**

**Attachment A to Answer and Counterclaim**

**PROPOSED POWER PURCHASE AND SALE AGREEMENT**

**Clean Version**

---

**REDACTED**

June 11, 2019

**ATTACHMENT A IS  
CONFIDENTIAL PER PROTECTIVE  
ORDER 19-162 AND WILL BE  
PROVIDED SEPARATELY**

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UM 2009**

**Portland General Electric Company**

**Attachment B to Answer and Counterclaim**

**PROPOSED POWER PURCHASE AND SALE AGREEMENT**

**Redline Version**

---

**REDACTED**

June 11, 2019

**ATTACHMENT B IS  
CONFIDENTIAL PER PROTECTIVE  
ORDER 19-162 AND WILL BE  
PROVIDED SEPARATELY**