

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

Docket No. _____

MADRAS PV1, LLC,

Complainant,

v.

PORTLAND GENERAL ELECTRIC
COMPANY,

Respondent.

**TESTIMONY OF ERIK STUEBE
IN SUPPORT OF
MADRAS SOLAR COMPLAINT**

April 22, 2019

I. INTRODUCTION

Q. Please state your name and business address.

A. My name is Erik Stuebe. I am employed as Chief Commercial Officer and President at Ecoplexus. My business address is 101 Second Street, Suite 1250, San Francisco, California, 94105.

Q. Please briefly describe your role at Ecoplexus and your background and experience.

A. I have co-led the development of 2.5 gigawatts of development portfolio of solar projects with Ecoplexus and managed the successful completion of 60 solar projects for utilities, municipalities, and commercial enterprises. I have over 20 years of business experience in corporate finance and general management. Prior to founding Ecoplexus, I started and grew a consumer products company, Blue Marlin Corp. I also formerly worked at Kidder, Peabody in investment banking and Trammell Crow Company in real estate development. I am a graduate of Harvard Business School and hold a BS in Finance from the University of Minnesota.

Q. Please describe the purpose of your testimony.

A. This testimony is filed concurrently with a complaint that Madras PV1, LLC ("Madras Solar") is filing against PGE with the Oregon Public Utility Commission ("Commission"). The complaint relates to the negotiation of a power purchase agreement ("PPA") between PGE and Madras Solar. Madras Solar is requesting that the Commission adjudicate the PPA to resolve terms and conditions that have remained in dispute between Madras Solar and PGE. This testimony supports the complaint, by providing information upon which the complaint relies. My testimony describes Ecoplexus and Madras Solar, and gives an overview of the negotiations process with

1 PGE. It also describes the relief that Madras Solar is seeking from the Commission
2 through its complaint.

3 **Q. Please describe Madras Solar and your involvement with it.**

4 **A.** Madras Solar is an approximately 65.784 MW solar facility, located in Jefferson County
5 Oregon. Ecoplexus, which develops solar energy systems throughout North America and
6 in certain other countries, owns Madras Solar, and formed Madras Solar as an Oregon
7 LLC in order to provide a renewable energy project in Jefferson County, Oregon.
8 Madras Solar is seeking to sell its net output to PGE as a qualifying facility ("QF").
9 Madras Solar's nameplate capacity is above that of QFs that are eligible for standard
10 contracts, and thus Madras Solar is seeking to sell power under PGE's Rate Schedule
11 202, which applies to QFs that are above 10 MWs in size. Part of my role at Ecoplexus is
12 to oversee the Madras Solar project, and I have been involved in the negotiations with
13 PGE, and am the executive decisionmaker with respect to the project.

14 **Q. Please provide an overview of your testimony.**

15 **A.** Madras Solar has been seeking to establish a PPA with PGE since October of 2017, but
16 has been unable to reach agreement on key terms and conditions. This inability to
17 execute a PPA has come about because of delay on PGE's part, and its insistence on
18 certain unreasonable terms and conditions. Madras Solar has taken the steps within its
19 control to document its agreement to sell its output to PGE under reasonable terms and
20 conditions, including executing a PPA and providing it to PGE, and also working to
21 negotiate a draft PPA that PGE finally provided to Madras Solar after significant delay.
22 Throughout this process, Madras Solar has been clear about its commitment to sell its
23 output to PGE, and Madras Solar's view is that it has created a legally enforceable

obligation to do so. Madras Solar has now filed a complaint with the Commission in order for the Commission to provide direction to PGE about the terms and conditions that should be included in its PPA with Madras Solar, and to remedy the impacts caused by PGE's delay.

Q. Are there other witnesses offering testimony on behalf of Madras Solar?

A. Yes. Nathan Rogers, Director of Project Development – Western Region, for Ecoplexus is also offering testimony. His testimony focuses in greater detail on the negotiations process, as well as the last items upon which Madras Solar and PGE have not been able to achieve resolution.

II. OVERVIEW OF NEGOTIATIONS PROCESS

Q. When did Madras Solar first reach out to PGE regarding its desire to sell power to PGE?

A. Madras Solar first reached out to PGE in October of 2017, and requested indicative pricing.

Q. Did PGE respond in a timely manner to Madras Solar's request for indicative pricing?

A. No. There was over four months of "back and forth" with PGE requesting additional information from Madras Solar and insisting that it was not required to provide indicative pricing to Madras Solar because of purported restrictions on the chosen delivery point for Madras Solar. PGE eventually agreed to provide indicative pricing, but not until February 23, 2018.

Q. Did Madras Solar request a PPA from PGE to begin the negotiation process?

A. Yes. Madras Solar requested that PGE provide it with a draft PPA on March 5, 2018.

Q. Did PGE provide Madras Solar with a PPA at that time?

1 **A.** No. PGE would not provide Madras Solar with a PPA because of its insistence that
2 Madras Solar had not provided sufficient evidence to demonstrate that any necessary
3 interconnection studies had been completed and assurance that interconnection
4 arrangements had been executed or were under negotiation. Madras Solar had provided
5 sufficient information to PGE, and, after numerous requests, PGE eventually seemed to
6 acquiesce on this point, finally providing a PPA on August 29, 2018.

7 **Q.** **How much time, then, went by between when Madras Solar requested a PPA and**
8 **when a draft was provided to Madras Solar?**

9 **A.** Over five months.

10 **Q.** **So it took almost a year for PGE to provide both indicative prices and a draft PPA?**

11 **A.** Yes.

12 **Q.** **In your opinion, what was the reason for the delay?**

13 **A.** In my opinion, PGE refused to engage in discussions, respond to requests for
14 information, or otherwise negotiate in good faith for almost a year, because it wanted to
15 make the process as frustrating as possible in hopes that Madras Solar would simply go
16 away.

17 **Q.** **Did Madras Solar partially execute a PPA with PGE during this time period?**

18 **A.** Yes. After almost six months, PGE had not even provided a draft PPA and there was a
19 pending avoided cost rate reduction in May 2018. We had intended to complete contract
20 negotiations by this time, and were unsure what steps we could take to obtain a contract
21 from PGE. Madras Solar took the Commission approved standard contract form for
22 smaller projects, inserted our project specific information, and executed the PPA.

Q. Is Madras Solar willing, ready and able to abide by the terms of that partially executed PPA?

A. Yes, with the caveat that we would request that the commercial operation date be moved from the date we provided of May 4, 2021, to three years from the date of a final Commission order in this proceeding. Madras Solar should not be penalized for continuing to negotiate with PGE in good faith for another year, and then ultimately filing a complaint.

Q. How did the negotiations go from that point on?

A. PGE and Madras Solar had a series of meetings, and exchanges for information. After significant “back and forth,” Madras Solar has expressed a willingness to execute a number of different PPAs; however, we have been unable to reach agreement with PGE on a PPA. This amount of time seemed unreasonable, and Madras Solar determined that it should file a demand letter with PGE, as a final effort to get to resolution. That demand letter was provided to PGE on April 19, 2019, and is attached to this testimony as Exhibit 101.

Q. Has Madras Solar offered to sell its output to PGE?

A. Yes. When PGE refused to provide a draft PPA to Madras Solar, despite our repeated requests for one, Madras Solar decided that it would provide PGE with an executed PPA, substantially similar in form to the Commission’s standard contract for QFs, to which Madras Solar was willing to commit. This was provided to PGE on May 4, 2018. Additionally, beyond that, Madras Solar continued to request that it receive a draft PPA, despite having already committed to sell its power under the previously-executed PPA. Eventually, after receiving that draft PPA, and negotiating provisions back and forth, we

1 reached a point where, despite having agreed to certain provisions that PGE insisted on
2 but which Madras Solar felt were unreasonable, PGE would still not agree to a PPA that
3 it would execute. We offered that we would agree to sell our power under reasonable
4 terms and conditions, and insisted that PGE provide an executable contract. PGE would
5 not do so. On April 19, 2019, Madras Solar provided PGE with contract, containing
6 reasonable terms and conditions, and asking that PGE sign it by April 22, 2019.

7 **Q. Has PGE ever agreed that it would purchase Madras Solar's output?**

8 **A.** No. Despite offering several times to unequivocally sell the net output of the Madras
9 Solar project to PGE, PGE has insisted that a legally enforceable obligation to do so has
10 not arisen, because PGE contends that we have not reached agreement on a power
11 purchase arrangement. PGE has never provided Madras Solar a PPA that it says that it is
12 willing to execute.

13 **Q. Did Madras Solar make any concessions to PGE during the negotiations process?**

14 **A.** Yes. Madras Solar made many concessions. As I stated, some of these involved requests
15 from PGE that Madras Solar believed were unreasonable or unlawful. Madras Solar
16 agreed to them, however, in order to move the process forward and to try to reach an
17 agreement on a PPA. These are discussed in more detail in the testimony of Nathan
18 Rogers.

19 **Q. Why has PGE been unwilling to agree to purchase Madras Solar's output?**

20 **A.** I cannot comment on PGE's motivations, but I can only note that PGE insists that we
21 have not reached an agreement on terms and conditions, and thus it will not agree to
22 purchase Madras Solar's output. Our experience has been that these negotiations have

gone on longer than is reasonable, and that PGE has insisted on contractual terms and provisions that are unreasonable.

