

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1931

PORTLAND GENERAL ELECTRIC	)
COMPANY,	)
	)
Complainant,	)
	)
v.	)
	)
ALFALFA SOLAR I LLC, et al.	)
	)
Defendants.	)
_____	)

**Response Testimony of Jake Stephens**  
**on behalf of**  
**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**  
**(collectively, the “NewSun Parties”)**

December 28, 2018

**I. INTRODUCTION**

**Q. Please state your name and business address.**

**A.** My name is Jacob Stephens, and my business address is 2033 E Speedway Blvd, Suite 200, Tucson, Arizona 85719.

**Q. By whom are you employed and in what capacity?**

**A.** I am the founder and chief executive officer of NewSun Energy LLC a company focused on the development of power generation facilities, primarily photovoltaic solar energy facilities. Relevant to this proceeding, and pursuant to that role, I negotiated and executed each of the power purchase agreements (each a “PPA”) at issue in this proceeding on behalf of the following parties as their manager: Alfalfa Solar I LLC (“Alfalfa”), Dayton Solar I LLC (“Dayton”), Fort Rock Solar I LLC (“Fort Rock I”), Fort Rock Solar II LLC (“Fort Rock II”), Fort Rock Solar IV LLC (“Fort Rock IV”), Harney Solar I LLC (“Harney”), Riley Solar I LLC (“Riley”), Starvation Solar I LLC (“Starvation”), Tygh Valley Solar I LLC (“Tygh Valley”), and Wasco Solar I LLC (“Wasco”) (collectively referred to as the “NewSun Parties”).

**Q. Please describe your educational and professional background and experience.**

**A.** I am a serial entrepreneur and power industry professional with over a decade of experience starting companies focused on the development of utility-scale solar photovoltaic and thermal power generation and energy storage, particularly in the western U.S. I started my first solar company when the U.S. utility-scale solar industry began in earnest around 2006-2007. I co-founded US Solar Holdings LLC in 2008 which resulted in the world’s 13th largest solar PV facility, Campo Verde Solar (139 MW), constructed in 2013. I founded NewSun Energy LLC in 2015.

During this time, I have worked on thousands of megawatts of power generation and storage, as an executive and boots-on-the-ground, including greenfield projects, power contracts, capital formation, finance, construction, financial modeling, deal

1 origination, M&A (corporate and project), land use and acquisition, interconnection and  
2 transmission, technology, supply, and regulatory affairs and policy. I secured and  
3 executed on a multi-university U.S. Department of Energy R&D grant to develop new  
4 energy storage technology resulting in operational prototypes and publication of peer-  
5 reviewed engineering journal articles. I have worked in several countries and with  
6 domestic and international counterparties including throughout the Americas, Asia,  
7 Middle East, and Europe, ranging from multi-billion-dollar, multi-national corporations  
8 and major private equity funds to small investors, mom-and-pop developers, and closely-  
9 held companies, as well as with many investor-owned utilities, electric cooperatives,  
10 independent power producers, and landowners of various types and sizes. I have worked  
11 on contracts and negotiations and with a wide variety of professionals related to all of  
12 these matters.

13 I have a B.S. in Mathematics from Virginia Tech, cum laude, with minors in  
14 History, Urban Planning, with significant coursework in physics and computer science.  
15 Following several years as a software engineer focused on developing auditing algorithm  
16 software for major telecommunications companys' mutual billing, I pursued my M.B.A.  
17 with concentrations in Finance and Entrepreneurship as a full scholarship student at  
18 University of Arizona's Eller College of Management where I graduated cum laude in  
19 2007.

20 **Q. What role did you play in connection with the PPAs that are the subject of this**  
21 **proceeding?**

22 **A.** I acted as the NewSun Parties' authorized agent in negotiating and executing the PPAs  
23 that each NewSun Party entered into with Portland General Electric Company ("PGE")  
24 (the "NewSun PPAs").

