

May 1, 2020

Via Electronic Filing

Public Utility Commission of Oregon
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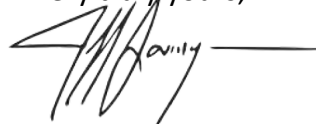
Re: UM 2051 - Fossil Lake Solar, LLC v. Portland General Electric Company

Attention Filing Center:

Enclosed for filing in the above-named docket are Joint Stipulated Undisputed Facts.

Thank you for your assistance.

Very truly yours,



Jeffrey S. Lovinger

Attachment
993128

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
UM 2051**

FOSSIL LAKE SOLAR, LLC,

Complainant,

vs.

PORTLAND GENERAL ELECTRIC
COMPANY,

Defendant.

**JOINT STIPULATED UNDISPUTED
FACTS**

Complainant Fossil Lake Solar, LLC (“Fossil Lake”), and defendant Portland General Electric Company (“PGE”) submit the following joint stipulation of undisputed facts:

Identity of the parties

1. Fossil Lake is an Oregon limited liability company with a principal address of 5 Centerpointe Drive, Suite 250, Lake Oswego, Oregon 97035. The manager of Fossil Lake is Mr. David Brown, who resides in Lake Oswego, Oregon. The sole member of Fossil Lake is Obsidian Renewables, LLC.

2. PGE is an investor-owned public utility regulated by the Public Utility Commission of Oregon (“Commission”) with headquarters at 121 SW Salmon Street, Portland, Oregon 97204.

The Facility

3. Fossil Lake is developing in Lake County, Oregon, a solar generation facility with a nameplate capacity rating of 10 megawatts (the “Facility”). The Facility is not yet constructed.

4. Fossil Lake has self-certified the Facility as a qualifying facility (“QF”) under the Federal Energy Regulatory Commission’s regulations implementing the Public Utility Regulatory Policies Act of 1978.

5. Fossil Lake intends to interconnect the Facility to the distribution system of the Mid-State Electric Cooperative Corporation (“Mid-State”).

6. Fossil Lake has negotiated the terms of an interconnection agreement with Mid-State, and Fossil Lake states that it will execute such interconnection agreement when Fossil Lake is ready to begin delivering the Net Output¹ of the Facility across Mid-State’s electric system.

7. When and if the Facility is completed, Mid-State will wheel the Net Output of the Facility from the point of receipt on its system to its Fort Rock substation, at which point it will be transferred to the transmission system of the Bonneville Power Administration (“BPA”).

8. On March 15, 2017, Fossil Lake executed a Generation Integration Construction Agreement with BPA to enable BPA metering and protections at the Facility. By email dated March 26, 2020, BPA confirmed that it would “continue to honor Obsidian’s generation queue position” as BPA and Fossil Lake work to amend the Generation Integration Construction Agreement.

9. Fossil Lake intends for BPA to use its transmission system to deliver the Net Output of the Facility from the Fort Rock Substation to PGE’s electric system.

10. In order to deliver the Net Output to PGE, Fossil Lake needs long-term firm transmission capacity across BPA’s system, specifically including BPA’s 115-kilovolt transmission line between Mid-State’s Fort Rock substation and BPA’s LaPine substation.

11. Fossil Lake has not yet been able to obtain from BPA the required long-term firm transmission capacity from Fort Rock to LaPine.

12. Fossil Lake is communicating with BPA in an attempt to obtain the needed transmission capacity from Fort Rock to LaPine.

¹ Capitalized terms used but not expressly defined herein shall have the meanings provided in the parties PPA.

13. Fossil Lake will initiate construction of the Facility when and if it obtains from BPA the required transmission capacity.

14. Not accounting for construction delays that may occur because of the current COVID-19 pandemic, Fossil Lake estimates that it can complete construction of the Facility in less than six months from the time it initiates construction.

15. In 2017, Fossil Lake informed PGE in writing that its difficulty in obtaining long-term firm transmission capacity from BPA has resulted in a delay of initial delivery of Net Output and the Commercial Operation Date under the PPA. By letter dated December 20, 2020, Fossil Lake again informed PGE that the reason for the delay in the Commercial Operation Date is the difficulty in obtaining long-term firm transmission capacity from BPA.

The PPA

16. Fossil Lake and PGE are parties to PGE's Standard Renewable Off-System Variable Power Purchase Agreement (the "PPA"), a copy of which has been filed with the Commission as Exhibit A to Fossil Lake's Complaint.²

17. Pursuant to its Schedule 201, PGE prepared the PPA for execution based on information about the Facility provided to it by Fossil Lake.