Q. Why has Madras Solar been unwilling to agree to these provisions that PGE has insisted on?

A. These last provisions seem unreasonable for Madras Solar to agree to. We believe that PGE is not justified in asking for us to agree to them. Some of them would be very problematic from an operational perspective, some of them may impact the financing of the project, and some of them put the project at unnecessary or due risk. We also believe that some of them are contrary to PGE's obligations to QFs. The testimony of Nathan Rogers spells out these provisions in greater detail, and explains why it would be problematic for Madras Solar to agree to them.

Q. Can you summarize each of the disputed contract provisions?

A. Yes. Those provisions include:

- (1) the applicable avoided cost rate,
 - (2) the nameplate capacity in terms of DC (listed on page 1, in Section 1.69, and in Exhibit E of the PPA),
 - (3) metering provisions (Section 3.6 of the PPA),
 - (4) a PGE-proposed revision that would allow PGE to adjust the price for power under the PPA if redispatch of PGE resources or "back down" occurs (PGE proposed a section 6.10 that would contain this provision),
 - (5) the terms for a project Commercial Operation Date ("COD") "milestone" related to signing a generator interconnection agreement (Section 2.1(g) of the PPA),
- and

(6) the sale of Project Test Energy (Section 2.3).

Each of these provisions is explained in greater detail in the testimony of Nathan Rogers.

Q. You mentioned earlier that Madras Solar found that it was taking an unreasonably long period of time in order to reach an agreement with PGE on the PPA. How does the process with PGE compare to other negotiations of PPAs that you have been involved with?

A. Ecoplexus has entered into about 80 PPAs, including both under the Public Utility Regulatory Policies Act (“PURPA”) and requests for proposals. PGE is an outlier with regarding to PPA negotiations in that they have put forth a PPA with unreasonable terms and moved the goalposts in several instances by adding or amending provisions at the “eleventh hour.”

III. MADRAS SOLAR’S REQUESTED RELIEF

Q. Does Madras Solar believe that PGE is required to purchase power from it?

A. Yes. While I am not a lawyer, I have negotiated many PURPA PPAs over the years and I am generally familiar with how PURPA is understood by professionals in the energy industry. I am testifying about my understanding of PURPA to provide context for why Madras Solar took certain actions. My understanding of PGE’s obligations under the PURPA, state law, and the Commission’s and FERC’s rules and policies is that PGE is required to purchase the net output of a QF when the QF makes an unequivocal commitment to sell power to the utility. I understand that in some instances, this obligation comes about when the utility and a QF reach a written agreement. I understand that FERC has also created the concept of a “legally enforceable obligation” for the QF to sell power, which can arise outside of a formal contract between a utility

1 and a QF, and that a legally enforceable obligation can be deemed by regulators to have
2 arisen because of either delay on the utility's part, or unreasonable behavior in failing to
3 move the negotiation forward or to agree to reasonable terms.

4 I am not testifying about whether Madras Solar's understanding of FERC's
5 requirements are correct, or what FERC's actual policies are. However, I do want to state
6 that Madras Solar has attempted to take actions in its negotiations with PGE in order to
7 satisfy our understanding of what is required to form a legally enforceable obligation. In
8 Madras Solar's case, we have attempted to sell power to PGE for over a year and half and
9 conducted extensive negotiations, but, in the end, PGE has refused to sign a contract.
10 Our understanding is that in circumstances like this, Madras Solar can unequivocally
11 commit to sell its output to PGE under reasonable terms and conditions, and the
12 Commission can issue an order stating that PGE has an obligation to purchase Madras
13 Solar's power.

14 **Q. At what price does Madras Solar believe PGE should be required to purchase its**
15 **power?**

16 **A.** Madras Solar should be entitled to sell its power at the prices associated with the May 4,
17 2018 contract that it signed and provided to PGE. At that time, Madras Solar had a right
18 to insist on reasonable contract provisions, and PGE had prevented the negotiation
19 process from proceeding by its refusal to even provide a draft PPA. Madras Solar's offer
20 was reasonable, its commitment was clear, and PGE should be required to abide by the
21 pricing that was in existence at that time.

22 Alternatively, if the Commission finds that Madras Solar is not entitled to the
23 pricing that existed on May 4, 2018, then it should find that Madras Solar is entitled at

1 least to the pricing that was associated with the PPA it was negotiating with PGE prior to
 2 April 23, 2019, when PGE's avoided cost prices are set to change. Madras Solar
 3 negotiated with PGE earnestly and in good faith, but, because of PGE's actions, was
 4 unable to move the negotiations forward within a reasonable amount of time. Thus, the
 5 Commission should find that Madras Solar is entitled to the pricing that was in effect
 6 during the time period in which PGE and Madras Solar should have been able to agree, if
 7 PGE had not delayed or insisted on unreasonable contract terms and conditions.

8 **Q. Through what process will reasonable terms and conditions be decided?**

9 **A.** Because PGE and Madras Solar have not been able to agree on a PPA with such terms,
 10 Madras Solar is seeking the Commission's adjudication of reasonable contract terms and
 11 conditions through Madras Solar's April 22, 2019 complaint. Upon conclusion of this
 12 process, Madras Solar and PGE will have clarity about what constitutes reasonable terms
 13 and conditions, and Madras Solar should be allowed to sell power to PGE under those
 14 terms at the pricing that existed prior to PGE's May 23, 2018 rate change, or at least the
 15 April 23, 2019 rate change.

16 **Q. When do new avoided cost rates go into effect for PGE?**

17 **A.** My understanding is that PGE will have new avoided cost rates go into effect on April
 18 23, 2019.

19 **Q. Is that relevant to this complaint?**

20 **A.** Yes. My understanding is that part of why a legally enforceable obligation can come
 21 about without the utility's consent is that because, if there were no such safeguard against
 22 a utility's bad behavior and attempts to obstruct a QF, a utility could delay negotiations
 23 until prices change, which can affect the viability of a project. The reason that Madras

Solar filed this complaint today is because PGE continued to refuse to agree to a PPA, despite the fact that negotiations had gone on for an unreasonably long time, and despite its rates changing. Madras Solar is seeking to enforce its rights to sell power at the rates that were in effect during its negotiations, and which would have applied if it were not for PGE's delay and insistence on unreasonable terms.

Q. Specifically, what relief is Madras Solar requesting?

A. Madras Solar is requesting the Commission direct PGE to execute a contract with reasonable terms, conditions, and prices. This means requiring PGE to execute the May 2018 partially executed PPA and the relevant rates, or, in the alternative, the April 2019 partially executed PPA and the relevant rates. We also ask the Commission to explicitly find that PGE unreasonably delayed the PPA negotiations process, did not consider Madras Solar's proposed additions or modification in good faith, and insisted on unreasonable terms in the PPA. Finally, we ask that the Commission Madras Solar's commercial operation date should be extended by one day for each day that occurs from the time this complaint was filed, until the Commission issues a final dispositive order on the issues raised in this complaint that resolves the terms of the PPA.

Q. Why does Madras Solar need the Commission to adjust the commercial operation date to reflect time spent litigating this complaint?

A. Although we will continue to engage in some activities related to moving the project forward during the pendency of the complaint, Madras Solar is unlikely to be able to obtain financing or expend considerable amounts of resources without a PPA in place that contains reasonable terms, conditions and prices.

3 **A.** Yes. Madras solar is still ready, willing, and able to do so.

6 A. Yes. Madras solar is still ready, willing, and able to do so.

7

IV. CONCLUSION

A. Yes. Ecoplexus and Madras Solar would like to resolve these issues with PGE and enter into a PPA that allows us to have an amicable business relationship following the completion of this proceeding. Ecoplexus rarely resorts to litigation and our goal is to contribute to a better energy future of clean power for this state, the nation, and the world. I am proud that Ecoplexus and its projects have provided over \$560 million in economic benefits to local communities and lowered carbon footprints with over 800,000 tons of avoided in carbon dioxide emissions. We ask the Commission to expeditiously resolve our complaint so that we can design, construct and obtain financing for this excellent solar project in Oregon.

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MADRAS PV1, LLC,

Complainant,

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PORTLAND GENERAL ELECTRIC
COMPANY,

Respondent.

EXHIBIT MADRAS SOLAR/101

DEMAND LETTER AND PPA

(PPA FILED CONFIDENTIALLY)

April 22, 2019

Sanger Thompson PC

1041 SE 58th Place, Portland, OR 97215

tel (503) 756-7533 fax (503) 334-2235 irion@sanger-law.com

April 19, 2019

Via Email

Crystal Lindquist
Donald Light
Portland General Electric Company
121 SW Salmon Street
Portland, OR 97204

RE: Ecoplexus Power Purchase Agreement

Dear Ms. Lindquist and Mr. Light:

I am sending this letter to request an executable power purchase agreement (“PPA”) for Ecoplexus’ Madras Solar (“Madras Solar”) Qualifying Facility (“QF”). Portland General Electric Company (“PGE”) and Ecoplexus have been in negotiations regarding the Madras Solar QF since at least October 10, 2017, and it is past time for PGE to provide an executable PPA. Ecoplexus has worked patiently with PGE, but has repeatedly informed PGE that it expects to receive an executed PPA prior to the next avoided cost rate change, which is scheduled for April 23, 2019. Ecoplexus makes this final demand for an executable PPA, and intends to file a complaint with the Oregon Public Utility Commission (“Commission”) if PGE has not executed a PPA by April 22, 2019. Ecoplexus is ready, willing, and able to execute the attached PPA. If Ecoplexus is required to file a complaint, then, in addition to requesting that PGE execute the attached PPA, Ecoplexus will also request that the Commission determine that Ecoplexus formed a legally enforceable obligation to the pre-May 2018 prices by executing a PPA on May 4, 2018.

