BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

AR 629

In the Matter of Rulemaking Regarding Alternative Dispute Resolution for Complaint Filings and Requests for Declaratory Ruling	JOINT COMMENTS OF RENEWABLE ENERGY COALITION, NORTHWEST & INTERMOUNTAIN POWER PRODUCERS COALITION, AND COMMUNITY RENEWABLE ENERGY ASSOCIATION ON THE PROPOSED ADR RULES

I. INTRODUCTION

The Renewable Energy Coalition ("the Coalition"), the Northwest and Intermountain Power Producers Coalition ("NIPPC"), and the Community Renewable Energy Association ("CREA") (collectively the "QF Trade Associations") respectfully submit these Comments in response to the Chief Administrative Law Judge ("ALJ") Nolan Moser's proposed alternative dispute resolution ("ADR") rules for Public Utility Regulatory Policy Act of 1978 ("PURPA") disputes between qualifying facilities ("QFs") and utilities, filed on August 28, 2020.

The QF Trade Associations appreciate ALJ Moser's efforts thus far, to ensure that the final proposed rules will resolve PURPA disputes in a fair, timely, and cost-effective manner while still enabling access to justice for QFs. Each of the three utilities (collectively the "Joint Utilities") and the individual renewable energy developers who participated in this process also engaged constructively and cooperatively. The efforts by all involved resulted in widespread agreement on most aspects of the proposed ADR

rules and only a discrete and limited number of outstanding issues for the Oregon Public Utility Commission (the "Commission" or "OPUC") to resolve.

In the regulatory context, which includes PURPA, the Commission should strive to make stable and enforceable decisions, consistent with state and federal law and regulations. Specifically, for disputes regarding QF power purchases and interconnection services, the Commission must exercise its general and specific powers to protect QFs, as utility customers, from unjust and unreasonable utility actions, which includes enabling QFs to obtain fair, just, and reasonable rates and contract provisions.[1] In addition, the Commission must enforce the utilities' purchase obligations under PURPA.

The QF Trade Associations ask that the Commission seriously consider its duties and obligations laid out in the statutory framework described below while determining the final version of the ADR rules for PURPA disputes in Oregon. Ultimately, the QF Trade Associations support the Administrative Hearing Division's ("AHD") recommendation to create a voluntary mediation option[2] and oppose the Joint Utilities' request for a mandatory meet and confer period with a seven day advance notice period before filing a complaint.[3] Additionally, the QF Trade Associations urge the Commission to maintain the confidentiality provision already present in OAR 860-001-0350. Lastly, the QF Trade Associations support the proposal to add a workable Staff consultation process into the final proposed rules, where Staff could provide informal guidance to parties in a dispute when necessary.

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1 ORS 756.040(1).
2 AHD Report at 3.
3 *Id.* at 4.

To aid the Commission's decision making, the QF Trade Associations have attached their comments made in the informal rulemaking as Appendix B to these comments.

II. STATUTORY FRAMEWORK

The Commission should adopt an ADR process in this proceeding that implements the specific goal of PURPA: allowing independent power producers and renewable energy generators to sell their net output to the utilities in a non-discriminatory manner and at avoided cost rates. The Commission's adjudicatory process is an important part of Oregon's uniform and settled institutional climate for and increasing the marketability of QFs. Therefore, the ADR process adopted from this proceeding should not undermine that climate or QF marketability, nor undermine the state's goals of promoting the development of a diverse array of permanently sustainable energy resources, which includes QFs.

The parties to PURPA disputes are not ordinary business litigants attempting to enforce a generic contract or business law, as the Commission must always consider its statutory duty to encourage QF development and enforce a utility's must-purchase obligation while working to resolve PURPA disputes. As regulated monopolies seeking a high return on investment, utilities have an incentive to invest in building their own new power plants instead of purchasing power from independently-owned generators.[4]

[4] Congress passed PURPA because Congress found that "traditional electricity utilities were reluctant to purchase power from, and to sell power to, the nontraditional facilities," and this reluctance was a barrier to the development of cogeneration and small power production facilities. *FERC v. Mississippi*, 456 U.S. 742, 750 (1982).

However, federal and Oregon-specific PURPA laws require that each "electric utility shall offer to purchase energy or energy and capacity … from a qualifying facility."[5] This statutory requirement exists to combat the natural business opposition of utilities to QFs, which manifests during the PPA and interconnection processes. Accordingly, then, the Commission should make its final decision on what ADR rules to adopt in light of this natural tension. The Commission must establish ADR procedures that are consistent with and further federal and state energy policy by creating an orderly and consistent set of economic practices and regulatory procedures that explicitly encourages QF development.

Additionally, under Oregon law, QFs are protected customers, both as interconnection customers and power purchasers. The Commission is required to represent all utility customers in "all controversies respecting rates, valuations, service and all matters of which the commission has jurisdiction."[6] The Commission has broad and expansive authority to "make use of its jurisdiction and powers of its office to protect such customers from unjust and unreasonable exactions and practices and to obtain for them adequate service at fair and reasonable rates."[7] Thus, in addition to its duty to encourage QF development, the Commission is obligated to protect QFs as end-use consumers of power and interconnection service.

Federal and state PURPA laws recognize that QFs, as interconnection consumers and purchasers of power, are entitled to additional statutory protections than other

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5 ORS 758.525(2).
6 ORS 756.040(1).
7 *Id.*

consumers.[8] Under the federal PURPA statute, QFs have the right to interconnect with a utility by paying a nondiscriminatory interconnection fee approved by the state regulatory authority or a nonregulated electric utility.[9] Federal law also provides specific statutory protections for QFs purchasing power from utilities in that they have the right to purchase supplementary power, back-up power, maintenance power, and interruptible power at rates which are just and reasonable, based on accurate data and consistent system-wide costing principles, and that are non-discriminatory.[10]

III. COMMENTS

A. The QF Trade Associations Support an Optional Mediation Period and Oppose a Requirement to Meet and Confer

An optional mediation period for parties within a PURPA dispute is currently the best practice available that simultaneously supports QF development. The QF Trade Associations appreciate the AHD's understanding that in order "to ensure that [these ADR rules] … are most effectively utilized" all parties must believe the rules are fair, and therefore, any mediation participation must be voluntary.[11] The QF Trade Associations understand and support the idea of reducing additional costs associated with litigation, but do not support the Joint Utilities' proposed mandatory meet and confer requirement before filing a complaint, nor the 7-day notice period for the reasons below.

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8 In addition to these affirmative rights, QFs are further protected because they are exempt from state laws and regulations respecting their rates, and financial and organizational aspects. 18 CFR § 292.602.

9 *Id.* § 292.306.

10 *Id.* § 292.305.

11 AHD Report at 6.

1. The Joint Utilities' Proposed Requirement Is Unnecessary and Inappropriate

The QF Trade Associations assert that the Joint Utilities' proposed meet and confer rule as well as its seven-day notice before filing a complaint rule are unnecessary, inappropriate, harmful, and unworkable with Oregon's PURPA policies. The Commission should not make conferring before filing mandatory because the counsel for QFs generally follow this protocol voluntarily, therefore, these complaints are rarely a surprise to the utility. As a result, the QF Trade Associations are concerned that there may be other motives to proposing this rule that could harm QFs in the long run. Moreover, meeting and conferring *after* filing a complaint could provide the same benefits to all parties with less risk to QFs. For these reasons, explained in further detail below, the Commission should not adopt the Joint Utilities' proposed mandatory meet and confer and notice rules. If the Commission nevertheless decides to adopt the Joint Utilities' proposals, then additional changes to the rules should be implemented.