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1 **Q. Please summarize your testimony.**

2 **A.** I will testify regarding the circumstances leading up to the execution of the NewSun  
3 PPAs. I will begin by addressing the NewSun Parties' decision to enter into the  
4 qualifying facility ("QF") contracting process with PGE and their communications with  
5 PGE prior to the execution of the NewSun PPAs. I then will discuss my understanding of  
6 PGE's standard contract forms on which the NewSun PPAs are based and my  
7 communications with PGE personnel regarding PGE's standard contract forms in general  
8 and the Renewable Fixed Price Option in particular.

9 My testimony will demonstrate that I clearly expressed my position to multiple  
10 PGE representatives that PGE's standard contract entitles a QF to be paid at the fixed  
11 prices for fifteen years after the Commercial Operation Date. Although PGE  
12 representatives expressed a contrary interpretation of the Oregon Public Utility  
13 Commission's (the "Commission" or the "PUC") policy and PGE's standard contract, I  
14 believed that PGE's statements regarding its interpretation were made to to deter,  
15 discourage, and/or delay me signing the standard QF contracts with PGE. My belief was  
16 supported by PGE's actions and statements regarding their view of QFs that I perceived  
17 to be hostile towards contracting with QFs, including PGE representative Bruce True's  
18 statement to me that he had previously been reprimanded by upper management at PGE  
19 for being too cooperative with QFs. PGE also refused to agree to provide me with a  
20 standard contract with a Termination Date that was twenty years after the Commercial  
21 Operation Date, which I understood to be my right under existing Commission policy  
22 from Order No. 05-584.

23 In this same timeframe, PGE filed a substantial and out-of-cycle rate reduction  
24 without any prior notice to me despite being in regular contact with me in the days and  
25 hours prior to the rate filing. My testimony will explain that I decided to complete and  
26 execute the standard contracts with a Termination Date which PGE could not object to—

1 *i.e.*, less than twenty years after the Effective Date—in order to avoid PGE induced risks  
2 of further delays of debating and/or adjudicating that issue with PGE, which I believed  
3 could be fatal to the projects (particularly given the pending rate changes), but which  
4 expressly preserved my position that the standard contract provides fixed prices for  
5 fifteen years after the Commercial Operation Date. I will explain why PGE’s contention  
6 that the NewSun Parties should have adjudicated their dispute with PGE prior to  
7 executing the agreements was not practicable, especially considering the out-of-cycle  
8 rate change PGE proposed in December 2015 as well as other delays in the contracting  
9 process that posed challenges to the NewSun Parties in their efforts to enter into standard  
10 form PPAs with PGE.

11 Because I am not an attorney, I will not respond to the legal arguments in PGE’s  
12 opening testimony, in particular those in the testimony of Robert Macfarlane. The  
13 NewSun Parties have already provided legal briefing through counsel in this proceeding  
14 and will do so again when called for in the procedural schedule. I refer the Commission  
15 to legal briefing for response to PGE’s testimony containing legal argument.

16  
17 **II. BACKGROUND REGARDING THIS DISPUTE**

18 **Q. What type of facilities are the NewSun Parties developing?**

19 **A.** Each of the NewSun Parties is developing a solar-powered QF as defined by the Public  
20 Utility Regulatory Policies Act of 1978 (“PURPA”) and related federal regulations  
21 promulgated by the Federal Energy Regulatory Commission (“FERC”). Each of the  
22 NewSun Parties has filed a self-certification as a QF with FERC.

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1 **Q. Does the fact that the NewSun Parties are QFs have any bearing on the NewSun**  
2 **PPAs?**

3 **A.** Yes. Each of the NewSun PPAs is an executed version of a standard contract form that  
4 PGE is required to offer to QFs, such as the NewSun Parties, pursuant to PURPA and  
5 related federal regulations, as implemented by the Commission.

