IN THE COURT OF APPEALS OF THE

STATE OF OREGON

ALFALFA SOLAR I LLC, DAYTON SOLAR I LLC, FORT ROCK SOLAR I LLC, FORT ROCK SOLAR II LLC, FORT ROCK SOLAR IV LLC, HARNEY SOLAR I LLC, RILEY SOLAR I LLC, STARVATION SOLAR I LLC, TYGH VALLEY SOLAR I LLC, and WASCO SOLAR I LLC,
Defendants-Petitioners,

v.

PORTLAND GENERAL ELECTRIC COMPANY,
Complainant-Respondent,

and

PUBLIC UTILITY COMMISSION OF OREGON,
Respondent,

NORTHWEST AND INTERMOUNTAIN POWER PRODUCERS COALITION, COMMUNITY RENEWABLE ENERGY ASSOCIATION, and RENEWABLE ENERGY COALITION,
Intervenors, below.

Public Utility Commission of Oregon

No. UM 1931

CA _____

PETITION FOR JUDICIAL REVIEW

Petitioners Alfalfa Solar I LLC, Dayton Solar I LLC, Fort Rock Solar I LLC, Fort Rock Solar II LLC, Fort Rock Solar IV LLC, Harney Solar I LLC,

Riley Solar I LLC, Starvation Solar I LLC, Tygh Valley Solar I LLC, and Wasco Solar I LLC ("Petitioners") seek judicial review of the following orders of the Public Utility Commission of Oregon ("PUC") in case number UM 1931: Order No. 19-394, entered on November 14, 2019; Order No. 19-255, entered on August 2, 2019; and Order No. 18-174, entered on May 23, 2018.

The parties to the judicial review proceeding before the Court of Appeals are:

Petitioners

Alfalfa Solar I LLC, Dayton Solar I LLC, Fort Rock Solar I LLC, Fort Rock Solar II LLC, Fort Rock Solar IV LLC, Harney Solar I LLC, Riley Solar I LLC, Starvation Solar I LLC, Tygh Valley Solar I LLC, and Wasco Solar I LLC

Respondents

Public Utility Commission of Oregon
Portland General Electric Company

The name, bar number, address, telephone number, and e-mail address of the attorneys for each party represented by an attorney are:

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There are no self-represented parties in this matter.

A. Attached to this petition is a copy of each order for which judicial review is sought. PUC Order No. 18-174, entered on May 23, 2018, denied Petitioners' motion to dismiss the PUC proceeding. PUC Order No. 19-255, entered on August 2, 2019, was a final order that denied Petitioners' and Intervenors' motions for summary judgment and granted Respondent Portland General Electric Company's motion for summary judgment. PUC Order No. 19-394, entered on November 14, 2019, was a final order that denied Petitioners' and Intervenors' applications for reconsideration of PUC Order No. 19-255. The petition for review is timely filed because it is filed within 60 days of PUC Order No. 19-394. ORS 183.482.

B. Petitioners were parties to the administrative proceeding which resulted in the orders for which review is sought.

C. Petitioners are not willing to stipulate that the agency record may be shortened.

Respectfully submitted this 10th day of January, 2020.

RICHARDSON ADAMS, PLLC

By: */s/ Gregory M. Adams*

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Attorneys for Petitioners

CERTIFICATE OF SERVICE

I certify that on January 10, 2020, I served a true copy of this **PETITION FOR JUDICIAL REVIEW** on the following named persons by United States Postal Service, certified mail, return receipt requested, contained in a sealed envelope, addressed to said persons at their last known addresses indicated below.

Public Utility Commission of Oregon
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DATED this 10th day of January, 2020.

RICHARDSON ADAMS, PLLC

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CERTIFICATE OF FILING

I certify that on January 10, 2020, I filed the original of this petition with the Appellate Court Administrator in .PDF, text-searchable format using the Oregon Appellate eCourt filing system in compliance with ORAP 16.25.

DATED this 10th day of January, 2020.

RICHARDSON ADAMS, PLLC

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ORDER NO. 18 174

ENTERED MAY 23 2018

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1931

PORTLAND GENERAL ELECTRIC COMPANY, Complainant, vs. ALFALFA SOLAR I LLC , DAYTON SOLAR I, LLC, FORT ROCK SOLAR I LLC, FORT ROCK SOLAR II LLC, FORT ROCK SOLAR IV LLC, HARNEY SOLAR I LLC, RILEY SOLAR I LLC, STARVATION SOLAR I LLC, TYGH VALLEY SOLAR I LLC, AND WASCO SOLAR I LLC, Defendants.	ORDER

DISPOSITION: MOTION TO DISMISS DENIED

I. SUMMARY

In this order, we deny the motion to dismiss the complaint filed by Alfalfa Solar I LLC, Dayton Solar I LLC, Fort Rock Solar I LLC, Fort Rock II LLC, Fort Rock Solar IV LLC, Harney Solar I LLC, Riley Solar I LLC, Starvation Solar I LLC, Tygh Valley Solar I, LLC and Wasco Solar I, LLC (defendants or NewSun QFs).

II. BACKGROUND

On January 25, 2018, Portland General Electric Company (PGE) filed this complaint seeking resolution of a dispute "relating to the interpretation of ten form standard power purchase agreements executed [with defendants] throughout 2016."[1] Specifically, PGE seeks clarification as to whether the 15-year term of fixed prices under the standard contracts begins on the commercial operation date (COD) or the date of execution.

[1] PGE Complaint at 1 (Jan 25, 2018).

On February 22, 2018, NewSun QFs filed a motion to dismiss these proceedings. NewSun QFs argue that PGE's complaint regards the identical dispute that it has already asked the United States District Court for the District of Oregon to resolve, and that PGE's attempt to take jurisdiction from the federal court should be dismissed. PGE filed a response in opposition on March 9, 2018, to which NewSun QFs replied on March 16, 2018.

III. DISCUSSION

A. Positions of the Parties

NewSun QFs characterize this case as a dispute to be adjudicated under common law principles relating to contracts. As such, they cite four grounds for seeking dismissal of the complaint, all related to our status as a state agency.

First, NewSun QFs state that there is no basis for this Commission to assert jurisdiction once the proceedings in federal court have commenced. They argue that, under the supremacy clause of the United States Constitution and diversity jurisdiction, we must dismiss the complaint unless the federal court explicitly defers to the Commission. NewSun QFs further state that adjudicating the meaning of a contract relates to questions of underlying intent, thus requiring a resolution by a trier of fact, and therefore giving rise to the common law right to a jury trial.