As a practical matter, a mandatory meet and confer and notice period of seven days is unnecessary because QFs or their counsel routinely provide adequate notice to utilities before filing complaints at the Commission by sending demand letters requesting that the utilities take action or else a complaint will be filed, or by reaching an agreement with the utility about how to resolve the dispute (e.g., mutual agreement to file a complaint). There are a small minority of cases where QFs do not send formal demand letters threatening litigation, or where there is no mutual agreement for filing a complaint. These generally fall into two categories: 1) cases where there were significant negotiations and disputes (often including the involvement of counsel), in which the

utility had ample time to elevate and resolve the dispute; and 2) cases where there was insufficient time to meet and confer, typically because of disputes (often arising at the last-minute) and an upcoming avoided cost price reduction (sometimes a surprise filing by utility or where the utility requested an earlier effective date, on which the utility itself did not "confer" or warn the QF with whom it was negotiating that rates would drop sooner than the QF expected). Mandating a meet and confer period does not add value in either of these categories of cases, especially when the utility is hiding information about its plans to lower prices from QFs.

At the Rulemaking Hearing on October 6, 2020, counsel for the Joint Utilities asserted that the Joint Utilities are often only provided with a phone call the day of or day before filing a complaint. The Joint Utilities have not provided any data to support this allegation.

The QF Trade Associations have conducted a careful review of the complaints filed against Portland General Electric Company ("PGE") and PacifiCorp,[12] which demonstrates that formal demand letters threating litigation are sent prior to filing most complaints, and nearly all of the remaining complaints were filed after the utility had more than sufficient time to resolve the dispute or there was no time to resolve the dispute. This is evidenced by the chart prepared by the QF Trade Associations and attached to these comments as Appendix A.[13] This chart clearly shows that of the 83

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12 The QF Trade Associations attempted to identify all the publicly available complaints against PGE and PacifiCorp; however, given the large number of complaints against PGE, some may have been inadvertently missed.

13 This chart is based on publicly available information, as well inquires to some QFs that were willing to provide additional information. There are some

complaints filed by QFs in the last four years (for which public information was available), QFs sent formal demand letters in 45 of those cases letting the utilities know that they would pursue litigation if the dispute was not resolved. Of the remaining cases, the parties had met and conferred in at least 18 of the cases. In another 10 cases, ongoing disputes were clearly apparent, and the complaints were filed only after parties were not able to effectively negotiate a resolution through other forms of documented communications.

Of the remaining cases, 10 QFs had to file speedy complaints to lock in avoided cost prices, as is explained in more detail below. Notably, in these cases, PGE engaged in actions which demonstrated that negotiation would have been futile and any meet and confer requirement would have been harmful to the QF.

Therefore, of the 83 complaints filed by QFs in the last four years, there were only 10 cases where utilities can say that they did not have formal or implied notice, but those complaints were filed expeditiously for reasons caused by a utility. By contrast, for the three complaints filed by PGE, it does not appear that PGE provided any notice or sent any demand letters before filing its complaint. Regardless of the specifics for each dispute, what is clear is that QF complaints are rarely surprising to the utility.

Finally, this chart does not take into consideration the majority of the communication made between the client and utility prior to retaining counsel. QF developers often seek to engage with the utilities to resolve disputes in most cases before they resort to retaining counsel, which can be a significant business expense, especially

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complaints in which the QF Trade Associations do not know or cannot reveal what communications or attempts to resolve the dispute occurred.

for many smaller developers. Thus, the Commission should presume that there have been other efforts to resolve disputes that have not been catalogued in the attached chart.

The Joint Utilities have indicated that they want a formal "meet and confer" requirement to properly elevate disputes to senior management. As evidenced by the attached chart, the utilities already have ample time to prepare for most complaints and elevate the issue within the utility organization. In contrast, QFs are already making considerable efforts and expending significant resources to alert utilities to disputes and resolve them without litigation. With that in mind, perhaps the best solution to help resolve disputes more efficiently would be to ask that the utilities (or at least PGE) to take QF disputes seriously by changing their interactions with QFs to reduce disputes and by involving more senior representatives in negotiations earlier. Under no circumstances, however, is it appropriate to mandate another compliance hurdle for QFs, when any "problem" of inefficiency when they have not created this "problem". Such an unfairly applied rule would cut against Oregon's PURPA policy of supporting QF development.

Lastly, a mandated meet and confer period *before* filing a complaint is inappropriate because nothing prevents the parties from meeting and conferring *after* a filing a complaint. The QF Trade Associations agree that voluntarily meeting and conferring before filing a complaint may help resolve PURPA disputes earlier and reduce litigation expenses for both sides. However, such an ADR process should be voluntary and not required before or after filing a complaint.

2. A Mandatory Meet and Confer and 7-Day Notice Period Could Prejudice QFs

The Commission should also reject the Joint Utilities' proposed mandatory meet-and-confer and seven-day notice requirements, because there are several ways they could potentially prejudice QFs, and prejudice against QFs would violate Oregon's policy of encouraging QF development.

a. Increased Expenses

One purpose of promulgating these ADR rules is to decrease the litigation expenses each party incurs.[14] However, creating a mandatory meet and confer requirement could actually increase expenses for QFs. The cost savings imagined by the proposed meet and confer process assumes that the process will resolve more disputes, eliminating the need to file a complaint. As previously mentioned, though, many QFs already provide notice and/or meet and confer with the utilities before filing complaints. Therefore, making this process mandatory is unlikely to result in reduced disputes. On the contrary, creating a mandatory notice and meet and confer requirement will add new and formalistic steps that only serves to lengthen the dispute process, which in all likelihood will result in higher legal costs.

b. Utilities Will Use Additional Contracting Delays to Prevent QFs from Locking in Avoided Cost Prices and Increase Associated Litigation

As previously mentioned, occasionally, it would prejudice a QF to participate in a meet and confer before pursuing litigation. For example, when a QF avoided cost rate

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[14] Email from Chief ALJ Moser to participants (Oct. 24, 2019, 18:06 PST) (asking if the new ADR rules should "be driven by a statutory goal or purpose along with common goals of cost-efficient, timely, and fair dispute resolution?").

change is imminent, the QF needs to establish its legally enforceable obligation ("LEO") to lock in prices before that change occurs. Thus, QFs must act quickly, generally because of the utility's actions, and any further delays only harm the QF.

The Commission's LEO policies are not clear and have been subject to extensive litigation. The Commission has concluded that:

> A LEO will be considered established once a QF signs the final draft of an executable contract provided by a utility to commit itself to sell power to the utility. A LEO may be established earlier if a QF demonstrates delay or obstruction of progress towards a final draft of an executable contract ….[15]

In UM 1610, CREA and the Coalition advocated for clearer policies to allow the QF to lock in prices without a need to resort to litigation and continue negotiations with the utilities.[16] However, the Commission elected to retain its discretion, which only increased the possibility of litigation.[17] What constitutes a delay or obstruction of progress is not clear.

One problem with this LEO standard, is that it is not clear how a QF can demonstrate utility delay other than by filing a complaint. Some utilities argue, and state commissions have adopted policies where a QF must file a complaint and/or execute a contract before forming a LEO. Therefore, QFs have attempted to establish a LEO by unilaterally executing PPAs when the utility refused to provide an executable PPA, and/or by filing a complaint before the date of the price change if utilities refuse to provide executable PPAs. In the pre-rulemaking process in AR 629, the QF Trade

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15 *In re Comm'n Investigation into QF Contracting and Pricing*, Docket No. UM 1610, Order No. 16-174 at 3 (May 13, 2016).