A. PGE Should Execute the Attached PPA by April 22, 2019, Because PGE Has Unreasonably Delayed and Imposed Unreasonable Contract Terms and Conditions

PGE has failed to comply with the Public Utility Regulatory Policies Act and its implementing rules and orders, the relevant Commission rules and policies, and PGE’s own rate schedules and policies. PGE has delayed and obstructed the contracting process, including, but not limited to, PGE’s failure to provide information and documents on a timely basis and imposing of unreasonable contract terms and conditions.

PGE has not timely responded to requests for information and documents. For example, despite repeated requests, it took PGE four months to provide indicative prices and eleven months to provide a draft power purchase agreement. After finally providing

PGE-Ecoplexus PPA
April 19, 2019
Page 2 of 5

this basic information, PGE also repeatedly delayed responding to Ecoplexus' questions and failed to timely return documents, including PPA redlines.

PGE imposed unreasonable restrictions in the contracting process. For example, PGE refused to even provide a draft PPA because of alleged constraints at the Round Butte point of delivery ("POD") and that Ecoplexus had not completed certain interconnection studies. PGE ultimately agreed that Ecoplexus' PPA could provide for deliveries at the Round Butte POD and that the interconnection studies need not be completed prior to contract execution. While PGE ultimately dropped its unreasonable objections, PGE delayed the contracting process by almost a year.

PGE has imposed unreasonable contract provisions, many of which Ecoplexus has ultimately agreed to under protest simply to complete the PPA process. For example, Ecoplexus agreed to PGE's demand that the PPA include "specified energy" provisions, despite these provisions having been rejected by the Commission and being designed for off-system QFs (Madras Solar is an on-system QF).

B. Remaining Disputed Provisions

There remain a handful of disputed contract provisions, and Ecoplexus requests that PGE drop its refusal to agree to Ecoplexus' reasonable contract provisions and provide an executable PPA so that Ecoplexus can execute it and then have PGE counter-sign it by April 22nd. Ecoplexus understands that PGE and Ecoplexus agree to all contract provisions, except potentially the following:

1. Nameplate Capacity Rating in megawatts ("MW") direct current ("DC").

Ecoplexus has selected a 65.784 megawatt direct current ("DC") size, but PGE will not agree and is insisting on a 75 MW DC size. Ecoplexus has complete discretion to construct a solar facility of any alternating current ("AC") or DC size of its choosing, as long as the AC size is 80 MW or less, and there is no basis in law or policy for PGE to refuse to execute a PPA with a 65 MW DC.

PGE has asked: "Please explain the necessity for adjusting the Nameplate Capacity Rating. This appears to be inconsistent with industry standard." The site that Ecoplexus is using can only accommodate a 65.784 MW DC facility, but Ecoplexus still wishes to maintain a 63 MW AC Net Available Capacity. Regardless of PGE's statements about an "industry standard", it is technically feasible and Ecoplexus requests that PGE agree to Ecoplexus' chosen 65.784 MW DC size.

2. Project Commercial Operation Date Milestones

Section 2.1 identifies "Project Milestones," that Ecoplexus agrees to undertake to complete the Madras Solar QF by the Commercial Operation Date ("COD"), which is

PGE-Ecoplexus PPA
April 19, 2019
Page 3 of 5

identified as March 1, 2022. Section 5.1(h) states that, if Ecoplexus misses a Project Milestone, then the PPA provides that Ecoplexus shall be in default, and Section 5.2 provides that PGE may terminate the PPA for such a default. Thus, Project Milestones are critical provisions of the PPA.

Ecoplexus has informed PGE that it does not believe PGE can insist on any COD-related Project Milestones that permit PGE to terminate the PPA. The Oregon Administrative Rules do not allow PGE to terminate the PPA prior to December 31, 2024 for failure to miss the COD, let alone missing a milestone to achieve COD. OAR 860-029-0130(d) provides: “Delay of commercial operation should not be a cause of termination if the utility determines at the time of contract execution that it will be resource sufficient as of the qualifying facility scheduled commercial operation date specified in the power purchase agreement.” PGE is currently resource sufficient until December 31, 2024. Thus, Ecoplexus has the right to insist that the PPA include provisions that prevent PGE from terminating the PPA for a failure to meet the COD, as long as the delayed COD does not extend to January 1, 2025. It would completely undermine Ecoplexus’ right to not be terminated for failure to miss its COD, if PGE could insist upon contract provisions that allow PGE to terminate the PPA for a delay in achieving its COD.

PGE’s COD-related Project Milestones are also internally inconsistent with Section 2.4 on Commercial Operation. Ecoplexus has selected a COD of March 1, 2022, and Section 5.1(j) allows Ecoplexus a one-year cure period to March 1, 2023. While Ecoplexus has a legal right to insist that the project not be terminated prior to January 1, 2025 and Ecoplexus requested that the PPA provide a cure period consistent with Oregon law, Ecoplexus agreed to this provision under duress because PGE refused to agree to a longer default period. This provision is rendered meaningless if PGE can terminate the PPA for failure to meet a COD-related Project Milestone. Ecoplexus’ one-year cure period related to missing its Scheduled COD would be meaningless if PGE could terminate the PPA for missing a milestone that would clearly be missed in the event that the project’s COD is delayed.

While PGE is not permitted as a matter of law to impose COD-related Project Milestones, Ecoplexus has been willing to agree to them, and is only refusing to agree to a specific date for Ecoplexus’ execution of a generation Interconnection Agreement. As PGE Merchant is aware, Ecoplexus and PGE Transmission disagree about whether certain network transmission upgrades are required, and there is a reasonable chance that this issue may need to be resolved by the Federal Energy Regulatory Commission.

Ecoplexus requests that the Project Milestone for Ecoplexus executing a generation Interconnection Agreement be set thirty days after Ecoplexus and PGE Transmission have come to mutual agreement with regard to the form of generation Interconnection Agreement, including the cost of any network upgrades and/or interconnection facilities and the timeline for completion of any network upgrades and/or interconnection facilities. Ecoplexus should not be subject to termination of the PPA

simply because Ecoplexus may decide to dispute PGE Transmission's unreasonable efforts to impose unnecessary interconnection upgrades upon Ecoplexus.

3. Project Test Energy

Ecoplexus requests that PGE agree to allow Ecoplexus to sell the Madras Solar QF's "Project Test Energy" to a third party under a wholesale power sale. Ecoplexus has the right to sell some or all of its net output to PGE. Ecoplexus has elected to sell PGE some, but not all, of its net output and is specifically requesting that it be allowed to sell the Project Test Energy as FERC jurisdictional wholesale sale. PGE should agree to Ecoplexus' language regarding Project Test Energy in Section 2.3.

4. Metering

Section 3.6 describes and provides obligations related to the Madras Solar QF's metering equipment. Since March 25, 2019, PGE has stated that this Section is "[u]nder review since Seller will interconnect using NRIS" and PGE has not provided any explanation regarding what its concerns are or otherwise provided alternative language acceptable to PGE. PGE should agree to Section 3.6.

5. Price Adjustment for Redispatch or Back Down of Buyer Generation

Section 6.10 provides PGE with the right to adjust the contract price when a Governmental Entity requires PGE to back down generation to accommodate or otherwise facilitate the dispatch of the Madras Solar QF. On April 14, 2019, PGE essentially proposed this new, substantive language for the first time after over a year and half of discussions, and only a week before PGE's rates are expected to change.

PGE originally proposed language that would have included a price adjustment for redispatch of PGE's generation. Ecoplexus informed PGE that it is opposed to this language because PGE's Open Access Transmission Tariff does not allow PGE to directly assign redispatch costs to any specific Network Resource (i.e., the Madras Solar QF).

PGE appears to have agreed with Ecoplexus that "redispatch" was not something that could occur under FERC's policies, and now states that the use of the word "redispatch" was "misleading". PGE has now changed the provision to reflect some potential back down of the Pelton-Round Butte hydroelectric facility. This is an entirely new concept that has never been discussed, and it is inappropriate to raise it at the eleventh hour.

Deliverability issues will be addressed in the interconnection process, which may need to be resolved by FERC. The Madras Solar QF has agreed that it will be responsible for all costs of network transmission upgrades that FERC concludes are appropriate to allow deliverability to PGE. While we do not have sufficient time to fully

PGE-Ecoplexus PPA
April 19, 2019
Page 5 of 5

analyze or understand the ramifications of PGE's new language, it appears that PGE is proposing new language that would allow it to circumvent its PURPA obligations in the event of an adverse ruling by FERC.

Finally, this provision is drafted to provide PGE with broad discretion to modify the contract price. Section 6.10 states that in such circumstance, PGE "(acting in a commercially reasonable manner) may re-evaluate and adjust the Fixed Price for future deliveries after delivering sixty (60) days prior written notice to Seller of such price adjustment." What this means is that, subject to some vague "commercially reasonable" limitation, PGE can adjust the contract price in whatever manner it deems fit for some an unknown event. Ecoplexus is entitled to a fixed price contract set at the time of contract execution, and is not willing or able to agree to a provision that allows PGE such wide discretion to change the contract price.