6 **Q. What is the subject of the dispute between the NewSun Parties and PGE?**

7 **A.** The parties' dispute concerns the interpretation of PPAs entered into between the  
8 NewSun Parties and Portland General Electric Company ("PGE"). Between January and  
9 June 2016, each of the ten NewSun Parties entered into its respective NewSun PPA with  
10 PGE. The executed versions of the final NewSun PPAs are included in the record as  
11 exhibits to the Declaration of Jacob Stephens in Support of Defendants' Motion for  
12 Summary Disposition, filed on July 2, 2018. The NewSun Parties contend that,  
13 consistent with longstanding Commission policy and the text and context of the NewSun  
14 PPAs, the Renewable Fixed Price Option that applies to each NewSun PPA obligates  
15 PGE to pay the NewSun Parties the On-Peak and Off-Peak fixed prices in Tables 6a and  
16 6b of Schedule 201 for a period of fifteen years after the QF achieves commercial  
17 operation (the "Commercial Operation Date" of "COD"). PGE contends – contrary to  
18 Commission policy since 2005 (and recent confirmations and clarifications of the same  
19 policy by the Commission in UM 1805) – that at the time the NewSun PPAs were  
20 executed, Commission policy did *not* require utilities to offer QFs PPAs providing QFs  
21 usable twenty-year power sale terms nor require utilities to provide QF Sellers PPAs  
22 with fixed pricing during first fifteen years of operations. PGE contends that the contract  
23 forms derived from the same policy, and on which policy and forms the NewSun PPAs  
24 are based, expressly limited the Renewable Fixed Price Option to a fifteen-year period  
25 beginning on the Effective Date of the PPA in question. PGE further specifically  
26 contends that NewSun PPAs *require* that the fifteen-year period during which the

1 Renewable Fixed Price Option ends fifteen years after the day the PPA was signed—the  
2 Effective Date of the contract—and that contractual rate reverts to an index-based  
3 price—the Mid-C Index Price—for all net output delivered more than fifteen years after  
4 the Effective Date. Each side asks the Commission to determine that its interpretation of  
5 the NewSun PPAs is correct.

6 **Q. What is at stake in this dispute?**

7 **A.** Three to four years of the NewSun QFs’s sixteen-year power sale term receiving the full  
8 and expected fifteen years of fixed pricing due under the PPAs and known at execution,  
9 per Commission policy, are at stake. My understanding is that the resolution of the  
10 parties’ dispute will determine whether each NewSun Party indeed receives a fixed price  
11 for net output delivered to PGE over a full fifteen-year period required by the  
12 Commission, or whether the period during which each NewSun Party receives a fixed  
13 price will effectively be reduced to twelve years or fewer. I also have concerns about this  
14 case related to the ability of the utilities to unilaterally rewrite Commission policy  
15 through mere assertion to counterparties, contracting practices, fiat, or otherwise – and to  
16 impose substantial burdens on others if any counterparty should contest their assertions,  
17 irrespective of the merits of their position or the simplicity of the issue.

18  
19 **III. COMMUNICATIONS CONCERNING THE NEWSUN PPAS**

20 **Q. How did the NewSun Parties become involved with PGE?**

21 **A.** In the summer of 2015, NewSun began exploring opportunities to develop solar power  
22 facilities in Oregon. NewSun analyzed a variety of options to develop power facilities,  
23 including QF and non-QF opportunities related to PGE, Pacific Power, and Idaho Power.  
24 Ultimately, NewSun decided to focus its efforts on the qualifying facility contracting  
25 process with PGE.

26

1 **Q. Who represented the NewSun Parties in their discussions with PGE?**

2 **A.** Other than a small handful of communications between the NewSun Parties' lawyer to  
3 PGE's attorneys, I was the only representative of the NewSun Parties who  
4 communicated with PGE regarding the NewSun PPAs.