16 *Id.* at 26.

17 *Id.* at 27-28.

Associations attempted to ensure more clarity regarding the ability to form a LEO, which would have allowed QFs to keep negotiating with the utilities without the need to file a complaint in an effort to lock in prices. Yet, their proposed approach was opposed and not included in the draft rules.

PGE has previously used out-of-cycle avoided cost filings while simultaneously delaying the negotiation process with the goal and purpose of ensuring that QFs negotiating contracts would be unable to form LEOs. For example, PGE has taken the position that its Schedule 201 for negotiating contracts has a specific process with a set number of days for PGE to respond (i.e., 15-business days), and PGE often will not provide a response earlier even if it is able to. Regardless of the unreasonableness of PGE's actions, as long a PGE strictly adheres to those contracting deadlines, then PGE's position is that a QF cannot form a LEO.[18] PGE has clearly taken an approach where it does not inform QFs of its intent to lower avoided cost rates early or provide QF with any notice that such a filing is coming (which would allow the QF to expedite its contracting).[19] With this approach, PGE can take all of the time outlined in its contracting process to ensure that it does not provide an executable PPA until after rates

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[18] *Bottlenose Solar et al. v. PGE*, Docket No. UM 1877-1882, UM 1884-UM 1866, UM 1888-UM 1890, PGE Motion for Summary Judgment at 4 (Jan. 24, 2018).

[19] A "confer" requirement that would require the utilities to inform and provide notice to QFs that a non-scheduled rate change would occur and a specific date for when rates would change would reduce litigation. Washington has a rule that avoided cost changes are filed on November 1 of each year and the utility can make a filing at any other time, but only "provided that the commission may not allow such tariff revision to become effective until at least sixty days after such filing." WAC 480-106-040(3). Such a rule in Oregon could have avoided a substantial portion of the complaints filed against PGE.

drop. This is not the only creative effort that PGE has taken to delay the QF contract negotiating process.[20]

PGE's delays and requests for expedited or retroactive price reductions are the reason for all or most of QF complaints where QFs did not send demand letters to PGE before filing a complaint. For example, in 2017, PGE filed a request to lower the size threshold for solar QF's eligibility for standard avoided cost prices from 10 MWs to 3 MWs,[21] which effectively was a surprise reduction in avoided cost prices. PGE also asked for the price reduction to be effective on the date of its filing.[22] In 2017, PGE also filed an avoided cost rate filing on May 1 hoping it would become effective on May 17,[23] which was earlier than the 60 days that the QF development community expected. In both circumstances, the Commission granted PGE partial relief allowing rates to be reduced earlier than usual, but not as early as PGE had requested.[24]

With this context in mind, PGE was negotiating contracts with four QFs, Kaiser Solar, Marquam Creek Solar, Ridgeway Solar, Walker Creek Solar, and Parrot Creek Solar in the spring of 2018. The QFs made a typographical mistake inserting "3039" as

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20 *E.g.*, *In re PGE Application to Lower the Standard Price and Standard Contract Eligibility Cap for Solar QFs*, Docket No. UM 1854, NIPPC, Coalition and CREA Joint Response to PGE Motion for Interim Relief at 36-39 (July 27, 2017) (Listing pages of examples of PGE's actions, including for example, PGE "mistakenly" inserting "Lane" instead of "Linn" county and incorrectly copying and pasting the project's nameplate, and then requiring the QF to wait 15 business days to obtain the next draft.).

21 Docket No. UM 1854, Application (June 30, 2017).

22 Docket No. UM 1854, PGE's Motion for Interim Relief.

23 *In re Application to Update Schedule 201 Qualifying Facility Info.*, Docket No. UM 1728, Supplemental Application (May 1, 2017).

24 Docket No. UM 1728, Order No. 17-177 (May 19, 2017); Docket No. UM 1854, Order No. 17-310 (Aug. 18, 2017).

the date of contract termination rather than "2039". A reasonable person would understand that the year 3039 was a typographical error and was supposed to be 2039. However, PGE was unwilling to simply correct this typographical error without delay and instead extended the contracting process by using an additional 15 business days to fix this minor typo, which would have resulted in the QF being unable to execute contract until late April 2018. PGE was expected to file for new avoided cost rates on May 1, but PGE did not inform the QFs whether there would be a rate reduction or whether PGE would request expedited or retroactive approval. Given PGE's actions, the QFs were not certain whether PGE would request retroactive or interim relief, and they anticipated that PGE would not provide an executable PPA until after avoided cost rates dropped. Accordingly, the QFs requested that PGE assure them in writing that it would not use the typographical error to delay providing an executable PPA. Additionally, the QFs made clear that they wanted to finalize a contract before avoided cost rates dropped.

When PGE did not respond to the QFs final communications on April 25, 2018, the QFs then executed draft contracts and filed complaints against PGE on April 30, 2018, immediately prior to PGE's May 1 filing (which sought an effective date of May 8, 2018).[25] This was intended to lock in avoided cost before the rate reduction or a potential PGE retroactive rate proposal. Had a meet and confer or notice period been mandatory when those disputes were live, it would mean that the QFs could not have filed their complaints until after PGE made its May 1 filing (or would have need to assert a "good

[25] Docket No. UM 1728, Supplemental Application (May 1, 2018).

cause" exception in order to file those complaints) giving PGE an additional argument for why it believes these QFs lost favorable avoided costs.

Further, had a mandatory meet and confer or notice period existed, it likely would not have resolved the dispute. This is because when PGE makes its surprise and/or retroactive avoided cost changes, it has at least sometimes wanted to know the results of the Commission's order regarding when the lower rates would go into effect before providing executable PPAs. More likely, it would have merely forced the QFs to hire counsel and escalate the disputes earlier on, so as to avoid the possibility of being irrevocably prejudiced.

The utility is the regulated entity with the mandatory purchase obligation, and at least PGE has made it clear that they will only do the minimum required by the Commission. Therefore, the solution here would be to simply require that the utility develop an internal procedure for elevating such disputes rather than requiring the QF to jump one more hurdle before filing a complaint (potentially risking its ability to form a legally enforceable obligation and in effect creating *more* disputes for the Commission to resolve). Such a rule would cut against the purpose of this rulemaking to *reduce* the number of disputes the Commission needs to resolve.

c. Venue Concerns Are a Legitimate Reason Not to Have a "Meet and Confer" Requirement

Venue disputes have also arisen when the utilities have prior notice and time to prepare to preemptively file a complaint against a QF that has notified a utility of its intent to file. Under the "first filed" doctrine, the complainant determines the controlling venue in a concurrent jurisdiction situation. PGE has purposely and strategically been the

first to file in the past when they have received such notice, and the QFs have suffered as a result. For example, in *PGE v. Pacific Northwest Solar LLC*, Pacific Northwest Solar LLC ("PNW Solar"), provided PGE with a demand letter and notified PGE that it would be filing a complaint in the Multnomah County Circuit Court to resolve the dispute if the dispute was not resolved.[26] Instead of constructively engaging, either on the merits or on the choice of venue, PGE rushed to file a preemptive complaint at the Commission because PGE believed it would obtain a more favorable decision by the Commission than a court. Instead of focusing only on the merits of the jurisdictional arguments raised in that case, PGE repeatedly argued that the fact that it had first filed was a relevant consideration. Requiring a 7-day notice period would only provide utilities an unfair advantage to file first.