Second, NewSun QFs argue that, even in the absence of a pending federal proceeding, we lack jurisdiction because the dispute relates solely to the meaning of a contract and "requires nothing more than application of common law contract principles."[2]

Third, NewSun QFs contend that state law requires dismissal under the "first-to-file" rule, which Oregon courts have applied to require that the court which first had possession of a subject must decide it. NewSun QFs assert that the first-to-file rule is fundamentally just as applicable to an agency, such as this Commission, as it is in other cases when suits are filed in multiple judicial venues.

Finally, NewSun QFs contend that PGE's complaint must be dismissed for failure to state a claim. NewSun QFs explains that, since they have not violated any rule or order, PGE's complaint essentially requires the Commission to issue a declaratory ruling regarding its policies when interpreting the contracts—an action beyond its authority—rather than resolving a complaint.

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[2] Defendants' Motion to Dismiss at 2 (Feb 22, 2018).

PGE responds that its complaint does not improperly impinge on federal or state court jurisdiction. PGE emphasizes that this Commission has previously addressed at length the question of jurisdiction over the interpretation of standard contracts and asserted jurisdiction to resolve a complaint via interpretation of an executed standard PPA.[3] PGE urges us to reach the same conclusions here. PGE also notes that the Oregon Court of Appeals has held that a standard PPA is "not governed by common law concepts of contract law; it is created by statutes, regulations and administrative rules."[4]

Additionally, PGE states that NewSun QFs misapply the first-to-file rule, as it relates to deference between courts, and that the doctrine of primary jurisdiction is the proper analysis for determining whether a state agency should resolve a dispute before a court exercises its jurisdiction. PGE relies on *Dreyer v. Portland Gen. Elec. Co*, where the Oregon Supreme Court applied the primary jurisdiction doctrine and ordered the abatement of a civil court proceeding even though it pre-dated the later-initiated Commission proceeding.[5]

Last, PGE contends that it has stated a claim under ORS 756.500(3), which allows a complainant to either state "all grounds of complaint on which the complainant seeks relief *or* the violation of any law claimed to have been committed by the defendant."[6] PGE acknowledges that it does not claim that the New Sun QFs have violated any law, but argues that its complaint satisfies ORS 756.500(3) because it identifies the relief sought.

B. Resolution

The motion to dismiss is denied. For the reasons set forth below, we find that this Commission has concurrent jurisdiction over the parties and the subject matter of this dispute. In light of the statutory bases delegating the development and analysis of the subject matter of this complaint, we conclude that we are the most appropriate forum to address the issues presented within it.

At the outset, we note that NewSun QFs mischaracterize the nature of this complaint. The instant proceeding is not a common law contract dispute, but rather one that relates to matters that have specifically been delegated to us under federal and state law. The

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[3] *See In the Matter of Portland General Electric Company v. Pacific Northwest Solar LLC,* Docket No. UM 1894, Order No. 18-025 (Jan. 25, 2018).
[4] PGE Response to Defendants' Motion to Dismiss at 2 (Mar 9, 2018), citing *Snow Mountain Pine Co. v. Mauldin,* 84 Or App 590, 598 (1987).
[5] *Dreyer v. Portland Gen. Elec. Co.,* 341 Or 262, 286-87 (2003).
[6] ORS 756.500(3) *(emphasis added).*

Public Utility Regulatory Reform Act (PURPA) and its complementary Oregon legislation requires utilities to purchase electric energy from qualifying facilities (QFs). To implement those requirements, this Commission has adopted rules and policies requiring utilities like PGE to offer to small QFs standard contracts that contain specified terms and conditions. Thus, as we recently stated in Order No. 18-025, "[t]he obligation to enter into a PURPA contract is not governed by common law concepts of contract law, but rather an obligation created by statutes, regulations, and this Commission's administrative rules."[7]

NewSun QFs' claim that we lack jurisdiction to hear the complaint is also incorrect. Neither this Commission nor the courts have unfettered, exclusive jurisdiction. While we do not claim to have exclusive jurisdiction over the interpretation of the standard contracts at issue, we affirm our recent decision in Order No. 18-025 concluding that we have *concurrent* jurisdiction.[8] Concurrent jurisdiction exists where a court and an agency share authority to deal with the same subject matter.[9] Indeed, NewSun QFs do not argue that, absent the pendency of the proceeding before the District Court, the Commission would lack such jurisdiction.

The question of deference between courts and agencies to first decide a question presented is subject to the doctrine of *primary jurisdiction*. An agency may have primary jurisdiction either by statute or by a determination by the court that it would be preferable to have the agency first address the matters presented.[10] In our view, such deference is warranted here. The terms and conditions of these contracts were litigated before the Commission, adopted by the Commission, and have the force of regulation under our implementation of PURPA. Moreover, the desire for uniform resolution, and the risk that a judicial decision could adversely impact the performance of our regulatory duties and responsibilities, further supports our view that this agency's interpretation has special significance.[11] Finally, the terms and conditions of standard contracts relate directly to the regulated rates and services of utilities subject to our oversight. We therefore have

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[7] *In the Matter of Portland General Electric Company v. Pacific Northwest Solar LLC,* Docket No. UM 1894, Order No. 18-025 at 6 (Jan 25, 2018). Furthermore, we note that Section 17 of the standard PPAs that PGE represents have been executed by the NewSun QFs, state in part "This Agreement is subject to the jurisdiction of those *governmental agencies* having control over either party or this Agreement."

[8] *Id.*

[9] *Boise Cascade Corp v. Board of Forestry,* 325 Or 185, 192, fn. 8 (1997).

[10] *Adamson v. WorldCom Communs., Inc.,* 190 Or App 215 at 223 (2003).

[11] *See Dreyer v. Portland Gen. Elec. Co.,* 341 Or 262, 286 (2003). To determine whether an agency has primary jurisdiction courts consider several factors, including (1) the extent to which the agency's specialized expertise makes it a preferable forum for resolving the issue, (2) the need for uniform resolution of the issue, and (3) the potential that judicial resolution of the issue will have an adverse impact on the agency's performance of its regulatory responsibilities.

the expertise and the authority to review the terms and conditions of these standard contracts that were developed through Commission proceedings.[12]

For this reason, we reject NewSun QFs' arguments that our consideration of this complaint violates the Supremacy Clause of the U.S. Constitution. Our jurisdiction does not conflict with the federal courts' jurisdiction, since the interpretation and application of PURPA rules and policies has been directly conferred upon the Commission by both federal and state law. While we recommend abatement of judicial proceedings, the U.S. District Court remains free to determine when and how to address all matters before it while taking cognizance of the statutory framework of the subject matter being addressed by the Commission pursuant to its statutorily delegated authority and the standards for primary jurisdiction enunciated by the Oregon Supreme Court. Moreover, because we do not claim exclusive jurisdiction, we need not resolve NewSun QFs' claim that our exercise of jurisdiction violates its constitutional right to a jury.