5 **Q. What was your understanding of the Oregon qualifying facility contracting process,  
6 as relates to standard form contracts, term length, and pricing?**

7 **A.** I understood that, pursuant to the Commission's implementation of PURPA, every utility  
8 in Oregon is required to contract with any QF seeking to sell power to the utility under  
9 long-term power purchase agreements. I further understood that there are certain  
10 standard terms the Commission requires all utilities to offer QFs who meet certain  
11 eligibility criteria and that (at the time) the Commission required utilities to use  
12 Commission-approved standard contract forms, including standard rates, as the basis for  
13 PPAs with QFs having up to 10 MW-AC in nameplate capacity. In particular, I  
14 understood that under these standard contracts utilities were required to allow a QF to  
15 sell its entire net output to the utility for a power sale term of up to twenty years (with the  
16 duration chosen by the QF), and with the first fifteen years of that term having fixed  
17 prices based on the utility's then-current standard, Commission-approved avoided-cost  
18 rate and the remaining five years priced at future, variable market-rate prices.

19 **Q. Did you have any understanding as to how the fifteen-year period of fixed pricing  
20 was measured?**

21 **A.** Yes. I understood that the twenty-year period during which a QF could sell its net output  
22 to the utility began when the QF achieved commercial operations, which corresponds to  
23 the commencement of regular power sales under the contract. I further understood that  
24 the fifteen-years of fixed prices a QF could elect to receive would be the first fifteen  
25 years of the twenty-year period of net output sales beginning at COD and that any  
26 remaining term of power sales beyond the first fifteen years after COD (which could be



1 up to five additional years) would be at market-rate prices. This allowed a QF to enter  
2 into a contract to sell its net output to the utility for a full twenty years from the  
3 Commercial Operation Date.

4 **Q. What was your understanding based on?**

5 **A.** My understanding was based on my experience of over a decade of developing new  
6 power generation, including my understanding of common industry usage of the  
7 associated terminology related to the question. I had reviewed PGE's applicable standard  
8 PPA contracts and the associated Schedule 201, my understanding of the underlying  
9 Commission order requiring the twenty-year terms and fifteen years of fixed pricing and  
10 confirmed that other Oregon investor-owned utilities were implementing the same  
11 Commission policy consistent with how I understood that policy. Typically in the power  
12 industry (much like in many other common contractual constructs where some future  
13 period of performance is memorialized in advance in a contract executed prior to the  
14 period of core contract performance) the "term length" or "contract length" or "term of  
15 the PPA" all refer to the duration of the power purchase/sale period – i.e. the length of  
16 the core point of the contract (power delivery/sales/purchase) – and observing that  
17 nothing in the PPAs explicitly contradicted this natural understanding of the terms in  
18 question. My understanding also was informed by my understanding of related  
19 Commission policy.

20 **Q. What was your understanding of Commission policy?**

21 **A.** I had reviewed the Commission's Order No. 05-584, especially its discussion of the  
22 "length of term" of QF power sales that the Commission would require Oregon utilities  
23 to provide QFs under long-term QF power purchase agreements. Based on my review,  
24 and in light of my related decade-plus of industry experience, I understood that the  
25 Commission required the utilities to purchase power from newly developed QFs for  
26 twenty-year terms with the initial fifteen years of pricing to be fixed and known at the