d. Allowing the QF to Complete Negotiations is Another Legitimate Reason Not to Have a "Meet and Confer" Requirement

A practical impact of the Commission's LEO policies and the utilities' interpretation of them is that it creates tension between honestly raising and trying to resolve issues early and as they come up or simply rushing through the negotiation process to reach the point of getting an executable PPA before raising an issue. For example, in the Blue Marmots case, there were policy questions and disputes regarding QF transmission arrangements, when a LEO was formed, and whether the LEO included non-price terms and conditions. The Commission allowed four of the five projects to obtain their sought transmission arrangements, in part, because those four projects had

[26] Docket No. UM 1894, Complaint and Request for Dispute Resolution (Aug. 31, 2017).

obtained executable PPAs. However, one of the projects did not obtain its preferred transmission arrangements, in part, because PGE did not provide an executable PPA.[27] The Commission's intention in these cases was to issue a fair and balanced order that balanced the interests of the QFs, PGE, and ratepayers. Based on the Blue Marmots order, QFs and the utilities now have a greater understanding of the importance of providing an executable contract and when disputes should be raised.

However, as a result of the Commission's UM 1610 policy and the Blue Marmot order that a LEO does not form until an executable PPA is provided, the Commission has provided an incentive for QFs to seek to get as far along in the PPA process as possible prior to the utility refusing to continue negotiations. Some QFs may delay raising any disputes until after they obtain an executable PPA for fear that the utility will stop negotiating or processing the PPA, which may harm the QFs ability to form a LEO. As a result, the 7-day notice period also has the potential to harm QFs because it could result in the utility refusing to continue negotiations or provide an executable contract.[28]

e. The "Meet and Confer" Requirement Will Limit Access to Justice

The QF Trade Associations see the mandatory meet and confer period as an additional hurdle that could prevent QFs from being heard on the merits. They also see it as a potential procedural trap for smaller or unaware QFs who could unknowingly

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27 *In re Blue Marmot V LLC, et al. v. PGE*, Docket No. UM 1829, Order No. 19-322 at 20 (Sept. 30, 2019).

28 Again, if the Commission had adopted the Coalition and CREA's recommendations in UM 1610 or the QF Trade Associations proposals in the informal dispute resolution process, then both the QFs and utilities could focus on contract negotiations rather than attempting to fit into FERC's and the Commission's similar but sometimes contradictory LEO policies.

commit compliance violations, which would add unavoidable litigation expenses to the QF. The Joint Utilities' Comments suggest that a complainant could "request a waiver of the [meet and confer] rule contemporaneously with the filing of its complaint" if it "believes it will be prejudiced by a delay in filing a complaint.[29] A "good cause" waiver will simply create more litigation over whether the waiver request was appropriate.

Instead of creating an unnecessary process that has the potential to prejudice QFs, the QF Trade Associations point out again that nothing currently prevents parties from meeting and conferring after filing a complaint. If the QFs file a complaint and the parties meet and confer shortly afterward, the parties could reach a settlement. Then, they could move to dismiss the case with almost no action by the OPUC, which poses minimal, if any, burden on Commission resources. In fact, a rapid conferral could allow the utilities to avoid the burden of preparing answers; if so, the QF, and not the utility, would be the only entity entailing greater litigation costs by conferring after filing rather than before. Nevertheless, the QF Trade Associations strongly prefer this approach. In practice, some complaints are in fact dismissed shortly after filing, which could signify a speedy settlement or other resolution acceptable to the QF, and this includes the four complaints in the spring of 2018 discussed above for which no demand letter was sent (Kaiser Solar, Marquam Creek Solar, Ridgeway Solar, Walker Creek Solar, and Parrot Creek Solar). Thus, the utilities have little reason to oppose postponing their suggestions until after QFs file their complaints.

[29] Joint Utilities' Comments at 2 (Oct 2, 2020).

f. The Commission May Not Have the Legal Authority to Require a QF to "Meet and Confer" Prior to Filing a Complaint

The QF Trade Associations question whether it is lawful to place any condition on the ability to file a complaint under ORS 756.500, which does not provide for any specific conditions prior to filing a complaint. Mandating a meet and confer period before pursuing litigation at the Commission could violate a QF's right to file a complaint "against any person whose business or activities are regulated by one or more of the statutes, jurisdictions for the enforcement or regulation of which is conferred upon the commission."[30]

g. AHD Has Explained that Mandatory Processes Will Undermine Confidence by the Stakeholders that the Dispute Resolution Process Is Fair

The AHD has already considered and rejected the option of mandatory mediation, explaining that it "believe[s] it is important that all traditional complaint participants believe that the rules are fair, in order to ensure that they are most effectively utilized."[31] Accordingly, the AHD settled on a voluntary participation structure. Mandating a meet and confer period is, in essence, not very different than mandating a mediation process, which the AHD did not support. Following the same line of logic, the Commission should not adopt an unfair mandatory meet and confer period, in lieu of a previously rejected and unfair mandatory mediation period.

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30 ORS 756.500

31 AHD Report at 6.

3. Extra Protections Must Be Added If a Meet And Confer is Required

If the Commission disagrees with the AHD's recommendation to only adopt voluntary ADR measures and adopts the Joint Utilities' mandatory meet and confer and 7-day notice period, then the QF Trade Associations recommend the following three revisions:

1. Projects that are five megawatts or less, sole proprietorships or family-owned, or community-based should be exempt from a mandatory meet and confer.

2. It should be in effect after filing the complaint.

3. The costs of both the QFs and utilities' participation should fall upon the utilities' shareholders, not QFs or ratepayers. The Commission, upon the recommendation of the utilities, would be mandating additional process and cost on QFs and ratepayers, even in scenarios where the parties have already failed to reach a successful compromise and the QFs have already determined that they want to pursue a complaint.

If the utilities truly want to mandate this additional unnecessary process, then they should be required to use their resources in furtherance of this solution, to ensure that QFs and ratepayers are not burdened with additional costs and to ensure that the legal playing field is level for QFs with limited legal resources.

B. The QF Trade Associations Do Not Support Restricting the Commission's Existing Confidentiality Rules Further

The QF Trade Associations ask the Commission to revise the proposed confidentiality provisions. First, the Commission should set narrow limitations on confidential material in settlement discussions, consistent with its current standard

confidentiality provision, [32] which only says parties cannot use any communications from settlement discussions against another party in filings. Second, the Commission should allow for the publication of all QF-utility settlements, especially ones that have occurred as part of a government-funded and approved mediation process.

In their comments, the Joint Utilities assert that the proposed rule maintains the strict confidentiality rule "the Commission has always accorded settlement discussions."[33] In reality, however, the proposed confidentiality rule[34] is much broader than the Commission's current confidentiality rule. The confidentiality provisions make it far more difficult, if not impossible, for QFs to discuss certain disputes among themselves. This proposed rule provides yet another barrier for access to justice because the QF will have to agree to far more restrictive confidentiality provisions to utilize any Commission mediation services.

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32 OAR 860-001-0350(3) ("Without the written consent of all parties, any statement, admission, or offer of settlement made during settlement discussions is not admissible in any Commission proceedings, unless independently discoverable or offered for other purposes allowed under").