We further conclude that NewSun QFs' reliance on the "first-to-file" doctrine is misplaced. That doctrine relates to deference among courts of general jurisdiction, and does not apply when determining whether a state agency has primary jurisdiction to address a dispute. As the Oregon Supreme Court recognized in *Dreyer,* our authority as an administrative agency charged with addressing subject matter delegated to it by statute does not turn on a question of timing. The first-to-file doctrine thus does not automatically give a court primary or exclusive jurisdiction over an agency.

Finally, we also conclude that PGE has satisfied the standards for bringing a complaint against NewSun QFs. Because PGE's complaint identifies the nature of the dispute and the relief sought, it satisfies the requirements of ORS 756.500(3). Furthermore, interpreting the language and intent of a particular contract—in contrast with interpreting the policy stated in an order that led to the preparation of the contract—does not constitute the issuance of a declaratory ruling whose application must be limited to a rule or statute.

[12]*See, e.g., In the Matter of Public Utility Commission of Oregon Staff's Investigation Relating to Electric Utility Purchases from Qualifying Facilities*, Docket No. UM 1129, Order No. 05-584 (May 13, 2005).

IV. ORDER

IT IS ORDERED that the motion to dismiss filed by Alfalfa Solar I LLC, Dayton Solar I LLC, Fort Rock Solar I LLC, Fort Rock II LLC, Fort Rock Solar IV LLC, Harney Solar I LLC, Riley Solar I LLC, Starvation Solar I LLC, Tygh Valley Solar I, LLC and Wasco Solar I, LLC is denied.

Made, entered, and effective MAY 23 2018.

Lisa D. Hardie
Chair

Stephen M. Bloom
Commissioner

Megan W. Decker
Commissioner

ORDER NO. 19-255

ENTERED Aug 2, 2019

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1931

PORTLAND GENERAL ELECTRIC COMPANY, Complainant, vs. ALFALFA SOLAR I LLC , DAYTON SOLAR I, LLC, FORT ROCK SOLAR 1 LLC, FORT ROCK SOLAR II LLC, FORT ROCK SOLAR IV LLC, HARNEY SOLAR I LLC, RILEY SOLAR I LLC, STARVATION SOLAR 1 LLC, TYGH VALLEY SOLAR I LLC, WASCO SOLAR I LLC Defendants.	ORDER

DISPOSITION: MOTION FOR SUMMARY JUDGMENT FOR PGE GRANTED, ALL OTHER MOTIONS FOR SUMMARY JUDGMENT DENIED

I. INTRODUCTION

In this order, we grant the motion of Portland General Electric Company (PGE) for summary judgment and deny the motions for summary judgment filed by Alfalfa Solar I LLC, Dayton Solar I LLC, Fort Rock Solar I LLC, Fort Rock Solar II LLC, Fort Rock Solar IV LLC, Harney Solar I LLC, Riley Solar I LLC, Starvation Solar I LLC, Tygh Valley Solar I LLC, and Wasco Solar I, LLC (defendants or NewSun QFs); and Northwest and Intermountain Power Producers Coalition (NIPPC), Renewable Energy Coalition (the Coalition), and Community Renewable Energy Association (CREA) (collectively, the Intervenors) and close the docket. We find that based on the specific language of the contracts in question, summary judgment should be granted for PGE.

II. PROCEDURAL HISTORY

The NewSun QFs are 10 qualifying facility (QF) solar projects that executed a series of standard contracts with PGE between January and June 2016, under the Commission's implementation of the Public Utilities Regulatory Policies Act of 1978 (PURPA).

In September 2017, the NewSun QFs filed a joint petition to intervene out of time in docket UM 1805, requesting that the Commission resolve a question of interpretation of PGE's standard PURPA contracts. In that petition to intervene, the NewSun QFs asked us to clarify the commencement date of the 15-year period during which QFs who have previously contracted with PGE to deliver power are entitled to sell their output at fixed avoided cost prices.[1] We denied late intervention in docket UM 1805 to the NewSun QFs as contravening ORS 756.525(2).

In January 2018, the NewSun QFs filed a complaint with the United States District Court.[2] PGE then filed a complaint with the Commission, seeking our resolution of the contract dispute with the NewSun QFs.[3] On February 2, 2018, the NewSun QFs asked the district court to stay the Commission proceeding due to the pendency of the federal case. On February 22, 2018, the NewSun QFs filed a motion with the Commission, seeking to dismiss our proceeding based on the same reasoning.

On May 23, 2018, the Commission entered Order No. 18-174 denying the NewSun QFs' motion to dismiss. In that order, we found that we have concurrent jurisdiction over the parties and the subject matter of this dispute, and that the dispute relates to matters specifically delegated to the Commission under federal and state law. We provided the following explanation:

> The terms and conditions of these contracts were litigated before the Commission, adopted by the Commission, and have the force of regulation under our implementation of PURPA. Moreover, the desire for uniform resolution, and the risk that a judicial decision could adversely impact the performance of our regulatory duties and responsibilities, further supports our view that this agency's interpretation has special significance. Finally, the terms and conditions of standard contracts relate directly to the regulated rates and services of utilities subject to our oversight. We

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[1] *In the Matter of Northwest and Intermountain Power Producers Coalition et al. v. Portland General Electric Company (NIPPC et al. v. PGE)*, Docket No. UM 1805(Sep 8, 2017)

[2] *Alfalfa Solar I LLC et al. v. Portland General Electric Company,* No 3:18-cv-00040-SI, (D Or, Jan 8 2018).

[3] PGE Complaint and Request for Dispute Resolution at 1 (Jan 25, 2018).

therefore have the expertise and the authority to review the terms and conditions of these standard contracts that were developed through Commission proceedings.

The district court subsequently agreed, staying the federal action to allow the Commission to proceed first under the doctrine of primary jurisdiction.[4]

The NewSun QFs filed an answer and affirmative defenses on June 6, 2018. On July 2, 2018, the NewSun QFs filed a motion for summary disposition, asserting that, when applying common law contract interpretation rules, the contract between the parties unambiguously provides fixed prices for a period of 15 years after the commercial operation date (COD).

On July 6, 2018, NIPPC and the Coalition intervened in this docket. On July 20, 2018, CREA intervened. Pursuant to an agreed-upon schedule, joint and separate undisputed statements of fact were filed on January 25, 2019, and each party filed motions for summary judgment on January 29, 2019. The Commission held oral argument on the motions on March 14, 2018.