PGE should remove Section 6.10.

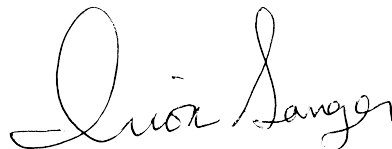
6. Exhibit I Examples

Exhibit I is intended to include specific examples prepared by PGE. Ecoplexus has previously requested that PGE provide a completed Exhibit I, but PGE has not done so. Ecoplexus does not understand why PGE has not provided this information, and is not aware of any actual dispute. However, Ecoplexus requests that PGE provide these examples.

C. Conclusion

Ecoplexus requests that PGE provide and execute the attached PPA for the Madras Solar QF by April 22, 2019, or Ecoplexus will file a complaint.

Sincerely,

A handwritten signature in black ink, appearing to read "Irion A. Sanger". The signature is fluid and cursive, with the first name "Irion" being more prominent and stylized than the last name "Sanger".

Irion A. Sanger

cc: Paul Esformes
Erik Stuebe
Nathan Rogers

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Respondent.

**TESTIMONY OF NATHAN ROGERS
IN SUPPORT OF
MADRAS SOLAR COMPLAINT**

April 22, 2019

I. INTRODUCTION

Q. Please state your name and business address.

A. My name is Nathan Rogers. I am employed as Director of Project Development – Western Region, at Ecoplexus. My business address is 101 Second Street, Suite 1250, San Francisco, California, 94105.

Q. Please describe the purpose of your testimony.

A. This testimony is filed concurrently with a complaint that Madras PV1, LLC (“Madras Solar”) is filing against Portland General Electric Company (“PGE”) with the Oregon Public Utility Commission (“Commission”). The complaint relates to the negotiation of a power purchase agreement (“PPA”) between PGE and Madras Solar. Madras Solar is requesting that the Commission adjudicate the PPA to resolve terms and conditions that have remained in dispute between Madras Solar and PGE. This testimony supports the complaint, by providing information upon which the complaint relies. My testimony describes the negotiation process with PGE, and the remaining outstanding items upon which PGE and Madras Solar have been unable to agree in order to finalize a PPA. I also describe why the Commission should adopt the PPA provided by Madras Solar with this complaint.

Q. Please briefly describe your role at Ecoplexus and background.

A. I lead Ecoplexus’ project development efforts in the Pacific Northwest and parts of the Intermountain West. Ecoplexus is a developer, owner, and operator of solar photovoltaic power plants. I’ve been employed with the company in various positions since 2012, and have been in my current role since 2017. My educational background is in urban

1 planning and policy, and I came to Ecoplexus after working for a consultancy to the
2 electric utility industry.

3 **Q. Please describe your involvement with Madras Solar.**

4 **A.** I have been involved in the negotiation of the PPA with PGE for the output of the Madras
5 Solar facility since the beginning of those efforts. The initial development work started
6 in September of 2017 when we initially executed an option to lease agreement for the
7 project site. After we approached PGE, I have been the main contact for Ecoplexus with
8 PGE personnel, and have sought to gain PGE's agreement to a PPA under which the
9 output of Madras Solar can be sold to PGE.

10 **Q. Please provide an overview of your testimony.**

11 **A.** Madras Solar has been working with PGE for over a year and a half to try to get a PPA in
12 place that will allow it to exercise its rights sell its net output to PGE as a QF under the
13 Public Utility Regulatory Policy Act ("PURPA"), state statutes, and the Commission's
14 rules. Throughout the process, PGE has caused delays, many of them significant, to key
15 parts of the established negotiation process. This includes taking approximately four
16 months to provide indicative pricing, and approximately six additional months to provide
17 a draft PPA. Moreover, once PGE did finally tender a draft PPA, it continued to delay
18 the process by refusing to engage in substantive PPA negotiations, failing to provide
19 information and drafts of the PPA on a timely basis, and by insisting on provisions that
20 are unreasonable or otherwise failing to agree to reasonable provisions proposed by
21 Madras Solar.

22 Madras Solar has agreed to many provisions to which it initially objected, and to
23 which it would be entitled to continue to object, simply in order to move the process

1 forward. However, PGE continues to prevent a PPA from being finalized by insisting on
2 several impractical, unfair, and unreasonable conditions. The Commission should now
3 review each of those provisions and determine that PGE should be required to enter into a
4 PPA that contains PGE's or Madras Solar's few remaining disputed contractual
5 provisions. In the end, there remain only a few disputed provisions; however, most of
6 these are material to Madras Solar's ability to become constructed and sell power to PGE
7 and third parties in the wholesale power market.

8 II. NEGOTIATIONS PROCESS

9 **Q. Is there an overall pattern to the negotiation process that you would like to**
10 **summarize?**

11 **A.** Yes. PGE ignored our requests for prices, documents, and other information, sometimes
12 for months. We repeatedly had to exhort PGE to be responsive. When PGE finally would
13 respond, they often refused to provide information or tried to impose unreasonable
14 conditions or terms. This was a pattern at the start, when PGE effectively refused to even
15 acknowledge the existence of Madras Solar, due to purported restrictions on the delivery
16 point for Madras Solar – restrictions that, to this day, PGE has still never been able to
17 satisfactorily substantiate. PGE then took approximately four months to simply provide
18 indicative prices and approximately six additional months to provide a draft contract.
19 Once PGE did finally tender a draft PPA, it refused to engage in substantive PPA
20 negotiations for two months, due to purported concerns over questions that had limited
21 bearing, if any, on the agreement as a whole and should not have been used as
22 justification to refuse to engage in substantive negotiations. Finally, even now, at the end
23 of the negotiation process, PGE has raised entirely new and materially harmful provisions

1 within just the last few weeks, including in their last draft. It has been clear throughout
2 the process that PGE would prefer that Madras Solar simply go away, and it would
3 appear that PGE has resorted to a number of means in order to effectuate that outcome. It
4 has only been through repeatedly making it clear that Madras Solar was, in fact, not
5 going away, and that it would litigate to enforce its basic rights, that PGE has agreed to
6 back down from unreasonable positions or simply move the negotiation process forward
7 as required under Schedule 202. It has been a constant fight with PGE in order for
8 Madras Solar to exercise its rights as a QF.

9 **Q. When did Madras Solar reach out to PGE regarding the negotiations process, and**
10 **what occurred after it did?**

11 **A.** Madras Solar first reached out to PGE regarding a potential sale of its net output in
12 October of 2017, a little more than a year and a half ago. On October 17, 2017, Madras
13 Solar requested that PGE provide an indicative pricing proposal. PGE asked for certain
14 information to be provided, which Madras Solar did provide, on October 18, 2017. This
15 included completing PGE's Schedule 202 "Initial Information Request Form" and
16 associated attachments.

17 A few weeks later, PGE responded that the information received on October 18,
18 2017 was deficient and requested clarification on several items, including asking Madras
19 Solar to specify a Point of Delivery ("POD") for the project. A few days later, Madras
20 Solar responded with the requested information, including a statement responding to
21 questions PGE had raised about the Point of Delivery ("POD") for the project.
22 Specifically, Madras Solar explained that there was no POD for the project, because it
23 would be directly interconnected to PGE's system. On December 19, 2017, PGE

1 responded to Madras Solar that it would assume that the POD is PGE's Round Butte
2 substation, and that PGE could not accept deliveries at that point. PGE stated that it
3 would not offer indicative pricing for the project until a valid POD was provided.

4 **Q. What did Madras Solar do in response to PGE's refusal to provide indicative**
5 **pricing for the project?**

6 A. Madras Solar inquired further regarding PGE's determination that the Round Butte POD
7 was not valid, and, over the next month or so, PGE and Madras Solar exchanged
8 information and questions about this topic. On February 8, 2018, Madras Solar sent a
9 letter to PGE explaining that PGE had not been entitled to withhold indicative pricing on
10 the basis of its concerns about the Round Butte POD, and that it was mistaken to ask
11 Madras Solar to have certain interconnection studies completed before PGE would
12 provide indicative pricing. Madras Solar also asserted that it had provided all
13 information necessary to receive indicative pricing, and requested that PGE provide it
14 immediately.

15 **Q. Did PGE eventually provide indicative pricing?**

16 A. Yes. PGE finally provided indicative pricing on February 23, 2018. PGE ultimately
17 quietly backed down from its original position that we cannot enter into a PPA due to
18 concerns about the Round Butte POD or that we are required to first complete certain
19 interconnection studies. PGE's initial (and ultimately completely unnecessary) refusal to
20 provide indicative pricing cost the project months of time – time that could have been
21 spent focusing on negotiating a PPA.

22 **Q. After reviewing the indicative pricing, did Madras Solar request a draft PPA?**

23 A. Yes. Madras Solar reviewed the indicative pricing, and then requested a draft PPA from

1 PGE on March 5, 2018. In response to that request, PGE sent a letter to Madras Solar on
2 March 27, 2018, explaining that it denied Madras Solar's request for a draft PPA,
3 because, in PGE's view, Madras Solar had not provided sufficient evidence to
4 demonstrate that any necessary interconnection studies had been completed and that
5 interconnection arrangements had been executed or were under negotiation. Madras Solar
6 disputed PGE's assessment, and wrote a letter to PGE on May 4, 2018, in which it
7 explained that all of the requirements for receiving a draft PPA had been met.