1 time of PPA execution. I understood the Commission to have stated that these power  
2 purchase/sale term lengths (particularly the fifteen years of fixed pricing) were being  
3 provided in order to support the facilities' ability to secure financing (particularly long-  
4 term debt). The Commission's order cited the fifteen-year loan terms which the Oregon  
5 Department of Energy ("ODOE") provided QFs and ODOE's recommendation of  
6 twenty-year term length when the PUC stated "we adopt ODOE's recommendation that  
7 the maximum term of a standard contract be raised to 20 years" and finding "that  
8 standard contract prices should be fixed for only the first 15 years of the 20-year term."<sup>1</sup>  
9 The Commission's order also stated, "it is necessary to ensure that the terms of the  
10 standard contract facilitate appropriate financing for a QF project,"<sup>2</sup> and stated it relied  
11 on a letter from ODOE that stated: "As a lender, it is important to have a power purchase  
12 contract that equals the loan term, usually fifteen years."<sup>3</sup> Based on these statements and  
13 my experience in the industry, including the natural correlation of the timing of typical  
14 placement of term debt financing (and the start of debt payments) for new facilities at the  
15 *start* of facility operations (i.e. when power sale revenue starts, from which debt is to be  
16 paid), I understood this order to require Oregon utilities to provide fifteen years of fixed  
17 pricing as part of an overall term of 20 years of power purchase/sales/energy delivery  
18 and payments beginning upon the *start* of the facility operations. Thus there appeared to  
19 me (and still does appear), to be a natural alignment in the Commission policy, with the  
20 understanding in the industry, with when a new power facility begins operations, begins  
21 debt placement/service, and term of the power purchase period. All of which naturally  
22 key off of the actual successful construction and commissioning of the applicable  
23 facility.

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26 <sup>1</sup> OPUC Order No. 05-584 at 20.

<sup>2</sup> OPUC Order No. 05-584 at 19.

<sup>3</sup> OPUC Order No. 05-584

1 **Q. Did you have any other experience in the industry that informed your**  
2 **understanding of Commission policy?**

3 **A.** Yes. My understanding is consistent with my knowledge of new power generation  
4 facility development and their financing, especially for long-term debt, for which pricing  
5 surety is an important element of facility financing as it affects the ability for a lender to  
6 project revenues and thus find comfort in the ability of the facility borrower to  
7 subsequently pay such debt successfully. Specifically, the lender places the final debt at  
8 the same time as the facility's ability to generate forecasted revenues is secured by it  
9 beginning commercial operations and regular energy sales.

10 Based on that industry understanding of the topics discussed in the Commission's  
11 order, I understood that the Commission required Oregon utilities to purchase power  
12 from a QF under such standard contracts for the first twenty years of their regular  
13 delivery of power for sale to the utility *under the PPA*. In other words, the required term  
14 in the order runs for twenty years that begins when the core performance period of the  
15 power *purchase* agreement began, which period (or term) is the primary point of the  
16 contract for the sale and purchase of power. Similarly, I understood that the first fifteen  
17 years of such term would have fixed pricing beginning from the date the QF achieved  
18 commercial operation and began selling power because that was the length stated  
19 necessary by the ODOE letter for fixed pricing.

20 **Q. Can you provide an illustrative example of your point?**

21 **A.** As I noted, my understanding—which, again, in my experience is shared by other  
22 industry participants—is that in a power purchase agreement the “*term*” of its duration,  
23 or its “*term length*” typically refers to length of the period of power purchases/sales, i.e.  
24 to the period when that core activity which is the essence and point of the PPA contract  
25 will or does occur (or is expected to occur).

26

1           Thus, if someone said that a PPA was X years long, or that someone was  
2 offering, soliciting, or required to offer a X-year PPA, the common understanding of that  
3 would be that in such PPA there would be a period of X years of power purchases and  
4 sales from the associated facility, assuming that the applicable conditions precedent to  
5 sale occurred, subsequent to the PPA's execution. For a new facility (i.e. one proposed  
6 and/or under development), there would naturally be a period of time under the PPA  
7 prior to facility operations (a pre-sales development period), but the PPA purchase/sale  
8 period would be X years long running from when the facility begins delivering power to  
9 the purchasing utility for a duration of X years.