III. DISCUSSION

A. Regulatory History

PURPA is a federal law that provides a market for electricity produced by small power producers by requiring utilities subject to the law to purchase power from QFs at the utility's avoided cost. Although PURPA is a federal law, states are responsible for implementing significant aspects of the law. Oregon has enacted its own complementary legislation in ORS 758.505 *et al.*, we have adopted rules governing PURPA's application to regulated utilities, and, in multiple dockets, we have adopted and revised the rates, terms, and conditions for QF power purchase agreements (PPAs) in Oregon.

The Commission reviews and approves standard QF contract templates that each utility must make available to QFs below a defined project size threshold. The key terms of the contracts that are the subject of this proceeding were developed through a protracted process of revision to the standard contract templates, with different terms and conditions emerging at different times in response to different policy changes, over a period of more than a decade.

[4] *Alfalfa Solar I LLC et al. v. Portland General Electric Company,* No 3:18-cv-00040-SI, 2018 WL 2452947 at 16 (D Or May 31, 2018): "Given the PUC's expertise in evaluating the contents and relevance of its previous orders to the parties' understanding of the PPA, the need for the disputed term to be interpreted uniformly, and the reduced risk of delay causing further harm to Plaintiff, it is appropriate for the Court to defer to the PUC's primary jurisdiction over this case."

In 2005, in docket UM 1129, the Commission first adopted a policy to require utility PPAs to offer 15 years of fixed prices. Order No. 05-584 established this requirement for reasons relating to the financing of QF projects, as discussed below. This decision did not describe when 15 years of fixed price availability would commence.

PGE's first compliance filing after Order No. 05-584, which included a revised standard contract template and Schedule 201 (PGE's tariff for standard QF purchases), provides insight into PGE's implementation of our order at that time, and includes key terms similar to those in the contracts in question in this docket. PGE's standard contract provided, in part, as follows:

> SECTION 2: TERM; COMMERCIAL OPERATION DATE
>
> > 2.1 This Agreement shall become effective upon execution by both Parties ("Effective Date").
> >
> > ***
> >
> > 2.3 This Agreement shall terminate on _____, ____ [date to be chosen by Seller], 20 years from the Effective Date, or the date the Agreement is terminated in accordance with Section 10 or 12.2, whichever is earlier ("Termination Date").

PGE's Schedule 201 tariff provided, in part, as follows:

> Sheet No. 201-4
>
> > 1) Fixed Price Option The Fixed Price Option is based on Avoided Costs including forecasted natural gas prices. This option is available for a maximum term of 15 years. Sellers with contracts exceeding 15 years will make a one time election at execution to select a market-based option for all years up to five in excess of the initial 15. Under the Fixed Price Option, prices will be as established at the time the Standard Contract is executed and shall be equal to the Avoided Costs in Tables 1 and 2 effective at execution for a term of up to 15 years.

Other regulated utilities also made compliance filings after Order No. 05-584. For example, the standard contract template included in PacifiCorp's compliance filing of July 12, 2005, differed from PGE's with respect to the contract and fixed-price terms:

Section 2.4

> "Except as otherwise provided herein, this Agreement shall terminate on _____ [enter Date that is no later than 20 years after the Scheduled Initial Delivery Date] ("Termination Date")."

Section 5.2

> "(Fixed Price Sellers Only). In the event Seller elects the Fixed Price payment method, PacifiCorp shall pay Seller the applicable On-Peak and Off-Peak rates specified in Schedule 37 during the first fifteen (15) years after the Scheduled Initial Delivery Date."

Idaho Power's July 12, 2005, compliance filing included standard contract language similar to PacifiCorp's, pegging the start date for 15 years of fixed prices to the commencement of commercial operation:

Section 1.2

> "Contract Year"-- The period commencing each calendar year on the same calendar date as the Operation Date and ending 364 days thereafter.

Section 1.13

> "Operation Date" – The day commencing at 0001 hours, Mountain Time, following the day that all requirements of paragraph 5.2 have been completed.[5]

Section 7.1:

> Net Energy Purchase Price – The Seller has selected option _____ from Schedule 85 as the purchase price for the first 15 Contract Years of this Agreement.

The Commission approved all three contracts, despite the material difference in the calculation of time periods—most significantly, when the 15-year period of fixed prices began.

[5] Section 5.2 lists the criteria demonstrating that the facility is able to provide safe, reliable and consistent energy and complies with related requirements.

Years later in Order No. 16-129, we reasserted our policy with respect to the start date for the 15 years of fixed prices, but again did not clarify specifically when the 15-year period of fixed prices must start:

> After further consideration in this docket, we conclude that our current policy appropriately balances these interests. That policy provides for 20-year contracts, with prices fixed at avoided cost rates in place at the time of signing remaining in effect for a 15-year period, and indexed pricing for the remaining five years, continues to have merit. By specifying index-based rates for the final five years, QF developers will be given an incentive to realistically address future projects and manage their operations in ways that will maximize efficiency. These factors bring down the cost of renewable energy, making it more competitive with less environmentally-friendly alternatives and thereby further the public interest.[6]

Order No. 16-175, which clarified Order No. 16-129, contained our first direct reference to the differences between the various utilities' contracts with respect to the start date of the 15-year period of fixed prices.[7] There, we stated the following:

> Thus, Order No. 16-129 made no changes to Idaho Power's Schedule 85, which unambiguously provides that the 15-year period commences at the time the QF's "Operation Date." We note that the standard contract approved by PacifiCorp, dba Pacific Power, contains language similar to Idaho Power's; however, PGE's standard QF contract differs with regards to when the 15-year period commences. Because this docket specifically addressed the terms and conditions of QF agreements to be entered into by Idaho Power and not one to address overall QF policy, we respond only to CREA's and REC's motion and do not address the provisions of PGE's standard contract at this time.[8]

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[6] *In the Matter of Idaho Power Company Application to Lower Standard Contract eligibility Cap and Reduce the Standard Contract Term, for Approval of Solar Integration Change, and for Change in Resource Sufficiency Determination (Idaho Power),* Docket No. 1725, Order No. 16-129 (Mar 29, 2016) at 8. This view was confirmed in a PacifiCorp Order entered the same day: *In the Matter of PacifiCorp, dba Pacific Power, Application to Reduce the Qualifying Facility Contract Term and lower the Qualifying Facility Standard Contract Eligibility Cap,* Docket No. 1734, Order No. 16-130 at 5 (Mar 29, 2016): "We conclude that ORS 758.525 does not mandate a particular term for QF contracts, and that our use of 20-year contracts, with prices fixed at avoided costs for 15 years followed by indexed pricing for the remaining five years, continues to have merit."