8 **Q. Why did Madras Solar dispute PGE's assessment that it was required to provide**
9 **assurances that interconnection arrangements had been executed or were under**
10 **negotiation?**

11 **A.** Madras Solar was moving forward diligently with the interconnection process, but PGE
12 transmission was delaying the interconnection process such that it was impossible for
13 Madras Solar to provide any additional information.

14 When Ecoplexus initially submitted the interconnection request for Madras Solar
15 to PGE Transmission on October 5, 2017, it requested to proceed directly to a System
16 Impact Study.¹ In January 2018, PGE Transmission denied this request, stating that the
17 transmission system in the area of Madras Solar is "very complicated" and "somewhat
18 limited," and required that the Facility first proceed with a Feasibility Study. Ecoplexus
19 received additional separate notices from PGE Transmission, one on March 23, 2018 and
20 another on April 26, 2018, stating that the Feasibility Study would be delayed by 30 days

¹ There are three interconnection studies: 1) a Feasibility Study; 2) a System Impact Study; and 3) a Facilities Study. Interconnection customers can, and often do, skip the Feasibility Study and directly proceed to the System Impact Study.

1 each time. In neither instance did PGE Transmission provide any specific details with
2 regard to why the Feasibility Study would be delayed, merely citing vague and
3 unsupported notions about the “very complex nature of the study” and a desire to deliver
4 “the best product possible.” At no point had PGE Transmission identified or requested
5 from Ecoplexus additional information necessary to complete the studies. It took nearly
6 eight months from the time the initial interconnection request was submitted to receive
7 the draft Feasibility Study. Given these delays that were outside of Madras Solar’s
8 control, Madras Solar informed PGE that it had satisfied the requirements of Procedure 4
9 of Schedule 202 to the best of its abilities, such that PGE should provide a draft PPA.

10 **Q. Did Ecoplexus also inform PGE that it believed its delays were illegal?**

11 **A.** Yes. We also informed PGE that any attempts to use the interconnection process in order
12 avoid entering into a PPA with a QF or formation of a LEO is in direct contravention of
13 FERC precedent. Specifically, we cited *FLS Energy, Inc.*, 157 FERC ¶ 61,211, Docket
14 No. EL17-5-000 (December 15, 2016).

15 **Q. Why did you cite this recent FERC precedent?**

16 **A.** While I am not a lawyer, and I am not testifying as to what FERC’s precedent is, I can
17 testify about what we thought the *FLS Energy, Inc.* decision meant, and why we cited it.
18 We referred to the case because we believed it was directly relevant to the issue at hand,
19 which was that PGE was refusing to provide a draft PPA due to a QF being unable to
20 provide certain executed interconnection studies. We understood *FLS Energy, Inc.* to
21 mean that a utility cannot require a QF to sign an interconnection agreement prior to
22 being eligible to receive an executed contract, given that the utility can delay
23 interconnection studies and the tendering to the QF of an executable interconnection

1 agreement. If a utility cannot condition obtaining a contract based on requiring a QF to
2 sign an interconnection agreement, then a utility should not be able to refuse to at least
3 provide a draft contract before the interconnection process has been completed. In our
4 case, PGE (in its merchant function) was refusing to provide a draft PPA because PGE
5 (in its transmission function) was refusing to provide an interconnection study.

6 **Q. In light of PGE's refusal to provide a draft PPA, did Madras Solar take any other**
7 **action?**

8 **A.** Yes. Madras Solar provided an executed PPA, in substantially the same form as the
9 Commission-approved standard contract for QF purchases, in which Madras Solar
10 committed to selling its power to PGE. This was provided on May 4, 2018, and in the
11 letter accompanying it, Madras Solar also explained that the interconnection process with
12 PGE had been delayed, through no fault of its own. The details of that dispute may not
13 be essential to go into at this time, but that dispute deals with whether PGE or Madras
14 Solar is responsible for certain very significant, costly transmission system upgrades and
15 whether such upgrades are actually even legitimately required in the first place. Madras
16 Solar also requested that PGE, if it was not willing to counter-sign the partially executed
17 PPA, provide a draft PPA that it was willing to execute.

18 **Q. Why did Madras Solar execute a PPA on May 4, 2018?**

19 **A.** Because of PGE's pending avoided cost rate reduction. Our original intention was to
20 have an executed contract prior to the May 2018 rate reduction; however, PGE took
21 months to provide us with indicative prices and still did not provide a draft PPA for
22 another six months thereafter. If PGE had proceeded more quickly, we may have been
23 able to finalize a PPA prior to the rate change.

1 **Q. Did the Commission lower PGE's avoided cost rates?**

2 **A.** Yes. On May 23, 2018, the Commission issued an order lowering PGE's avoided cost
3 rates. PGE later updated its indicative prices, and PGE's position is that Madras Solar is
4 not entitled to the pre-May 23, 2018 avoided cost rates.

5 **Q. Is there anything else relevant about the May 23, 2018 avoided cost rate reduction?**

6 **A.** Yes. We understood that the Commission's policies were that on May 1 of every year
7 the Oregon investor owned utilities would file avoided cost rate changes, to be effective
8 within 60 days after filing. PGE filed its updated avoided cost rates, but asked that they
9 become effective early on May 8, 2018. PGE did not inform us that it would seek an
10 early avoided cost rate reduction.

11 **Q. Did PGE respond to Madras Solar's May 4th letter?**

12 **A.** For several weeks, PGE did not respond to Madras Solar's letter, and so Madras Solar
13 sent a follow-up letter to PGE on July 10, 2018, reiterating its request for a draft PPA, but
14 also confirming its commitment to sell its output to PGE under the PPA that it executed
15 and provided on May 4, 2018, and requesting an in-person meeting. After additional
16 communication, PGE finally provided Madras Solar with a draft PPA on August 29,
17 2018.

18 **Q. How did negotiations progress after PGE finally provided a draft PPA?**

19 **A.** On October 8, 2018, Madras Solar provided PGE with a redline draft of the PPA. On
20 November 2, 2018, PGE then submitted a letter to Madras Solar stating that, until Madras
21 Solar commits to an interconnection method for the project, PGE would not enter into
22 substantive PPA negotiations. Shortly after that, on November 7, 2018, Madras Solar
23 notified PGE that it should assume, for purposes of the PPA, that Madras Solar would

1 take Network Resource Interconnection Service, and that it would fund any upgrades
2 legitimately required for deliverability. On November 12, 2018, Madras Solar again
3 reiterated its desire to move forward, and requested that PGE provide a final, executable
4 PPA.

5 PGE responded that it would not provide an executable PPA, and Madras Solar
6 requested again, then, that PGE should provide a fully-revised version of the draft PPA,
7 and propose a date and time for in-person negotiations. Madras Solar also informed
8 PGE, two days later, that it viewed PGE's actions as attempting to delay execution of the
9 PPA until such time as it files its proposed avoided cost reduction, and that Madras Solar
10 would be ready to take actions to protect its rights, should Madras Solar not be in
11 possession of a mutually-executed PPA at the time that PGE filed for new avoided cost
12 rates. Madras Solar also requested that PGE inform it of the date of the anticipated filing
13 for changing its rates.

14 Between November 15, 2018 and December 7, 2018, PGE and Madras Solar
15 continued to exchange information and questions, and, on or around December 7, 2018,
16 Madras Solar stated that, notwithstanding the previously-formed LEO, it was still
17 awaiting a revised PPA.

18 On December 12, 2018, PGE provided Madras Solar with an updated draft PPA
19 and possible dates for an in-person meeting in January. This meeting occurred on
20 January 8, 2019, and Madras Solar then sent PGE an updated draft of the PPA on January
21 22, 2019. On January 25, 2019, Madras Solar and PGE met in person to negotiate the
22 draft PPA, and, on February 12, 2019, Madras Solar sent PGE comments on certain
23 sections of the PPA. Madras Solar then sent PGE a revised draft of the PPA on February

1 22, 2019. PGE did not provide a revised draft of its own until March 25, 2019, more than
2 30 days after receiving Madras Solar's previous draft, despite repeated inquiries with
3 PGE staff as to the status of the revised PPA.

4 On March 29, 2019, Madras Solar provided PGE with its final draft of the PPA
5 and accompanying exhibits. Madras Solar also requested an executable version or, if
6 PGE could not provide an executable version, to let it know as soon as possible, given the
7 pending avoided cost rate reduction, which I understand to be April 23, 2019.

8 On April 5, 2019, Madras Solar reiterated its request for an executable PPA,
9 noting that, if PGE is unable to provide an executable PPA by April 22, 2019, to let
10 Madras Solar know as soon as possible. Madras Solar also explained that it seeks to have
11 the PPA executed prior to April 23, 2019, when PGE's rates were expected to be reduced,
12 and that, while it is not its desire to litigate, Madras Solar would be forced to do so,
13 absent an executed PPA by April 22, 2019. Madras Solar also offered to have a
14 discussion about the remaining, outstanding items.

15 On April 5, 2019, PGE informed Madras Solar that it was not in agreement as to
16 the terms and conditions of the PPA, and, on April 9, 2019, provided Madras Solar with
17 an updated PPA. PGE noted that it was performing research related to several of Madras
18 Solar's previous comments. On April 14, 2019, PGE provided Madras Solar with an
19 updated version of the PPA. Madras Solar assessed the updated version of the PPA and
20 determined that it did not resolve Madras Solar's requests and concerns, and that it
21 continued to contain problematic provisions and unclear descriptions of PGE's positions.