10           Similarly, if someone said the first Y years of that term would have fixed pricing  
11 and remaining years would be variable pricing, I would understand that to mean for the  
12 first Y years of the X-year term the pricing was fixed per some known fixed price  
13 schedule, perhaps a table or a starting price that escalates per some set amount each year.  
14 However, that the remaining years after Y would vary according to some other rules. In  
15 my experience, the fact that the *term of effectiveness of the contract* may have begun  
16 prior to when the *term of power purchase/sales duration* is not generally relevant or  
17 affecting to the term length of power sales because most power purchase agreements (as  
18 per their *raison d'etre*) only provide for compensation to the seller during the term for  
19 which power is delivered. Likewise, the buyer does not and would not make payments to  
20 the seller before the seller begins to deliver power, because the buyer is only obligated to  
21 full performance of purchases during that same term length.

22 **Q. Please summarize your perspective on this issue with power purchase agreements.**

23 **A.** In my experience, when industry participants refer to a period of years during which a  
24 seller will sell power to a buyer (whether at fixed rates or variable rates), they generally  
25 mean a period of years—in this case, fifteen years—from the time the seller begins  
26 delivering power to the buyer. Before that time, the seller either is developing its

1 generation facility or, in the case of an existing facility, selling its power to another buyer  
2 or under a different contract to the same buyer. In any case, it is common in the industry  
3 to refer to the “term” of years of pricing available as beginning on the date of  
4 commencement of sales, during which operation and delivery occurs to the buyer. In my  
5 experience, it would be out of the ordinary to refer to a term of years of pricing to begin  
6 on the date the PPA is executed, especially in the context of a PPA executed for a facility  
7 that is not yet constructed, and I would expect a contract to explicitly spell out such an  
8 atypical contractual approach.

9 **Q. When did you first approach PGE on behalf of the NewSun Parties?**

10 **A.** To the best of my recollection, my first contact with PGE was a telephone conversation  
11 with Bruce True, which I believe took place October 2, 2015. I followed up with Mr.  
12 True by email on October 14, 2015, and requested that he send me PGE’s then-current  
13 standard variable PPA for both in-system and out-of-system qualifying facilities. A copy  
14 of the email is attached as NewSun Exhibit 101.

15 **Q. Did Mr. True send you the documents you requested?**

16 **A.** Yes. The next day, October 15, Mr. True sent me PGE’s Commission-approved contract  
17 forms. A copy of the email is attached as NewSun Exhibit 102 and copies of two  
18 attachments to the email (the Standard Renewable In-System Variable Power Purchase  
19 Agreement and the Standard Renewable Off-System Variable Power Purchase  
20 Agreement) are attached as NewSun Exhibits 103 and 104.

21 **Q. What did you do with contract forms you received from Mr. True?**

22 **A.** Using the contract forms, I prepared PPAs for Wasco, Dayton, and Tygh Valley by  
23 completing the handful of blanks in the contract forms with the pertinent seller-provided  
24 information. For the Wasco and Tygh Valley PPAs, I used the Standard Renewable Off-  
25 System Variable Power Purchase Agreement. For the Dayton PPA, I used the Standard  
26 Renewable On-System Variable Power Purchase Agreement.

1 **Q. Why did you use those forms?**

2 **A.** All the NewSun Parties planned to sell power from QFs with photovoltaic solar power as  
3 their motive force and with nameplate capacity of 10 MW-AC or less, so they were  
4 eligible for standard contracts. As they intended to sell under the renewable avoided cost  
5 rates, I used the renewable contract forms as opposed to the non-renewable forms.  
6 Mr. True had sent me the variable, as opposed to the non-variable version of the forms  
7 for use for a solar facility, so I used the variable form instead of the non-variable form. I  
8 used the off-system form for Wasco and Tygh Valley because the facilities they are  
9 developing will have to interconnect to utilities other than PGE and deliver to PGE over  
10 intervening utilities' systems. Dayton's facility will connect directly to PGE's system, so  
11 I used the in-system form.

12 **Q. Did you review PGE's contract forms?**

13 **A.** Yes.