[7] *Idaho Power,* Order No. 16-175 was entered May 16, 2016, a month during which some NewSun QF contracts had been executed and others remained to be signed.

[8] *Id.* at 2-3.

Although we described the different approaches to the 15-year fixed-price term in Order No. 16-175, we declined to address whether such differences were consistent with our policy.

Finally, in Order No. 17-256 in docket UM 1805, we clarified our previously adopted policy establishing 15-year fixed-price terms so that, going forward, the 15-year period of fixed prices would commence on the date the QF begins transmitting power to the utility. We recognized that we had consistently approved PGE's standard contracts and could not find that any PGE contracts that began the fixed-price period at contract execution had violated our policy. We stated "[h]aving found that PGE's past standard contracts have not been in violation of our orders, we shall not require that existing executed contracts be revised."[9] We did require PGE to revise its contracts going forward.

We subsequently amended Order No. 17-256 with Order No. 17-465, noting that we had not reviewed all versions of PGE's standard contract nor any individual executed contracts, which could have varied in meaningful ways. Therefore, we revised Order No. 17-256 to state only that PGE "may have" placed limitations on when fixed prices commenced. We also struck the sentence quoted above and stated in its place "[i]n this decision, we do not address any existing executed contracts or PGE's current or existing standard contracts."[10] Finally, in Order No. 18-079, we stated "we continue to stand ready to interpret individual standard contract forms as they are brought to us * * *".[11]

B. Position of the Parties

1. PGE

PGE states that Order No. 05-584 clearly required that QF standard contracts offered by utilities had to offer fixed prices for only the first 15 years of the 20-year term and declined to adopt a model contract that all utilities must use. PGE's compliance filing contract was approved thereafter, along with the compliance filings of Idaho Power and PacifiCorp.[12] Subsequent standard contracts developed by PGE, all approved by the Commission, contained language with the same effect.

Because Schedule 201 refers to fixed prices being applicable to the "initial 15" years of the contract beginning at execution, PGE asserts that its standard contract templates unambiguously provide for the 15-year period of fixed prices to begin at the date of

[9] *NIPPC et al. v. PGE*, Docket No. 1805, Order No. 17-256 at 4 (Jan 12, 2018).
[10] *NIPPC et al., v. PGE*, Docket No. 1805, Order No. 17-465 at 4 (Nov 13, 2017).
[11] *NIPPC et al., v. PGE*, Docket No. 1805, Order No. 18-079 at 3 (Mar 5, 2018).
[12] *In the Matter of Idaho Power Company, Pacific Power & Light and Portland General Electric Company*, Docket No. 1129, Order No. 05-899 (Aug 9, 2005).

execution and are therefore not internally inconsistent.[13] The word "term" in Schedule 201, PGE asserts, does not create ambiguity. PGE contends that the NewSun QFs' proposed "industry standard" definition of "term" as starting at the project's COD contradicts the language of both PGE's standard contract and Schedule 201.

PGE declares that Order Nos. 17-256 and 17-465 in docket UM 1805 clarified the Commission's policy on a going-forward basis only, and clearly stated that the Commission was not interpreting past contracts in adopting that policy or requiring previously executed contracts to adopt the new requirements retroactively.

Finally, PGE cites discussions between the parties prior to contract execution confirming that the NewSun QFs knew of PGE's interpretation of its standard PPA, asserting that such knowledge is relevant to the Commission's decision.

2. NewSun QFs

The NewSun QFs state that, when read in context, the PPAs unambiguously provide fixed prices for 15 years after the COD, because the Commission always intended—beginning with Order No. 05-584—that the fixed-price term would provide 15 years of predictable revenue to the QF after operation and power sales begin. Furthermore, the NewSun QFs contend that in docket UM 1805, Order No. 18-079, the Commission did not establish a new policy, but confirmed that complainants in that docket had correctly interpreted the intent of the Commission in 2005.

The NewSun QFs next claim that there is a common industry context and understanding that a PPA begins when power is delivered and that evidence from industry experts and a review of contracts with other utilities demonstrate that PGE is taking an outlier and mistaken position on contract interpretation. The NewSun QFs further assert that PGE's own recent RFP defined "term" to begin with COD, supporting the existence of a standard industry interpretation. The NewSun QFs argue that, under the standards set forth by the Oregon Supreme Court in *Yogman*, ambiguity in the contract must be interpreted against PGE as the drafter of the agreement.

The NewSun QFs note that portions of the contract expressly recognize that a facility may not be operational at the time a PPA is signed. The NewSun QFs observe that "there is no way in which a seller could realize the entire twenty years of Commission-mandated power sales opportunity under the PGE standard contract if the ability to sell power to PGE terminated twenty years after the PPA Effective Date."[14]

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[13] PGE Motion for Summary Judgment at 13-16 (Jan 29, 2019); PGE Response to Defendants' and Intervenors' Motions for Summary Judgment.at 8-10 (Feb 15, 2019).
[14] Defendant Motion for Summary Judgment at 13 (Jan 29, 2019).

The NewSun QFs point to Section 4.5 of the contract, which discusses the transfer of renewable attributes with reference to "Contract Years," which are measured from COD. NewSun QFs argue that this reference to COD, taken in conjunction with the context of Schedule 201, means that the agreement expressly contemplated 15 years of fixed pricing from COD, not from the contract effective date.

3. NIPPC, the Coalition, and CREA

Together, NIPPC, the Coalition, and CREA (Intervenors) argue that PGE's interpretation of the standard contract is unreasonable because it contradicts the common understanding and implementation of our 15-year fixed price term. Intervenors observe that PGE attempted to revise its tariff language to clarify that fixed pricing is available for 15 years immediately following the effective date of the contract. This proposal was removed from consideration after Commission Staff determined that it represented a substantive change outside the scope of a narrow docket.

The Intervenors argue that our regulatory history clearly demonstrates a policy determination that 20-year terms should be available to QFs and that, during 15 years of the 20-year term, pricing should be fixed. The Intervenors assert that PGE has not always held the view it takes in this docket, because PGE has previously modified its standard contract in specific instances to explicitly start fixed prices at COD. The Intervenors argue that PGE's conception of the word "term" is divergent from industry standard, and that these trade terms should be considered and interpreted as part of the first step of a *Yogman* review.

C. Stipulated Facts

The parties jointly and separately submitted statements of undisputed facts relevant to these matters. No party has claimed that any facts alleged by another party are either incorrect or irrelevant and the parties acknowledge that the Commission has a sufficient record for us to resolve these proceedings under our summary judgment standards.