22 On April 19, 2019, Madras Solar provided a letter to PGE, demanding that PGE
23 sign a PPA that was attached on or before April 22, 2019, or that it would, as previously

1 described, take action at the Commission to seek a review of the PPA and address its
2 complaints, and enforce its LEO.

3 **Q. Is there anything else you would like to note about the last few months of**
4 **negotiations?**

5 A. Yes. Once negotiations started moving forward in earnest in January of 2019, PGE
6 became more friendly toward the project and responsive. For a period of time, we
7 believed that we might actually be able to enter into a PPA with PGE; however, PGE
8 then took more than 30 days to provide an update to the draft PPA Madras Solar provided
9 on February 22, 2019. PGE also then continued to insist upon provisions we believe are
10 unreasonable, and raised new ideas and concepts late in the process.

11 **Q. As of the date of the filing of this testimony, what is the status of the negotiations?**

12 A. PGE and Madras Solar have been unable to agree on a PPA. Because Madras Solar
13 repeatedly requested that PGE negotiate with it to enter into a PPA before April 23, 2019,
14 and because Madras Solar had experienced several delays caused by PGE during the
15 negotiations process, and given that Madras Solar had clearly committed to sell its output
16 to PGE under reasonable terms and conditions – terms and conditions that PGE would
17 not agree to – Madras Solar determined that it should send a final demand letter to PGE.
18 Madras Solar provided this letter to PGE on April 19, 2010. The parties have still not
19 been able to reach agreement, and thus Madras Solar is now seeking relief from the
20 Commission through having an adjudication of the reasonableness of its proposed PPA.

21 **Q. In summary, what is your overall view of the negotiation process with PGE**
22 **regarding the PPA?**

23 A. PGE has not timely responded to requests for information and documents. For example,

1 despite repeated requests, it took PGE four months to provide indicative prices and
2 approximately six additional months to provide a draft power purchase agreement after
3 Madras Solar initially requested one. After finally providing indicative pricing and a
4 draft PPA, PGE repeatedly delayed responding to Madras Solar's questions and failed to
5 timely return documents, including PPA redlines. The time between October 8, 2018,
6 when Ecoplexus provided its initial revised draft of the PPA, and December 12, 2018,
7 when PGE finally provided an updated draft of its own, comes to mind. During this time,
8 PGE raised multiple issues that purportedly prevented it from being able to move forward
9 with substantive PPA negotiations, including changes to the project configuration, the
10 intended interconnection path (whether Network Resource Energy Service or Energy
11 Resource Interconnection Service), and a request for a voluntary waiver to allow PGE's
12 merchant and transmission functions to communicate with one another regarding Madras
13 Solar. Ultimately, none of these alleged issues legitimately prevented PGE from
14 engaging in substantive PPA negotiations. Even if certain questions needed to be
15 addressed prior to execution of a PPA, none of the issues raised by PGE should have
16 prevented the parties from continuing to negotiate the other unrelated provisions of the
17 PPA, which is effectively what Madras Solar requested PGE to do. During this time, 60
18 days that could have been constructively spent continuing to negotiate the draft
19 agreement were simply wasted. Clearly, PGE's delays and recalcitrance amounted to
20 unreasonable restrictions in the contracting process. Finally, PGE has insisted on certain
21 unreasonable terms and conditions, which have prevented Madras Solar and PGE from
22 agreeing on a PPA.

1 **Q. How did PGE's actions during the negotiations process compare with the deadlines**
2 **that you understand to apply under the Commission's guidelines governing**
3 **negotiated PPAs?**

4 A. My understanding is that PGE is required to provide QFs with an indicative pricing
5 proposal within 30 business days following receipt of the information reasonably
6 required by the Company to prepare the indicative pricing proposal.² Some of the
7 information that may be required is listed in Schedule 202.³

8 As I described earlier, Madras Solar initially provided this information to PGE on
9 October 18, 2017. PGE indicated its view that some of the information was deficient,
10 with Madras Solar then providing the additional requested information on November 14,
11 2017. PGE then requested certain information related to interconnection, which Madras
12 Solar insisted could not be required prior to getting an indicative pricing proposal. PGE
13 finally provided indicative pricing on February 23, 2018. So, it took PGE about 18
14 weeks to provide the indicative pricing proposal from the time it was requested, and
15 about 14 weeks to provide it after Madras Solar provided PGE with the updated
16 information. This means that, even with respect to that latter date, PGE took more than
17 three times the amount of time that is required under its tariff to provide this information.

18 With respect to a draft PPA, which begins the negotiation, my understanding is
19 that PGE is required to provide this to a QF that requests it within 30 days after it is

² See Exhibit 201, PGE's Schedule 202 at Sheet No. 202-2 (listing various items PGE may
require from QFs before providing indicative pricing).

³ *Id.*

1 requested and after receiving certain information from the QF. PGE's Schedule 202 lists
2 information that may be required.⁴

3 Madras Solar requested a draft PPA from PGE on March 5, 2018. PGE refused to
4 provide it because of PGE's view that Madras Solar was required to have taken certain
5 steps regarding interconnection, which Madras Solar disputed. PGE continued to deny
6 that Madras Solar was entitled to receive a draft PPA, until August 29, 2018, when one
7 was finally provided. This means that, from the time Madras Solar requested a draft PPA
8 until PGE provided it, nearly six months passed.

9 **Q. Aside from PGE's missing of those deadlines, were there other actions by PGE that**
10 **caused delay in the negotiations?**

11 **A.** Yes. As discussed earlier, there were two periods of significant delays by PGE in
12 tendering revised PPA drafts, the first being the period between October 8, 2018 and
13 December 12, 2018, and the second being more recently, between February 22, 2019 and
14 March 25, 2019. These two periods combined amount to more than 90 days of lost
15 negotiation time. PGE has also insisted on unreasonable conditions and terms in the
16 PPA, and has also not provided clarity around some of its objections, or has unreasonably
17 ensured that ambiguity remains in the contract by not being forthcoming with
18 suggestions. Finally, PGE has not timely, or with earnestness, considered resolutions
19 proposed by Madras Solar. Some of these issues are discussed below.

4 *Id.* at Sheet No. 202-4.

III. OUTSTANDING ITEMS IN NEGOTIATIONS

Q. On what items have PGE and Madras Solar been able to agree through negotiations on the PPA?

A. PGE and Madras Solar have, despite the problems described above, been able to agree on most provisions in the PPA. On one hand, there are only a handful of remaining issues. On the other hand, the parties are quite far from reaching an agreement, because the remaining issues are important, and it would be highly problematic for Madras Solar to agree to PGE's position on them.

Q. In the PPA negotiations process, were there certain points that Madras Solar has conceded in order to get to an agreement?

A. Certainly. Some examples include that PGE insisted on particular language regarding "specified energy." Madras Solar found this provision problematic, because it has the effect of reducing the price that Madras Solar would be paid for its net output. And, I understand that these provisions have been rejected by the Commission⁵ and were designed for off-system QFs, not on-system QFs like Madras Solar. Madras Solar ultimately agreed to these provisions simply in order to move the PPA process forward. Additionally, PGE insisted on "scheduling" provisions under the PPA, which is confusing, given that Madras Solar is an on-system facility and will become a Network Resource of PGE's merchant function, meaning that PGE will schedule the resource, not Madras Solar. We came to understand this provision to be more accurately described as a

⁵ *Re PGE 2018 Request for Proposals for Renewable Resources*, Docket No. UM 1934, Order No. 18-171 at 3 (May 21, 2018).

1 forecasting, rather than a scheduling, provision, and ultimately agreed to it, despite it still
2 being a confusing provision and one that is not entirely clear in terms of how it is
3 supposed to work in practice, simply out of our interest in moving the contract forward.
4 PGE also insisted on provisions that could result in termination of the agreement prior to
5 the time that PGE would be entitled to do so under the Commission's rules, from what I
6 understand, including provisions related to the requirement for Madras Solar to achieve
7 various development milestones upon a date certain, or else be in breach of the PPA and
8 face potential termination. We agreed to most of those, again, just to move things
9 forward.

10 **Q. On what items have PGE and Madras Solar been unable to agree?**

11 **A.** PGE and Madras Solar have been unable to agree on the following items:

- 12 (1) the applicable avoided cost rate,
 - 13 (2) the nameplate capacity in terms of DC (listed on page 1, in Section 1.69, and in
14 Exhibit E of the PPA),
 - 15 (3) metering provisions (Section 3.6 of the PPA),
 - 16 (4) a PGE-proposed revision that would allow PGE to adjust the price for power
17 under the PPA if redispatch of PGE resources or "back down" occurs (PGE
18 proposed a section 6.10 that would contain this provision),
 - 19 (5) the terms for a project Commercial Operation Date ("COD") "milestone" related
20 to signing a generator interconnection agreement (Section 2.1(g) of the PPA),
21 and
 - 22 (6) the sale of Project Test Energy (Section 2.3).
- 23

1 **Q. With respect to the avoided cost rate, what is Madras Solar's position?**

2 **A.** Madras solar believes that it should be entitled to the avoided cost rates applicable to the
3 PPA it executed on May 4, 2018. In the alternative, it should be entitled to the avoided
4 costs in effect prior to April 23, 2019. The reasons for this are described more
5 specifically in the testimony of Erik Stuebe, and I expect will be further explored in legal
6 briefings in this case.