33 Joint Utilities' Comments on Staff's Proposed Rules at 3 (Oct. 10, 2020).

34 Order No. 20-273 at 4 ("Confidentiality and Use of Statements, Proposals, or Materials in Complaints ("(1) Unless otherwise agreed to by the parties in writing, all written or oral communications made by the parties in preparation for or during the mediation session(s) including but not limited to offers of settlement must be kept confidential by the parties and the mediator, may not be used by the non-disclosing party for any purpose other than participation in the mediation process, and may not be released to any third party or be offered into evidence in any legal proceeding unless agreed to in writing by both parties. Confidentiality obligations in this section apply to each party's employees and representatives (including each party's counsel). (2) For purposes of ORS 192.502(4), the Commission obligates itself to protect from disclosure any document submitted in confidence during settlement discussions.").

This particular proposed confidentiality rule would give utilities the upper hand in any mediation proceeding. Consider that a single utility like PGE would have the ability to enter into multiple simultaneous settlements with many different QFs. When this happens, PGE will know every communication and negotiation made with each QF and what it has agreed to with different QFs. However, the QFs will be in the dark in their negotiations, as they would not be allowed to discuss any aspect of the mediation with other QFs facing similar disputes. While utilities are obliged to treat QFs in a non-discriminatory manner, any utility could provide different and better deals to QFs with better negotiating tactics, a bigger legal budget or that are willing to reach an agreement on other unrelated issues, regardless of whether the QFs are similarly situated as to the facts and merits of the disputes. The Commission must fairly implement PURPA, not just resolve disputes. Therefore, it should not adopt ADR rules that increase the utilities bargaining position and power over QFs.

All settlements reached in Commission-funded mediation should be publicly available. Making PUC-funded mediation settlements available will allow the Commission, other developers, and the public to learn about any systemic or wrongful conduct. Furthermore, the secrecy of settlements protects and often encourages repeat harmful behavior, which is why many courts and legislative bodies have recently enforced and passed laws mandating the publication of certain settlements to protect the public interest.[35]

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[35] For example, the Eleventh Circuit has long held that settlements in Fair Labor Standards Act ("FLSA") litigation should not be confidential because as that would contravene congressional intent and undermine regulatory efforts. *Lynn's*

The Commission has published its PURPA rules and orders and has a strong interest in ensuring the uniform and non-discriminatory application of the law to all QFs. Making all settlements public will also allow the Commission to perform its duty to enforce the law, protect the public, and encourage QF development. If a utility violation of PURPA or any other law is hidden by settlement confidentiality, then the Commission cannot fulfil its duties under Oregon's PURPA statutes and may encourage the utilities to treat similarly situated QFs differently.

It is one thing to allow utilities and QFs to negotiate disputes outside of the Commission's view, but the rules promulgated in this proceeding will be official OPUC rules for an OPUC-approved mediation process. Thus, the Commission would be approving a mediation process that uses the OPUC's resources to promote a potentially discriminatory and non-uniform application of the law that was specifically designed, in part, to protect QFs.

Again, one of the purposes for promulgating these ADR rules was to make the dispute process more efficient and affordable.[36] Keeping in line with this goal, it is logical for the Commission to discourage any repeat harmful or unlawful conduct that utilities could keep hidden through a confidential mediated settlement process. For these

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Food Stores, Inc. v. United States, 679 F.2d 1350 (11th Cir. 1982). As a result, FLSA settlement agreements must be filed in the court's public docket (*Hanson v. Wells Fargo Bank*, No. 08-80182-CIV, 2009 WL 1490582 (S.D.Fla. May 26, 2009)). Other examples of laws that mandate publicized settlements include settlements that would have concealed public hazards (Fla. Stat. Ann. § 69.081) and settlements over motor vehicle problems in its Lemon Law settlements (Cal. Civ. Code § 1793.26). In recent years legislative bodies have also made efforts to publicize settlements related to fair housing claims and harassment claims.

[36] *See supra* 9 n. 13.

reasons, the QF Trade Associations support and request that the Commission not adopt the proposed confidentiality rule, keep its existing confidentiality rule, and make (at least some extent) the PUC-funded negotiated settlements available to the public.

C. The QF Trade Associations Support Having Commission Staff Involved in the ADR Process

NewSun Energy proposed to involve Commission Staff in the ADR process when needed to provide insights into questions of law and Commission policy that arise during PURPA disputes. The QF Trade Associations support creating such a mechanism to the extent that Staff is willing, available, and able to help.[37] Staff has already made themselves available for consultations in the past when available, but unfortunately, many QFs are unaware that Staff offers this valuable informal guidance. Therefore, there is no reason for the Commission not to publicize this consultation service, which is already available, in the proposed rules.

If the Commission does not adopt NewSun's proposal, at minimum the Commission should include in its rules that Staff may be available to provide insights. This would allow smaller or less sophisticated QFs to take advantage of the Staff's guidance while going through the ADR process without hiring legal counsel to know that this option is available.

To be sure, the QF Trade Associations do not expect Staff to offer mediation services during the ADR process. The expectation would be that Staff offer, when asked, to listen to the dispute discussion informally, offer their understanding of Commission

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[37] The QF Trade Associations understand and support Staff's need to make decisions regarding who participates in a particular ADR process, so they are not prevented from working on any future policy dockets related to the same topic.

law and policy, and explain how it may apply to the particular dispute at hand. Staff should have the discretion to decline to participate or opine. The QF Trade Associations understand that Staff has concerns regarding their availability to assist should there be an influx of ADR proceedings in a short window of time, which is why the QF Trade Associations ask that this service be publicized and available for future ADR proceedings specifically subject to any conditions that Staff believes are warranted.

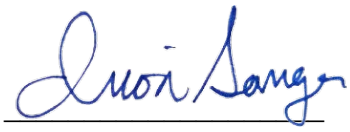
IV. CONCLUSION

The QF Trade Associations appreciate the opportunity to comment on the proposed ADR rules for PURPA disputes.

Dated this 20th day of October 2020.

Respectfully submitted,

Sanger Law, PC



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OPUC Docket #	Complainant	Date Filed	Brief Description	Did Utility Have Official Notice that Complaint Would be Filed if Issue Was Not Resolved? N/A = not available or not publicly known.	Was the Utility Provided an Opportunity to Resolve the Dispute?	Demand letter & Date letter was sent if known N/A = not available or not publicly known.	Other forms of notice or important notes?
UM 1566	Patu Wind Farm v. PGE	12/12/2011	PGE refused to pay full net output from off system QF regarding transmission arrangements dispute.	Yes, by way of demand letter.	Yes, the demand letter was served more than a month before the complaint was filed.	Yes (11/07/2011).	
UM 1742	Surprise Valley Electric. Corp v. PacifiCorp	6/22/2015	PacifiCorp has failed to comply with Schedule 37, OPUC rules, FERC rules and policies, and the Oregon and federal PURPA statutes. PacifiCorp unreasonably delayed the contract completion process and refused to finalize or execute a PPA with QF.	Yes, by way of demand letter.	Yes, the QF struggled through two years of communicating with PacifiCorp regarding interconnection issues before filing complaint, and QF sent a demand letter more than two months before filing.	Yes (4/16/2015).	
UM 1784	Harney Solar I v. PGE	6/21/2016	PGE failed to execute a PPA because of pending rate reduction.	No.	Yes, to the extent that there was time available with the urgent filing deadline. PGE had an QF-executed PPA for almost a month that they would not execute despite ongoing communications to resolve the dispute.	N/A.	QF executed its contract on 5/24/2016 and on 6/8/2016 OPUC approved the updated AC rates that would go into effect on 6/22/2016.
UM 1785	Riley Solar I v. PGE	6/21/2016	See above.	No.	Yes, to the extent that there was time available with the urgent filing deadline. PGE had an QF-executed PPA for almost a month that they would not execute despite ongoing communications to resolve the dispute.	N/A.	QF executed its contract on 5/27/2016 and on 6/8/2016 OPUC approved the updated AC rates that would go into effect on 6/22/2016.
UM 1829	Blue Marmot V v. PGE	4/28/2017	PGE refused to execute PPA because PGE did not accept QF transmission arrangements.	Yes, by way of demand letter.	Yes.	Yes (4/24/2017).	