PGE's complaint included copies of the executed contracts with each of the named QF defendants. The relevant sections of the contract form are taken from the agreement between PGE and Alfalfa Solar I LLC, executed June 26, 2016, and affixed as Exhibit 1 to the PGE complaint. The parties acknowledge that each of the QF contracts is based on the Commission-approved PGE Standard Renewable Off-System Variable Power Purchase Agreement or PGE Renewable In-System Variable Power Purchase

Agreement[15] and therefore contains the following identical sections relevant to the issues presented to us:

SECTION 1: DEFINITIONS

1.7. "Contract Year" means each twelve (12) month period commencing upon the Commercial Operation Date or its anniversary during the Term, except the final Contract Year will be the period from the last anniversary of the Commercial Operation Date during the Term until the end of the Term.

1.8. "Effective Date" has the meaning set forth in Section 2.1.

1.38. "Term" shall mean the period beginning on the Effective Date and ending on the Termination Date.

SECTION 2: TERM; COMMERCIAL OPERATION DATE

2.1. This Agreement shall become effective upon execution by both Parties ("Effective Date").

2.2.2. By thirty-six (36) month anniversary of the Effective Date Seller shall have completed all requirements under Section 1.5 and shall have established the Commercial Operation Date.

2.3. This Agreement shall terminate on the completion of the last day of the sixteenth (16th) Contract Year, or the date the Agreement is terminated in accordance with Section 8 or 11, whichever is earlier ("Termination Date").

SECTION 4: DELIVERY OF POWER, PRICE AND ENVIRONMENTAL ATTRIBUTES

4.1. Commencing on the Effective Date and continuing through the Term of this Agreement, Seller shall sell to PGE the entire Net Output delivered from the Facility at the Point of Delivery.

4.2. PGE shall pay Seller the Contract Price for all delivered Net Output.

4.5 During the Renewable Resource Deficiency Period [i.e., beginning in 2020], Seller shall provide and PGE shall acquire the RPS Attributes for the Contract Years as specified in the Schedule and Seller shall retain

[15] *See* Joint Statement of Undisputed Facts, Attachment A, paragraph 13 (Jan 25, 2019).

> ownership of all other Environmental Attributes if any. During the Renewable Resource Sufficiency Period [i.e., through 2019, and any period within the Term of this Agreement after completion of the first fifteen (15) years after the Commercial Operation Date, Seller shall retain all Environmental Attributes in accordance with the Schedule. The Contract Price includes full payment for the Net Output and any RPS Attributes transferred to PGE under this Agreement.

The relevant sections of Schedule 201 are the following:

> Schedule 201, Sheet No. 201-12:
>
> PRICING OPTIONS FOR STANDARD PPA (Continued)***
>
> 2) Renewable Fixed Price Option
>
> ***
>
> This option is available for a maximum term of 15 years. Prices will be as established at the time the standard PPA is executed***
>
> Sellers with PPAs exceeding 15 years will receive pricing equal to the Mid-C Index Price and will retain all Environmental Attributes generated by the facility for all years up to five in excess of the initial 15.
>
> Schedule 201, Sheet No. 201-24:
>
> TERM OF AGREEMENT
>
> Not less than one year and not to exceed 20 years.

For the "Renewable Fixed Price Option," Schedule 201 provides:

> Sellers will retain all Environmental Attributes generated by the facility during the Renewable Resource Sufficiency Period [i.e., through 2019]. A renewable QF choosing the Renewable Fixed Price Option must cede all RPS Attributes generated by the facility to the Company during the Renewable Resource Deficiency Period [i.e. beginning in 2020]. * * *
>
> Sellers with PPAs exceeding 15 years will receive pricing equal to the Mid-C Index Price and will retain all Environmental Attributes generated by the facility for all years up to five in excess of the initial 15.

D. Legal Standard for Summary Judgment

Section 860-001-0000(1) of the Commission's rules provides that the Oregon Rules of Civil Procedure (ORCP) apply in contested case and declaratory ruling proceedings unless they are inconsistent with Commission rules, a Commission order, or an Administrative Law Judge (ALJ) ruling. ORCP 47 C provides in pertinent part as follows:

> The court shall grant the motion if the pleadings, depositions, affidavits, declarations, and admissions on file show that there is no genuine issue as to any material fact and that the moving party is entitled to prevail as a matter of law. No genuine issue as to a material fact exists if, based on the record before the court viewed in a manner most favorable to the adverse party, no objectively reasonable juror could return a verdict for the adverse party on the matter that is the subject of the motion for summary judgment. The adverse party has the burden of producing evidence on any issue raised in the motion as to which the adverse party would have the burden of persuasion at trial.

E. Legal Standard for Contract Interpretation

We examine the language of the contracts between PGE and the NewSun QFs in accordance with the standards prescribed under Oregon law. In *Yogman v. Parrot*, 325 Or 358 (1997), the Supreme Court of Oregon set out the standard to be applied when reviewing a contract:

> To interpret a contractual provision****, the court follows three steps. First, the court examines the text of the disputed provision, in the context of the document as a whole. If the provision is clear, the analysis ends.
>
> When considering a written contractual provision, the court's first inquiry is what the words of the contract say * * *. To determine that, the court looks at the four corners of a written contract, and considers the contract as a whole with emphasis on the provision or provisions in question. The meaning of disputed text in that context is then determined. In making that determination, the court inquires whether the provision at issue is ambiguous. Whether terms of a contract are ambiguous is a question of law. In the absence of an ambiguity, the court construes the words of a contract as a matter of law.[16]

[16] *Eagle Industries, Inc. v. Thompson*, 321 Or 398, 405 (1995). *See also* ORS 42.230 (in construing a document, the court is "to ascertain and declare what is, in terms or in substance, contained therein, not to insert what has been omitted, or to omit what has been inserted.")

> [If] the contractual provision at issue is ambiguous, we proceed to the second of the three analytical steps that the court follows in interpreting contracts. That step is to examine extrinsic evidence of the contracting parties' intent.
>
> "If a contract is ambiguous, the trier of fact will ascertain the intent of the parties and construe the contract consistent with the intent of the parties. Words or terms of a contract are ambiguous when they reasonably can, in context, be given more than one meaning." *Pacific First Bank v. New Morgan Park Corp.*, 319 Or 342, 347-48, 876 P2d 761 (1994) (citations omitted).
>
> [If] the first two analytical steps have not resolved the ambiguity, we must reach the third and final analytical step. If the meaning of a contractual provision remains ambiguous after the first two steps have been followed, we must apply appropriate maxims of construction.