7 **Q. With respect to the nameplate capacity of the project, what is the disagreement, and**
8 **why is Madras Solar unwilling to agree with PGE?**

9 **A.** PGE is insisting that the project's DC capacity remain at 75 MW, because it was listed at
10 that amount at one time in the negotiation process. Madras Solar has determined that it
11 cannot fit a project of that size on the project site, however, and had modified the DC size
12 down to around 65.784 MW. Madras Solar's view is simply that it should be entitled to
13 indicate in the PPA the actual planned DC nameplate capacity rating of the project. The
14 development of solar facilities is a dynamic process, and design assumptions change as
15 site conditions are uncovered. While it would be ideal for both parties to have a complete
16 understanding of the project before commencing the PPA negotiation process, the ever-
17 shifting nature of avoided costs causes QF developers to attempt to secure rates as early
18 in the process as possible. Regardless, Madras Solar has full discretion to construct a
19 solar facility of whatever size it chooses (so long as the nameplate capacity does not
20 exceed 80 MW AC), including its desired 65.784 MW DC size, and the PPA should
21 accurately reflect that size.

22 Madras Solar notes that the AC size of the project has remained at a constant 63
23 MW since November 7, 2018, when we initially informed PGE of the size change. My

1 understanding is that the AC nameplate is what is normally used in PPAs. DC is the
2 amount of energy that the solar panels produce and AC is the type of electricity used and
3 transmitted to the electrical grid. An inverter converts the DC to AC, so that the AC
4 rating is what PGE should care about. This is why PGE's standard contracts "nameplate
5 capacity" are listed in AC.

6 **Q. With respect to the metering provisions, what is the dispute, and what is Madras**
7 **Solar's position?**

8 A. Madras Solar believes that the metering provisions of the PPA are standard and workable
9 in the form that they are currently in. In fact, these provisions were in the draft PPA that
10 PGE originally provided. Those provisions state:

11 Metering. Seller shall design, furnish, install, own, inspect, test, and maintain
12 metering equipment for the Project. Seller shall periodically (but no less than once
13 every six (6) months) inspect, test, repair or replace the metering equipment at
14 Seller's cost and provide such results to Buyer upon Buyer's request. If any of the
15 inspections or tests disclose an error exceeding 0.5 percent, either fast or slow,
16 proper correction, based upon the inaccuracy found, shall be made of previous
17 readings for the actual period during which the Project Meter rendered inaccurate
18 measurements if that period can be ascertained. If the actual period cannot be
19 ascertained, the proper correction shall be made to the measurements taken during
20 the time the metering equipment was in service since last tested, but not exceeding
21 three (3) months, in the amount the Project Meter shall have been shown to be in
22 error by such test. Any correction in billings or payments resulting from a
23 correction in the meter records shall be made in the next monthly billing or payment
24 rendered. Such correction, when made, shall constitute full adjustment of any claim
25 between Seller and Buyer arising out of such inaccuracy of metering equipment.

26
27 Starting with the revised draft PPA that PGE provided on March 25, 2019, PGE
28 has included a comment on this section that says "Under review since Seller will
29 interconnect using NRIS." PGE has not shared any information other than this. It is
30 unreasonable for the negotiation of the PPA to be held up over standard metering
31 provisions, especially when PGE has been unable to articulate its view. Ecoplexus does

1 not believe that there is any difference in the meters required for Network Resource
2 Interconnection Service as opposed to Energy Resource Interconnection Service.
3 However, this is a term that is one that is holding up conclusion of the negotiation
4 process.

5 **Q. Would Madras Solar agree to different metering provisions?**

6 **A.** Potentially. However, we are not sure what other metering provisions PGE might want.
7 We cannot respond to, or have a position on different provisions, if we have no idea what
8 those provisions are or why PGE is proposing them. Again, we do not believe that the
9 type of interconnection service selected changes what type of meter is installed. As such,
10 this should not be a complicated issue that warrants adjudication by the Commission.
11 However, we are raising it because PGE won't tell us what metering it wants.

12 **Q. With respect to the PGE-proposed revision that would allow PGE to adjust the**
13 **price for power under the PPA if redispatch or "back down" of PGE resources**
14 **occurs, what is the dispute, and what is Madras Solar's position?**

15 **A.** PGE has proposed a provision that states:

16 In the event a Governmental Authority requires Buyer to back down generation at
17 one or more of Buyer's electric generation facilities to accommodate or otherwise
18 facilitate the dispatch of the Project under this Agreement, Buyer (acting in a
19 commercially reasonable manner) may re-evaluate and adjust the Fixed Price for
20 future deliveries after delivering sixty (60) days prior written notice to Seller of
21 such price adjustment.

22
23 This provision would undermine the price certainty provisions that are an integral
24 part of PURPA, and would give PGE an ambiguous and ill-defined right to PGE to
25 change the price it pays Madras Solar for power. As a practical matter, such a provision is

1 completely unworkable for the project, because the provision would result in the project
2 not being financeable.

3 The vast majority of renewable energy projects, both those developed under
4 PURPA and those not, require some sort of a fixed price in order to be able to obtain
5 financing. From the perspective of an investor in, or lender to, the project, the type of
6 provision being proposed by PGE would mean that there is no certainty about the price,
7 and thus the project would represent a much greater degree of risk than what most
8 investors and lenders would consider acceptable. Under normal utility contracting
9 processes, for both QFs and non-QFs alike, prices are fixed at the time of PPA execution.
10 It is this predictable revenue stream that allows projects to be successfully financed.
11 PGE's provision effectively removes any degree of certainty or predictability about the
12 revenue stream, given that it is very difficult, if not completely impossible, to forecast or
13 predict how the provision would actually operate. Thus, this proposed provision is
14 counter to the basic market construct for how renewable energy facilities are developed
15 and financed.

16 Additionally, PGE proposed the original version of this provision on March 25,
17 2019, nearly seven months after tendering the original draft PPA, and only several weeks
18 before PGE's rates for purchases under PURPA are expected to change. The provision
19 originally proposed would have included a price adjustment for "redispatch" of PGE's
20 generation. After Madras Solar informed PGE of its view that PGE's Open Access
21 Transmission Tariff does not allow PGE to directly assign redispatch costs to any specific
22 Network Resource, such as Madras Solar, PGE removed that provision, but is now
23 insisting on the provision described above – which appears to differ from the originally-

1 proposed provision only by way of semantics. Regardless of whether the provision refers
2 to “redispatch” or the more generic “backing down” of other resources, either PGE knew
3 it wanted a provision like this for months and was withholding this important provision
4 until the last minute, or PGE came up with it at the last minute, both of which
5 demonstrate a lack of good faith.

6 Madras Solar has agreed that it will be responsible for all of network transmission
7 upgrades that PGE and Madras Solar agree are required, or that FERC concludes are
8 appropriate to allow for deliverability to PGE. But Madras Solar does not believe it is
9 reasonable that PGE seek to subordinate its fixed price purchase obligation to Madras
10 Solar to other actions FERC may find are appropriate or required for PGE to take with
11 respect to unknown dispatch of its resources.

12 **Q. With respect to the terms for a COD milestone related to signing a generator**
13 **interconnection agreement, what is the dispute, and what is Madras Solar’s**
14 **position?**

15 **A.** Section 2.1 of the PPA identifies “Project Milestones” that Madras Solar agrees to
16 undertake to complete its project by the COD, which is identified as March 1, 2022.
17 Section 5.1(h) of the PPA states that, if Madras Solar misses a Project Milestone, then the
18 it shall be in default, and Section 5.2 provides that PGE may terminate the PPA for such a
19 default under certain circumstances. Thus, Project Milestones are critical provisions of
20 the PPA.

21 Madras Solar and PGE have a disagreement about whether certain network
22 transmission upgrades are required as part of the interconnection process, and any dispute
23 over the need and cost for any network transmission upgrades will need to be resolved by

1 FERC. In light of this potential need to adjudicate this issue before FERC, Madras Solar
2 has asked PGE to agree that the project milestone related to signing an interconnection
3 agreement state that the required action is for Madras Solar to sign a Generation
4 Interconnection Agreement no later than 30 days after Madras Solar and PGE reach
5 agreement with regard to the form of the agreement, including the cost of any network
6 upgrades and/or interconnection facilities, and the timeline for completion of those
7 upgrades or facilities. This provision appears as Section 2.1(g) in the PPA attached to the
8 complaint as Attachment A.

9 Such a provision is reasonable because it ensures that Madras Solar's ability to
10 sell power to PGE under its legally enforceable obligation is not upset solely due to a
11 need to resolve disputes with PGE regarding a position that Madras Solar believes PGE
12 has taken unlawfully, unreasonably, or unjustifiably. Without such a provision, PGE
13 would have the ability to upset the project by continuing to dispute the interconnection
14 requirements until Madras Solar is found to be in default under the PPA and subject to
15 having the PPA terminated.

16 **Q. With respect to Project Test Energy, what is the dispute, and what is Madras**
17 **Solar's position?**

18 **A.** Madras Solar has requested that it be able to sell Project Test energy to a third-party, and
19 submit bids into the western Energy Imbalance Market. Madras Solar has requested that
20 PGE agree to allow it to exercise this right, but PGE has objected to this provision. In the
21 PPA attached to the complaint, Section 2.3 provides Madras Solar the rights it seeks, and
22 PGE should adopt this language.