UM 1830	Blue Marmot VI v. PGE	4/28/2017	See above.	Yes, by way of demand letter.	Yes.	Yes (4/24/2017).	
UM 1831	Blue Marmot VII v. PGE	4/28/2017	See above.	Yes, by way of demand letter.	Yes.	Yes (4/24/2017).	
UM 1832	Blue Marmot VIII v. PGE	4/28/2017	See above.	Yes, by way of demand letter.	Yes.	Yes (4/24/2017).	
UM 1833	Blue Marmot IX v. PGE	4/28/2017	See above.	Yes, by way of demand letter.	Yes.	Yes (4/24/2017).	
UM 1844	Evergreen Biopower v. PGE	5/31/2017	PGE challenged a QF's eligibility for standard prices.	Yes, in the form of emails and several calls to the utility's attorney in an attempt to avoid litigation.	Yes, to the extent that there was time available with the urgent filing deadline.	Yes (date unknown).	There was a deadline to file before the rate change. PGE changed terms at the last minute.
UM 1859	Falls Creek Hydro v. PGE	8/7/2017	PGE refused to execute PPA of a pending rate reduction.	Yes, by way of demand letter.	Yes, the demand letter was served more than a month before the complaint was filed.	Yes (7/03/2017).	
UM 1860	Red Prairie Solar v. PGE	8/7/2017	PGE refused to accept estimated generation output using the same formula it has previously accepted for over a dozen projects and refused to execute PPA because of pending rate reduction.	Yes, by way of demand letter.	Yes, QF provided all info requested to receive a PPA on 6/2/2017 and PGE did not respond until 6/28/2017 requesting additional info, which QF provided immediately. PGE said it would provide a PPA but did not reach out again until 7/22/2017 saying it needed more information.	Yes (7/31/2017).	
UM 1861	Volcano Solar v. PGE	8/7/2017	See above.	Yes, by way of demand letter.	Similar to Red Prairie, the QF requested a PPA in early May, provided additional info in early June, and PGE continued to drag out its responses until QF sent final demand letter on 7/31.	Yes (7/31/2017).	
UM 1862	Tickle Creek Solar v. PGE	8/7/2017	See above.	Yes, by way of demand letter.	Similar set of facts to Red Prairie Solar and Volcano the cases above	Yes (7/26/2017).	

					only the QF started asking for PPA in late February and was ready to sign in late May.		
UM 1863	SSD Marion 4 v. PGE	8/7/2017	PGE refused to execute PPA because of pending rate reduction.	Yes, by way of demand letter.	Yes, QF developer filed complaint 7 days after it provided a demand letter which is what Joint Utilities have recommended in this proceeding.	Yes (7/31/2017 & 8/02/2017).	
UM 1864	SSD Clackamas 4 v. PGE	8/7/2017	See above.	Yes, by way of demand letter.	Yes, QF filed complaint 5 days after sending a demand letter. However, PGE could have foreseen the imminence of these demand letters given similar disputes were occurring on other projects that demand letters were sent.	Yes (8/02/2017).	
UM 1865	SSD Marion 1 v. PGE	8/7/2017	See above.	Yes, by way of demand letter.	Yes, QF filed complaint 5 days after sending a demand letter. PGE also could have foreseen the imminence of these demand letters given that were similar disputes on other projects that demand letters were sent.	Yes (8/02/2017).	
UM 1866	SSD Clackamas 7 v. PGE	8/7/2017	See above.	Yes, by way of demand letter.	Yes, QF filed complaint 7 days after it provided a demand letter which is what Joint Utilities have recommended in this proceeding.	Yes (7/31/2017 & 8/02/2017).	
UM 1867	SSD Marion 2 v. PGE	8/7/2017	See above.	Yes, by way of demand letter.	Yes, QF filed complaint 5 days after sending a demand letter. PGE also could have foreseen the imminence of these demand letters given that were similar disputes on other projects that demand letters were sent.	Yes (8/02/2017).	
UM 1868	SSD Clackamas 6 v. PGE	8/7/2017	See above.	Yes, by way of demand letter.	Yes, QF filed complaint 7 days after it provided a demand letter which is what Joint Utilities have recommended in this proceeding.	Yes (7/31/2017).	
UM 1869	SSD Clackamas 1 v. PGE	8/7/2017	See above.	Yes, by way of demand letter.	Yes, QF filed complaint 5 days after sending a demand letter. PGE also could have foreseen the imminence of these demand letters given that were similar disputes on	Yes (8/02/2017).	

					other projects that demand letters were sent.		
UM 1870	SSD Clackamas 2 v. PGE	8/7/2017	See above.	Yes, by way of demand letter.	Yes, QF filed complaint 5 days after sending a demand letter. PGE also could have foreseen the imminence of these demand letters given that were similar disputes on other projects that demand letters were sent.	Yes (8/02/2017).	
UM 1871	SSD Marion 3 v. PGE	8/7/2017	See above.	Yes, by way of demand letter.	Yes, QF filed complaint 5 days after sending a demand letter. PGE also could have foreseen the imminence of these demand letters given that were similar disputes on other projects that demand letters were sent.	Yes (8/02/2017).	
UM 1872	SSD Marion 5 v. PGE	8/7/2017	See above.	Yes, by way of demand letter.	Yes, QF filed complaint 7 days after it provided a demand letter which is what Joint Utilities have recommended in this proceeding.	Yes (7/31/2017).	
UM 1873	SSD Marion 6 v. PGE	8/7/2017	See above.	Yes, by way of demand letter.	Yes, QF filed complaint 5 days after sending a demand letter. PGE also could have foreseen the imminence of these demand letters given that were similar disputes on other projects that demand letters were sent.	Yes (8/02/2017).	
UM 1874	SSD Yamhill 1 v. PGE	8/7/2017	See above.	Yes, by way of demand letter.	Yes, QF filed complaint 7 days after it provided a demand letter which is what Joint Utilities have recommended in this proceeding.	Yes (7/31/2017 & 8/02/2017).	
UM 1875	Klondike Solar v. PGE	8/7/2017	PGE requested information new and unnecessary information while simultaneously refused to execute PPA because PGE made its filing to lower standard price eligibility from 10 MW to 3 MW.	No.	Yes, QF provided updated information to PGE on 6/28/2017 via email and asked for a Standard PPA over a month before filing complaint. Utility created dispute with no time for extensive discussions before rate reduction.	N/A.	The Complainant sent first letter on 7/24/2017 requesting a draft PPA and sent second letter letting PGE know it was ready and willing to sign a PPA, and it stated that the request to sign was urgent. (8/3/2017)