IV. RESOLUTION

PGE and the NewSun QFs signed the agreements in question in the context of our regulatory decisions, guidelines, and rules governing PURPA implementation in Oregon. In docket UM 1805, we set a clear policy going forward that all standard QF contracts must provide for 15 years of fixed prices commencing no sooner than COD, as had already been done since 2005 by PacifiCorp and Idaho Power. We concluded in docket UM 1805 that, although PGE asserted a different view of the policy for commencement of the 15-year period, we would not assume that all of PGE's past standard and executed contracts had been drafted to commence the 15-year period for fixed prices from the date of contract execution. Instead, we would interpret past executed contracts as they were brought to us for consideration.

Now, we are presented with a set of executed contracts that the parties interpret differently with respect to the commencement of the 15-year period for fixed prices. To resolve the disputed contract interpretation, the parties agree that we must apply the analysis in *Yogman*.[17]

We find that, under the first step of the *Yogman* analysis, the contract can only reasonably be interpreted to provide for fixed prices for 15 years from the contract effective date, which is the date of contract execution. Based on the plain language of the contract, there is not a plausible interpretation indicating the availability of 15 years of fixed pricing from COD. Although our analysis ends with our conclusion that the contract is

[17] *Yogman v. Parrot*, 325 Or 358 (1997).

unambiguous, we go on to confirm that nothing in the regulatory history conflicts with our conclusion under the first step of *Yogman*.

A. *Yogman* Analysis

We look to the "four corners" of the contract and examine the provisions in question within the context of the entire agreement. In this instance, the entire agreement includes the executed contract and Schedule 201, the PGE tariff.

The provisions most directly related to the 15-year period of fixed prices appear in sheet 201-12 of PGE's Schedule 201. Schedule 201 defines the fixed prices "available for a maximum term of 15 years" and identifies the index by which market-based prices will be established for PPAs whose terms extend beyond 15 years. Schedule 201 sheet 201-12 describes the "Renewable Fixed Price Option," stating as follows:

> This option is available for a maximum term of 15 years. Prices will be as established at the time the standard PPA is executed and will be equal to [the prices listed in the relevant Schedule 201 table].

A sentence later in the same tariff sheet describes the pricing to be available after "the initial 15" years:

> Sellers with PPAs exceeding 15 years will receive pricing equal to the Mid-C index price and will retain all Environmental Attributes generated by the facility for all years up to five in excess of the initial 15.

Although Schedule 201 does not explicitly define the "term" during which fixed prices are available, this final quoted sentence implicitly refers to the PPA term in defining the availability of market-based prices after "the initial 15" years of fixed prices.

We conclude that the PPA itself provides the source for understanding the 15-year term defined in Schedule 201. Section 1.38 defines the "Term" as "the period beginning on the Effective Date and ending on the Termination Date." Section 2.1 defines the Effective Date as the date of execution by both parties. Section 2.3 defines the Termination Date in a manner that makes clear that the agreement may not extend more than 20 years past the Effective Date.[18]

[18] In normal circumstances, under Section 2.3 the Termination Date is "on the completion of the last day of the sixteenth contract year." A "Contract Year" is defined in Section 1.7 as "each twelve (12) month period commencing on the Commercial Operation Date or its anniversary during the Term," except at the end of the term. Because Section 2.2.2 and 2.2.3 requires the Commercial Operation Date be no more than three years from the Effective Date (*i.e.*, the date of contract execution), the Termination Date (i.e., last day of the sixteenth Contract Year) will never be later than 20 years after contract execution.

For the contracts before us, interpreting the entire agreement by reading Schedule 201 together with the PPA's definitions leads to the conclusion that 15 years of fixed pricing is available from the effective date. The term of the contract is a maximum of 20 years, and commences upon execution by both parties. In Schedule 201, 15 years of fixed pricing are available for the "initial 15" years of the term. In order to reach a different conclusion, we would need to find that the word "term" in Schedule 201 had a different meaning that the word "term" in the contract.

The NewSun QFs and Intervenors argue that we should favor industry trade usage over a holistic reading of the entire agreement. We have approved other utilities' standard QF contracts with terms that begin at COD. However, approval of other utilities' contracts does not override the definition of "term" in PGE's PPA that unambiguously begins on the date of execution by both parties, and not COD.

Nor can we conclude that the NewSun QFs' interpretation of the contract—that we should look to the later-added contract provisions relating to environmental attributes being available for 15 years following COD—offers a plausible alternative interpretation for interpreting the availability of fixed pricing. Section 4.5 does not speak to fixed price availability and does not indicate when fixed prices are available. The controlling fixed price terms are found in Schedule 201. The fact that the date of contract execution and commercial operation date may or may not align as it relates to Schedule 201 and Section 4.5 with respect to the availability of environmental attributes does not create ambiguity with respect to the availability of fixed prices starting at contract execution.[19]

In short, we conclude that the only reasonable interpretation of the availability of fixed prices under Schedule 201 is with reference to the unambiguous definition of the contract term in the PPA. Having made this finding, we do not need to proceed with the remainder of the *Yogman* analysis to address the record evidence of the parties' discussion of this issue during the contracting process, the parties' intent, or maxims of construction under contract law.

Although we reach this conclusion under *Yogman*'s first step, looking only to the "four corners" of the agreement, we recognize that both parties have relied extensively on the regulatory history to support their interpretations. Therefore, we briefly review the regulatory history to confirm that it does not mandate a conclusion contrary to the one we reach under *Yogman*.

[19] This section was drafted separately and well after the terms governing the availability of fixed prices that were initially set in 2005. Section 4.5 was added to the contract in 2014 as a result of Order No. 14-435, through a compliance filing in docket UM 1610.

B. Regulatory History

Until we clarified our policy on a going-forward basis, the Commission had not established a specific requirement for when the 15-year period of fixed prices must commence. Nothing in the regulatory history points to a different conclusion than we reach under *Yogman*.

When the Commission initially established the 15-year fixed price period in 2005, through Order No. 05-584 in docket UM 1129, we did not firmly guarantee that each QF would receive 15 years of fixed prices. We sought to establish a contract length that would allow a QF to achieve third party financing under acceptable terms, but also wanted to balance the interests of ratepayers by avoiding too lengthy a fixed price term.[20] We found 15 years of fixed pricing more reasonable than 20 years because "20 years is a significant amount of time over which to forecast avoided costs" and the "divergence between forecasted and actual avoided costs must be expected over a period of 20 years." The Commission concluded that a 20 year contract could satisfy third-party lenders with the assurance of a longer stream of revenue, but protected ratepayers from an unacceptable divergence between payments to QFs and avoided costs experienced in the later years of the contract.