18. Fossil Lake executed the PPA on March 25, 2015.

19. PGE executed the PPA on April 29, 2015.

20. The Effective Date of the PPA is April 29, 2015.

21. The term of the PPA runs through April 29, 2035, unless earlier terminated.

22. Fossil Lake is Seller and PGE is Buyer under the PPA.

² Any characterization of the terms of the PPA herein is for convenience only and is not intended to amend, modify, supersede or replace the plain language of the PPA.

23. During the term of the PPA, Fossil Lake has agreed to sell and deliver to PGE all Net Output from the Facility, and PGE has agreed to purchase and receive from Fossil Lake all delivered Net Output from the Facility.

24. Under the terms of the PPA, PGE is to pay Fossil Lake fixed prices for delivered Net Output for a fifteen-year period that began to run on the PPA Effective Date, April 29, 2015.

25. The fixed prices to be paid by PGE to Fossil Lake for any Net Output of the Facility delivered to PGE by Fossil Lake during whatever is left, following the Commercial Operation Date, of the fifteen-year fixed price period are found on Sheet No. 201-17 and Sheet No. 201-18, in table 6a and table 6b, of Exhibit D to the Fossil Lake PPA.

26. Section 2.2.1 of the PPA states that Fossil shall begin initial delivery of Net Output to PGE by December 15, 2016.

27. Fossil Lake did not begin initial delivery of Net Output on or before December 15, 2016.

28. Fossil Lake has not yet been able to begin initial delivery of Net Output.

29. Section 2.2.2 of the PPA states that Fossil Lake shall achieve the Commercial Operation Date by March 15, 2017.

30. Pursuant to letter dated January 30, 2017, PGE agreed to extend the Section 2.2.2 deadline for Fossil Lake to achieve the Commercial Operation Date from March 15, 2017, to November 30, 2017.

31. Fossil Lake did not achieve the Commercial Operation Date on or before November 30, 2017.

32. Fossil Lake has not yet reached the Commercial Operation Date pursuant to Section 2.2.2 of the PPA, as amended.

33. Section 2.2.3 of the PPA states that “[i]n the event that Seller is unable to meet the requirements of Sections 2.2.1 and 2.2.2., and if PGE is resource deficient (as defined by the Commission) PGE may terminate this Agreement in accordance with Section 8. Otherwise, PGE may not terminate this Agreement but Seller shall pay PGE the Start-Up Lost Energy Value.”

34. PGE has billed, and Fossil Lake timely paid, Start-Up Lost Energy Value. As of the date hereof, Fossil Lake has paid PGE \$126,226.59 in Start-Up Lost Energy Value. The payment was made under protest.

35. On January 2, 2020, PGE issued notice to Fossil Lake that PGE had terminated the PPA pursuant to Section 2.2.3 and Section 8 of the PPA effective January 2, 2020.

36. Fossil Lake disputes that PGE had the authority under Section 2.2.3 and Section 8 of the PPA to terminate the PPA effective January 2, 2020.

Certain Correspondence between the Parties

37. On November 27, 2019, PGE provided Fossil Lake with written notice of PGE’s intent to terminate the PPA pursuant to Sections 2.2.3 and 8.2 of the PPA if Fossil Lake did not cure its defaults under the PPA by January 1, 2020. A copy of PGE’s November 27 letter is attached as Exhibit B to Fossil Lake’s Complaint.

38. On December 20, 2019, Fossil Lake provided PGE with a letter disputing that PGE would have the right to terminate the PPA if Fossil Lake did not cure its defaults by January 1, 2020. A copy of Fossil Lake’s December 20 letter is attached as Exhibit A to Fossil Lake’s Answer to PGE’s Counterclaims.

39. On December 31, 2019, PGE responded to Fossil Lake’s December 20, 2019 letter. A copy of PGE’s December 31 letter is attached as Exhibit C to Fossil Lake’s Complaint.

40. On December 31, 2019, Fossil Lake filed its Complaint.

41. On January 2, 2020, PGE issued a written notice of termination to Fossil Lake pursuant to Section 2.2.3 and 8.2 of the PPA. A copy of PGE's January 2, 2020 notice of termination is attached as Exhibit A to PGE's Answer, Affirmative Defenses, and Counterclaim.

42. The parties do not dispute that they sent and received the communications described above. Fossil Lake does not assert that PGE's January 2 termination notice fails to comply with the notice requirements under the PPA.

Dated: May 1, 2020.

Respectfully submitted,

FOSSIL LAKE SOLAR, LLC

PORTLAND GENERAL ELECTRIC
COMPANY

s/ Richard G. Lorenz

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