							By making a surprise filing and suddenly refusing to continue negotiations, PGE provided the QF with no opportunity to resolve the dispute prior to filing a complaint.
UM 1876	Saddle Butte Solar v. PGE	8/7/2017	PGE requested information new and unnecessary information while simultaneously refused to execute PPA because PGE made its surprise filing to lower standard price eligibility from 10 MW to 3 MW.	No.	Yes, QF provided updated information to PGE on 6/28/2017 via email and asked for a Standard PPA over a month before filing complaint. Utility created dispute with no time for extensive discussions before rate reduction.	N/A.	The Complainant sent a letter requesting a draft PPA immediately. By making a surprise filing and suddenly refusing to continue negotiations, PGE provided the QF with no opportunity to resolve the dispute prior to filing a complaint.
UM 1877	Bottlenose Solar v. PGE	8/7/2017	PGE refused to execute PPA because of pending rate reduction.	Yes, by way of demand letter.	Yes, PGE: 1) provided a late draft PPA on May 23; 2) refused requests to meet in person twice; 3) ignored requests for expedited processing on twice; 4) requested that QF resubmit its app. on 3/22, then requested reformatting on 4/13;5) ignored two requests for an executable PPAs;6) waited to inform QF about 6/1 rate change; and 7) completely ignored a partially executed PPA QF submitted on 5/31.	Yes (8/02/2017).	
UM 1878	Valhalla Solar v. PGE	8/7/2017	PGE refused to execute PPA because of pending rate reduction.	Yes, by way of demand letter.	Yes, but instead PGE engaged in a similar delay pattern as the facts described above.	Yes (8/02/2017).	
UM 1879	Whipsnake Solar v. PGE	8/7/2017	PGE refused to execute PPA because of pending rate reduction.	Yes, by way of demand letter.	Yes, but instead PGE engaged in a similar delay pattern as the facts described above.	Yes (8/02/2017).	
UM 1880	Skyward Solar v. PGE	8/7/2017	PGE refused to execute PPA because of pending rate reduction.	Yes, by way of demand letter.	See above.	Yes (8/02/2017).	

UM 1881	Leatherback Solar v. PGE	8/7/2017	PGE refused to execute PPA because of pending rate reduction.	Yes, by way of demand letter.	See above.	Yes (8/02/2017).	
UM 1882	Pika Solar v. PGE	8/7/2017	PGE refused to execute PPA because of pending rate reduction.	Yes, by way of demand letter.	See above.	Yes (8/02/2017).	
UM 1883	SSD Clackamas 3 v. PGE	8/8/2017	PGE refused to execute PPA because of pending rate reduction.	Yes, by way of demand letter.	Yes, QF filed complaint 7 days after it provided a demand letter which is what Joint Utilities have recommended in this proceeding.	Yes (7/31/2017).	
UM 1884	Cottontail Solar v. PGE	8/10/2017	PGE refused to execute PPA because of pending rate reduction.	Yes, by way of demand letter.	Yes, QF filed complaint 6 days after sending a demand letter. PGE could have foreseen the imminence of these demand letters given the 20 filed days earlier for the same dispute.	Yes (8/04/2017).	
UM 1885	Osprey Solar v. PGE	8/10/2017	PGE refused to execute PPA because of pending rate reduction.	Yes, by way of demand letter.	Yes, QF filed complaint 6 days after sending a demand letter. PGE could have foreseen the imminence of these demand letters given the 20 filed days earlier for the same dispute.	Yes (8/04/2017).	
UM 1886	Wapiti Solar v. PGE	8/10/2017	PGE refused to execute PPA because of pending rate reduction.	Yes.	Yes, QF filed complaint 6 days after sending a demand letter. PGE could have foreseen the imminence of these demand letters given the 20 filed days earlier for the same dispute.	Yes (8/04/2017).	
UM 1888	Bighorn Solar v. PGE	8/14/2017	PGE refused to execute PPA because of pending rate reduction.	N/A.	Yes.	N/A.	Public information states that QF sent a demand letter on 8/11/2017 requesting that PGE execute the PPA that had been signed and provided back to PGE on 5/31/2017; QF owner sent demand letters specifically threating the filing of a complaint for nine other projects.

UM 1889	Minke Solar v. PGE	8/14/2017	See above.	N/A.	See above.	N/A.	See above.
UM 1890	Harrier Solar v. PGE	8/14/2017	See above.	N/A.	See above.	N/A.	See above.
UM 1902	Pacific Northwest Solar (Amity Project) v. PGE	10/9/2017	PGE failed to follow OPUC interconnection timeline and policies.	Yes.	Yes, demand letter was served over a month before complaint was filed.	Yes (8/28/2017).	
UM 1903	Butler Solar v. PGE	10/9/2017	See above.	Yes.	Yes, demand letter was served over a month before complaint was filed.	Yes (8/28/2017).	
UM 1904	Pacific Northwest Solar (Duus Project) v. PGE	10/9/2017	See above.	N/A.	Yes, PGE was sent a letter informing them of ongoing disputes. Complaint further stated that "PGE has repeatedly lost emails, lost letters and checks sent via U.S. mail, and delayed the interconnection process."	N/A.	Not called a demand letter in the complaint but the letter explained how PGE's delays have been harming PNW Solar. (6/23/2017) Publicly available complaints identify that demand letters sent for 3 of the 5 projects by the same owner with same issues.
UM 1905	Pacific Northwest Solar Firwood Project) v. PGE	10/9/2017	See above.	N/A.	Yes, though PGE was sent a letter informing them of ongoing disputes. Complaint further stated that "PGE has repeatedly lost emails, lost letters and checks sent via U.S. mail, and delayed the interconnection process."	N/A.	Sent letter on how PGE's delays have been harming PNW Solar. (6/23/2017). Publicly available complaints identify that demand letters sent for 3 of the 5 projects by the same owner with same issues.
UM 1906	Pacific Northwest Solar (Starlight	10/9/2017	See above.	Yes, by way of demand letter.	Yes, demand letter was served over a month before complaint was filed.	Yes (8/28/2017).	

	Project) v. PGE						
UM 1907	Pacific Northwest Solar (Stringtown Project) v. PGE	10/9/2017	See above.	Yes, by way of demand letter.	Yes, demand letter was served over a month before complaint was filed.	Yes (8/28/2017).	
UM 1941	Kaiser Solar v. PGE	4/30/2018	PGE delayed contract negotiations due to a typographical error.	No.	Utility created dispute with no time to resolve before rate reduction.	N/A.	QF indicated to PGE its desire to finalize the PPA before annual rate change. (4/25/2018) PGE created the dispute by refusing to process a contract immediately prior to a request for expedited avoided cost rate reduction
UM 1942	Marquam Creek Solar v. PGE	4/30/2018	See above.	No.	See above.	N/A.	PGE created the dispute by refusing to process a contract immediately prior to a request for expedited avoided cost rate reduction
UM 1943	Ridgeway Solar v. PGE	4/30/2018	See above.	No.	See above.	N/A.	See above.
UM 1944	Walker Creek Solar v. PGE	4/30/2018	See above.	No.	See above.	N/A.	PGE created the dispute by refusing to process a contract immediately prior to a request for expedited avoided cost rate reduction.
UM 1945	Parrott Creek Solar v. PGE	4/30/2018	See above.	No.	See above.	N/A.	PGE created the dispute by refusing to process a contract immediately prior to a request for expedited avoided cost rate reduction.