The decision itself did not address the potential start date for that 15 years of fixed price availability, and nowhere in the record leading up to the decision did any party or the Commission Staff, either by testimony or brief, raise the issue of the possible financial effects of variations in the COD having any impact on the start date of fixed prices. The Commission also considered and rejected requiring each utility to use the same, uniform QF standard contract template. Accordingly, the commencement date of fixed pricing was not specified in Order No. 05-584, and the Commission expressly stated that "terms that are not specifically discussed in this order or past orders will vary among the utilities."

With the very first compliance filings filed pursuant to that order by PGE, PacifiCorp and Idaho Power, variations between the standard form contracts submitted to the Commission Staff for review surfaced with respect to the start date for the 20-year period of the contract and, therefore, fixed prices. PacifiCorp and Idaho Power developed contracts that were clear in beginning fixed price terms upon operation, while PGE's contract took a different direction. All of the contracts were approved by the Commission.

Ultimately then, though the Commission required that 15 years of fixed pricing be made available to QFs, it did not specify the date at which that 15 years of fixed pricing must

[20] Order No. 05-584 2005 19-20.

be offered, and then subsequently approved different contracts that had varying degrees of clarity concerning when the 15 years of fixed pricing was required to be offered—and varying degrees of likelihood that QFs would be able to achieve a full 15 years.

The Commission remarked upon this apparent difference in a 2016 order, but did not address whether uniformity was expected or indicate a policy that would control the outcome here. All but four of the contracts at issue here were executed after our March 29, 2016 decision in Order No. 16-129, which made observations concerning previously approved standard contract templates. We clarified that Idaho Power's contract allowed for 15 years of fixed pricing commencing at COD, but in doing so we noted as follows:

> "PGE's standard QF contract differs with regards to when the 15-year period commences[.] * * * [W]e respond only to CREA's and REC's motion and do not address the provisions of PGE's standard contract at this time."[21]

The Commission recognized that PGE's contract differed. The QF representatives viewed that interpretation as erroneous, but our regulatory history demonstrates that past decisions neither mandated nor prohibited PGE from developing a contract that provided 15 years of fixed pricing from execution of the contract. Our silence on this issue prior to 2018 is not altered by our conclusion in docket UM 1805, when the specific question was finally before us, that 15 years of fixed prices must be available from COD in order to appropriately balance the policy considerations between QFs and ratepayers that the Commission first introduced in 2005.

C. Conclusion

We find that the language of the contracts in question favors PGE's interpretation, and that nothing in the regulatory history suggests a different conclusion. The internal logic of the contract limits 15 years of fixed prices to a period commencing at the effective date of the contract. We find that there is no genuine issue of material fact and that summary judgment in favor of PGE is therefore appropriate. The motions for summary judgment of the NewSun QFs and Intervenors are therefore denied.

IV. ORDER

IT IS ORDERED that:

1. Portland General Electric Company's motion for summary judgment is granted.

2. Alfalfa Solar I LLC, Dayton Solar I LLC, Fort Rock Solar I LLC, Fort Rock Solar II LLC, Fort Rock Solar IV LLC, Harney Solar I LLC, Riley Solar I LLC,

[21] *Idaho Power*, Order No. 16-175 at 3.

Starvation Solar I LLC, Tygh Valley Solar I LLC, and Wasco Solar I, LLC's motion for summary judgment is denied.

3. Northwest and Intermountain Power Producers Coalition, Renewable Energy Coalition and Community Renewable Energy Association's motion for summary judgment is denied.

4. The docket is closed.

Made, entered, and effective Aug 02 2019.

Megan W. Decker
Chair

Stephen M. Bloom
Commissioner

Letha Tawney
Commissioner

A party may request rehearing or reconsideration of this order under ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480 through 183.484.

ORDER NO. 19-394

ENTERED Nov 14 2019

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1931

PORTLAND GENERAL ELECTRIC COMPANY, Complainant, vs. ALFALFA SOLAR I LLC, DAYTON SOLAR I LLC, FORT ROCK SOLAR I LLC, FORT ROCK SOLAR II LLC, FORT ROCK SOLAR IV LLC, HARNEY SOLAR I LLC, RILEY SOLAR I LLC, STARVATION SOLAR I LLC, TYGH VALLEY SOLAR I LLC, WASCO SOLAR I LLC, Defendants.	ORDER

DISPOSITION: APPLICATIONS FOR RECONSIDERATION DENIED

We deny the applications for reconsideration of Order No. 19-255 filed by Alfalfa Solar I LLC, Dayton Solar I LLC, Fort Rock Solar I LLC, Fort Rock Solar II LLC, Fort Rock Solar IV LLC, Harney Solar I LLC, Riley Solar I LLC, Starvation Solar I LLC, Tygh Valley Solar I LLC, and Wasco Solar I, LLC (defendants or NewSun QFs) and Northwest and Intermountain Power Producers Coalition (NIPPC), the Community Renewable Energy Association (CREA) and the Renewable Energy Coalition (the Coalition, and together with NIPPC and CREA, the Intervenors).

In Order No. 19-255, entered August 2, 2019, we granted the motion of Portland General Electric Company (PGE) for summary judgment, finding that the contract language provided that the commencement date for the period of fixed prices was the date on which each contract had been executed by both parties, and denied the motions for summary judgment filed by the NewSun QFs by and the Intervenors. On October 1, 2019, NewSun QFs and the Intervenors filed separate Applications for Reconsideration.

PGE filed a response on October 16, 2019; defendants filed a reply on October 23, 2019; and PGE filed a sur-reply on November 4, 2019.

We have carefully reviewed our prior order, the separate Applications for Reconsideration, the PGE response and the replies, and decline to reconsider Order No. 19-255.

ORDER

IT IS ORDERED that the Applications for Reconsideration of Order No. 19-255 filed by Alfalfa Solar I LLC, Dayton Solar I LLC, Fort Rock Solar I LLC, Fort Rock Solar II LLC, Fort Rock Solar IV LLC, Harney Solar I LLC, Riley Solar I LLC, Starvation Solar I LLC, Tygh Valley Solar I LLC, and Wasco Solar I, LLC and by Northwest and Intermountain Power Producers Coalition, the Community Renewable Energy Association, and the Renewable Energy Coalition are denied.

Made, entered, and effective Nov 14 2019.

Megan W. Decker
Chair

Stephen M. Bloom
Commissioner

Letha Tawney
Commissioner

A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480-183.484.