1 Madras Solar knows of no legal, technical, or policy reason why it cannot sell its
2 project test energy to another third-party and still commit to sell the remainder of its
3 output to PGE. PGE has also not explained why it is insisting that it receive all the
4 project test energy. In light of this, PGE's insistence that this provision be removed is
5 unreasonable.

6 **Q. Please describe why you believe the Commission should adopt the PPA that is**
7 **provided with Madras Solar's complaint?**

8 **A.** Madras Solar has been working, for over a year and a half, to reach an agreed-upon PPA
9 with PGE. PGE has caused delays, and now insists on unreasonable terms (or rejects
10 reasonable terms) under the PPA. All of this has caused Madras Solar to be unable to get
11 a PPA in place to sell its output under PURPA. In addition to the legal arguments (which
12 I do not address in my testimony) for why PGE should be required to purchase Madras
13 Solar's power, the Commission should find that it is fair under the circumstances to
14 remove the barrier that Madras Solar has run into with trying to get a PPA finalized with
15 PGE. All of the provisions in Madras Solar's PPA are reasonable, and the Commission
16 should find that PGE should execute the contract.

17 **IV. CONCLUSION**

18 **A. Does this conclude your testimony?**

19 **Q.** Yes.

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

Docket No. _____

MADRAS PV1, LLC,

Complainant,

v.

PORTLAND GENERAL ELECTRIC
COMPANY,

Respondent.

EXHIBIT MADRAS SOLAR/201

PGE SCHEDULE 202

April 22, 2019

**SCHEDULE 202
QUALIFYING FACILITIES GREATER THAN 10MW
AVOIDED COST POWER PURCHASE INFORMATION**

PURPOSE

To provide information regarding procedures and timelines leading to a power purchase agreement between the Company and a Qualifying Facility (QF) with an aggregate nameplate capacity greater than 10,000 kW.

AVAILABLE

To owners of QFs making sales of electricity to the Company in the State of Oregon (Seller).

APPLICABLE

To qualifying cogeneration facilities or qualifying small power production facilities within the meaning of section 201 and 210 of the Public Utility Regulatory Act of 1978 (PURPA), 16 U.S.C. 796 and 824a-3.

A QF with nameplate capacity greater than 10,000 kW will be required to enter into a negotiated written power purchase agreement (Negotiated Agreement) with the Company.

A QF with nameplate capacity less than 10,000 kW or less may elect the option of a Standard Contract with terms and pricing as defined in Schedule 201.

POWER PURCHASE INFORMATION

A QF may call the Power Production Coordinator at (503) 464-8000 to obtain more information about being a Seller or how to apply for service under this schedule.

GUIDELINES

The Company will purchase any Energy in excess of station service (power necessary to produce generation) and amounts attributable to conversion losses, that is made available to Company by the Seller, pursuant to a Negotiated Agreement with the Company executed prior to delivery of such power. The Negotiated Agreement will comply with the requirements of the Federal Energy Regulatory Commission (FERC) and the guidelines established by Commission Order No. 07-360.

The Negotiated Agreement may have a term of up to 20 years, as selected by the Seller.

SCHEDULE 202 (Continued)

PROCEDURES TO DEVELOP A NEGOTIATED AGREEMENT

1. The Seller may request indicative power purchase prices. To obtain an indicative pricing proposal for a proposed project, the Seller must provide in writing, general project information reasonably required for the development of indicative pricing, including, but not limited to:
 - Demonstration of ability to obtain QF status.
 - Design capacity (MW), station service requirements, and net amount of power to be delivered to the Company's electric system.
 - Generation technology and other related technology applicable to the site.
 - Quantity and timing of monthly power deliveries (including project ability to respond to dispatch orders from the Company).
 - Proposed site location and electrical interconnection point.
 - Status of interconnection and transmission arrangements.
 - Proposed on-line date and outstanding permitting requirements.
 - Motive force or fuel plan consisting of fuel type(s) and source(s).
 - Proposed contract term and pricing provisions.
2. The Company will not be obligated to provide an indicative pricing proposal until all the information described above has been received in writing from the Seller. Within 30 business days following receipt of all required information, the Company will provide the Seller with an indicative pricing proposal, which may include other terms and conditions, tailored to the individual characteristics of the proposed project. Such proposal may be used by the Seller to make determinations regarding project planning, financing and feasibility. However, such prices are indicative and are not final and binding. Prices and other terms and conditions are only final and binding to the extent contained in Negotiated Agreement, once executed by both parties. The Company will provide with the indicative prices a description of the methodology used to develop the prices.

SCHEDULE 202 (Continued)**PROCEDURES TO DEVELOP A NEGOTIATED AGREEMENT (Continued)**

3. The Avoided Cost Prices specified in Schedule 201 provide a starting point for indicative prices, and will be modified to address the following specific factors established in OPUC Order No. 07-360 and FERC 18 § CFR 292.304(e):
 - (e) *Factors affecting rates for purchases. In determining avoided costs, the following factors will, to the extent practicable, be taken into account.*
 - (1) *The data provided pursuant to 18 CFR § 292.302(b), (c), or (d), including State review of any such data;*
 - (2) *The availability of capacity or energy from a qualifying facility during the system daily and seasonal peak periods, including:*
 - (i) *The ability of the Company to dispatch the qualifying facility;*
 - (ii) *The expected or demonstrated reliability of the qualifying facility;*
 - (iii) *The terms of any contract or other legally enforceable obligation, including the duration of the obligation, termination notice requirement and sanctions for non-compliance;*
 - (iv) *The extent to which scheduled outages of the qualifying facility can be usefully coordinated with scheduled outages of the Company's facilities;*
 - (v) *The usefulness of energy and capacity supplied from a qualifying facility during system emergencies, including its ability to separate its load from its generation;*
 - (vi) *The individual and aggregate value of energy and capacity from qualifying facilities on the Company's system; and*
 - (vii) *The smaller capacity increments and the shorter lead time available with additions of capacity from qualifying facilities; and*
 - (3) *The relationship of the availability of energy or capacity from the qualifying facility as derived in part (e) (2) of this section, to the ability of the Company to avoid costs, including the deferral of capacity additions and the reduction of fossil fuel use; and*
 - (4) *The costs or savings resulting from variations in line losses from those that would have existed in the absence of purchases from a qualifying facility, if the Company generated an equivalent amount of energy itself or purchased an equivalent amount of electric energy or capacity.*

SCHEDULE 202 (Continued)**PROCEDURES TO DEVELOP A NEGOTIATED AGREEMENT (Continued)**

4. If the Seller desires to proceed with negotiations after reviewing the Company's indicative price proposal, the Seller must request in writing that the Company prepare a draft Negotiated Agreement to serve as the basis for negotiations between the parties. In connection with such request, the Seller must provide the Company with any additional project information that the Company reasonably determines to be necessary for the preparation of the Negotiated Agreement, which may include, but will not be limited to:
 - Updated information for the project information listed above in paragraphs 1 and 3.
 - Evidence of adequate control of proposed site.
 - Timelines for obtaining any necessary governmental permits, approvals or authorizations.
 - Assurance of fuel supply or motive force.
 - Anticipated timelines for completion of key project milestones.
 - Evidence that any necessary interconnection studies have been completed and assurance that the necessary interconnection arrangements have been executed or are under negotiation.
5. Within 30 days following receipt of updated information required by the Company, the Company will provide the Seller with a draft Negotiated Agreement. The draft agreement will contain proposed terms and conditions in addition to indicative pricing. The draft agreement is not binding; however, it will serve as the basis for subsequent negotiations.
6. After reviewing the draft Negotiated Agreement, the Seller will notify the Company in writing of its intent to proceed with negotiations. The Seller may prepare an initial set of written comments and proposals regarding the agreement and forward them to the Company. The Company will not be obligated to begin negotiations with a Seller until the Company has received an initial set of written comments. After the Company's receipt of comments and proposals, the Seller may contact the Company to schedule contract negotiations at such times and places as are mutually agreeable to the parties. In connection with such negotiations, the Company:
 - Will not unreasonably delay negotiations and will respond in good faith to any additions, deletions or modifications to the draft Negotiated Agreement that are proposed by the Seller.
 - May request to visit the site of the proposed project if such a visit has not previously occurred.
 - Will update its pricing proposals at appropriate intervals to accommodate any changes to the Company's avoided-cost calculations, the proposed project or proposed terms of the draft Negotiated Agreement.
 - May request any additional information from the Seller necessary to finalize the terms of the Negotiated Agreement and satisfy the Company's due diligence regarding the QF project.

SCHEDULE 202 (Concluded)

PROCEDURES TO DEVELOP A NEGOTIATED AGREEMENT (Continued)

7. When both parties are in full agreement as to all terms and conditions of the draft Negotiated Agreement, the Company will prepare and forward to the Seller a final, executable version of the agreement within 15 business days. Prices and other terms and conditions in the Negotiated Agreement will not be final and binding until the agreement has been executed by both parties.
8. If parties are not in full agreement within 60 days from the date of written notice, the Seller may file a complaint with the Commission asking the Commission to adjudicate the disputed contract terms.

OFF SYSTEM POWER PURCHASE AGREEMENT

A QF that interconnects with an electric system other than the Company's electric system may enter into a power purchase agreement with the Company after following the applicable negotiated contract guidelines and making the arrangements necessary for transmission of power to the Company's system.