UM 1949	Cow Creek Solar v. PGE	5/21/2018	See above.	No.	See above.	N/A.	PGE requested early avoided cost reduction and refused to commit to provide an executable PPA until after the PUC order re timing of rate change.
UM 1950	Williams Acres Solar v. PGE	5/21/2018	See above.	No.	See above.	N/A.	See above.
UM 1951	Zena Solar v. PGE	5/21/2018	See above.	No.	See above.	N/A.	See above.
UM 1963	Dunn Rd. Solar v. PGE	7/26/2018	PGE provided little to no detail in its interconnection studies and explanation as to why certain interconnection facilities and system upgrades were required.	Yes, by way of demand letter.	Yes. Dunn Road Solar informed PGE on 5/22 that it would file a complaint if PGE did not provide appropriately specific and reasonable information.	Yes (5/22/2018 email from Complainant and 7/26/2018 letter from attorney).	Complainant's deadline to execute the interconnection agreement was 7/27.
UM 1967	Sandy River Solar v. PGE	8/24/2018	PGE delayed and made inconsistent statements in the interconnection study process and unreasonably refused to allow Sandy River to hire a third-party to complete the work.	Yes, by way of demand letter.	Yes, PGE received two demand letters in and around a month before QF filed complaint.	Yes (7/19/2018 & 8/02/2018).	
UM 1971	Waconda Solar v. PGE	9/28/2018	PGE refused to allow Waconda Solar to hire third party contractor to preform studies.	No.	Yes, QF was tried to resolve issue with PGE for over a month prior to filing complaint.	N/A.	QF's attorney sent a demand letter on (8/24/2018) requesting that PGE allow it to use 3rd party consultants. The letter did not specifically threaten litigation. PGE's response denied QF's request without explanation.
UM 1994	Klamath Hills Geothermal v. PGE	1/11/2019	PGE withheld the standard non-variable, off-system contract prior to 9/1/17.	Yes.	Yes, the complaint notes that KHG has attempted to resolve these issues with PGE since late 2017, but PGE has rebuffed all of those settlement efforts.	N/A.	

UM 1995	Middle Fork Irrigation District v. PGE	1/15/2019	PGE rejected QF's PPA on the grounds that it will not execute an agreement more than one year in advance of the expiration of the existing PPA.	Yes.	Yes.	N/A.	Three separate letters were sent requesting draft contracts and suggesting that PGE had violated the law. (9/20/2018, 10/31/2018, & 12/07/2018).
UM 1998	Evergreen Biopower v. PGE	1/29/2019	PGE refuses to do monthly balancing for off-system QF, refuses to waive any ownership of T-RECs or to accept T-RECs when settling under delivery damages.	Yes, by way of demand letter.	Yes.	Yes (date unknown).	QF counsel sent three rounds of letters to utility prior to filing a complaint, the first of which stated an intent to litigate if not resolved amicably.
UM 2009	Madras PV1 v. PGE	4/22/2019	Negotiated QF PPA; PGE delayed contract negotiation process, insisted on unreasonable terms, and insisted on IA prior to draft PPA.	Yes, by way of demand letter.	Yes, Negotiations ongoing for one and half years. Complaint filed the day prior to avoided cost reduction on 4/23.	Yes (4/19/2019).	
UM 2051	Fossil Solar v. PGE	12/31/2019	Fossil Lake filed a complaint against PGE to prevent PGE from terminating the PPA between the parties, asserting that PGE's notice of termination is invalid because PGE is not currently renewable resource deficient.	Yes, by way of demand letter.	Yes, PGE received a demand letter more than 10 days before QF filed complaint.	Yes (12/20/2019).	
UM 2057	St. Louis Solar v. PGE	2/3/2020	St. Louis Solar filed a complaint against PGE because PGE has failed to complete interconnection, causing SLS to miss its COD.	Yes.	Yes, PGE received two letters, the first of which expressed several concerns and the more recent letter asked PGE to amend the PPA. PGE refused explaining actions PGE would take if the matter proceeded to litigation, and a complaint was filed nine days later.	Yes (7/26/2019 & 1/24/2020).	

UM 2074	Zena Solar v. PGE	3/27/2020	Zena Solar raised various interconnection issues.	Yes, by way of demand letter.	Yes, various interconnection issues in dispute since 2019.	Yes.	
UM 2079	Marquam Creek Solar v. PGE	4/23/2020	Marquam Creek Solar asks the OPUC to order PGE to either accept Marquam Creek Solar's notice of termination or terminate the PPA itself, so that Marquam Creek Solar can participate in the CSP.	Yes, PGE asked QF to file "placeholder" complaint.	Yes, PGE and QF met and conferred.	N/A.	PGE asked Complainant to file placeholder complaints in meet and confer, so there was a 'conferral' in lieu of a letter.
UM 2080	Sesqui-C Solar v. PGE	5/1/2020	QF filed complaint as a "placeholder" in the event that PGE did not agree to terminate its PPA. If PGE agreed to terminate, QF agreed to withdraw this complaint.	Yes, see above..	See above.	N/A.	See above.
UM 2082	Sandy River Solar v. PGE	5/7/2020	See above.	Yes, see above	See above.	N/A.	See above.
UM 2084	Kaiser Creek Solar v. PGE	5/8/2020	See above.	Yes, see above.	See above.	N/A.	See above..
UM 2083	Carned Creek Solar v. PGE	5/8/2020	See above.	Yes, see above.	See above.	N/A.	See above
UM 2086	River Valley Solar v. PGE	5/11/2020	See above.	Yes, see above.	See above.	N/A.	See above.
UM 2085	Fruitland Creek Solar v. PGE	5/11/2020	See above.	Yes, see above.	See above.	N/A.	See above.
UM 2087	Mt. Hope Solar v. PGE	5/12/2020	See above.	Yes, see above.	See above.	N/A.	See above.
UM 2090	Cusack Solar v. PGE	5/13/2020	See above.	Yes, see above.	See above.	N/A.	See above.
UM 2089	Cosper Creek v. PGE	5/13/2020	See above.	Yes, see above.	See above.	N/A.	See above.

UM 2088	Belvedere Solar v. PGE	5/13/2020	See above.	Yes, see above.	See above.	N/A.	See above.
UM 2093	Williams Acres Solar v. PGE	5/14/2020	See above.	Yes, see above.	See above.	N/A.	See above.
UM 2092	Dunn Rd. Solar v. PGE	5/14/2020	See above.	Yes, see above.	See above.	N/A.	See above.
UM 2091	Ashfield Solar v. PGE	5/14/2020	See above.	Yes, see above.	See above.	N/A.	See above.
UM 2096	Zena Solar v. PGE	5/15/2020	See above.	Yes, see above.	See above.	N/A.	See above.
UM 2095	Gun Club Solar v. PGE	5/15/2020	See above.	Yes, see above.	See above.	N/A.	See above.
UM 2094	Buckner Creek Solar v. PGE	5/15/2020	See above.	Yes, see above.	See above.	N/A.	See above.
UM 2097	Auburn Solar v. PGE	5/18/2020	See above.	Yes, see above	See above	N/A.	See above
Cases Where PGE Was The Complainant							
UM 1887	PGE v. Covanta	8/11/2017	PGE refused to execute PPA because QF proposed to reduce its nameplate capacity.	Yes.	Yes.	N/A.	Covanta brought complaint to FERC, PGE intervened and brought complaint to the OPUC.
UM 1894	PGE v. Pacific Northwest Solar	8/31/2017	Contract dispute about whether a QF can increase or decrease its nameplate capacity.	Yes.	Yes.	PGE did not send a demand letter.	
UM 1931	PGE v. Alfalfa Solar I	1/25/2018	Contract dispute about whether PGE must pay 15 years of fixed prices.	Yes.	Yes.	PGE did not send a demand letter.	