14 **Q. With regard to the matters in dispute in this proceeding, do you understand there**  
15 **to be any material differences between the in-system and off-system contract**  
16 **forms?**

17 **A.** No. My understanding is, and always has been, that both contract forms rely on the same  
18 version of PGE's Schedule 201, which describes the Renewable Fixed Price Option, and  
19 that both contract forms contain identical provisions regarding pricing and contract term.  
20 Both forms also contain identical language regarding ownership of "Environmental  
21 Attributes" and "Renewable Portfolio Standard Attributes," which I understood to be tied  
22 to the pricing.

23 **Q. Do the contract forms say anything about the length of the agreement?**

24 **A.** PGE's standard contract forms contain several provisions that I understood to be relevant  
25 to the length of the agreement, but there is no language in the contract forms themselves

26

1 that I understood at the time or understand now to set a limit on the length of an  
2 agreement between PGE and a QF.

3 **Q. What provisions did you understand to be relevant to the length of agreement?**

4 **A.** The contract forms contain three provisions that I understood to be relevant to the length  
5 of the agreement. First, the forms define the “Term” of effectiveness of the PPA as “the  
6 period beginning on the Effective Date and ending on the Termination Date.” Second,  
7 Section 2.3 provides, “This Agreement shall terminate on \_\_\_\_\_, \_\_\_\_ [*date to be*  
8 *chosen by Seller*], or the date the Agreement is terminated in accordance with Section 9  
9 or 11, whichever is earlier (‘Termination Date’).” Third, the forms define “Contract  
10 Year” as “each twelve (12) month period commencing upon the Commercial Operation  
11 Date or its anniversary during the Term ...,” which appeared to be the key time construct  
12 of the contract forms.

13 I was not, and am not aware, of any provision of the form contract that specified  
14 that the agreement could not exceed any particular length. Indeed, as can be seen, the  
15 termination date is actually “chosen by Seller” in the form agreement.

16 **Q. Do the contract forms say anything about price?**

17 **A.** The contract forms provide that “Contract Price” means “the applicable price ... as  
18 specified in the Schedule,” which the forms defined as “PGE Schedule 201 filed with the  
19 [Commission] in effect on the Effective Date of this Agreement and attached hereto as  
20 Exhibit D, the terms of which are hereby incorporated by reference.” I understood this to  
21 mean that one needed to refer to Schedule 201 to know the Contract Price, which would  
22 be attached to the PPAs upon execution thus fixing the price schedule applicable to the  
23 PPAs thereafter.

24 **Q. Did you review Schedule 201?**

25 **A.** Yes. I reviewed Schedule 201 to understand what the contract price would be.

26

1 **Q. Did you identify portions of Schedule 201 that you understood to be relevant to the**  
2 **contract price?**

3 **A.** Yes. Schedule 201 provides two pricing options for PGE’s standard PPAs—a Standard  
4 Fixed Price Option and a Renewable Fixed Price Option. Because the NewSun Parties  
5 planned to develop solar-power facilities, I understood the Renewable Fixed Price  
6 Option would determine the contract price for the NewSun PPAs. The Renewable Fixed  
7 Price Option provides (on page Sheet No. 201-12) that prices will be established at the  
8 time the PPA is executed and will depend on the resource type. Prices for solar are set  
9 forth in Tables 6a (on-peak prices) and 6b (off-peak prices). Schedule 201 provides  
10 “[t]his option is available for a maximum term of 15 years” and that the seller will  
11 receive the Mid-C price “for all years up to five in excess of the initial 15.”

12 **Q. What did you understand the language in Section 201 regarding the Renewable**  
13 **Fixed Price Option to mean?**

14 **A.** Given typical industry understanding of the terminology involved, as discussed above,  
15 and because a QF would not be generating power—and therefore could not sell power to  
16 PGE—during its development phase, I understood this language about the length and  
17 pricing of the power sale term to mean that a QF, such as the NewSun Parties, under the  
18 Renewable Fixed Price Option, could choose to sell its net output to PGE at the fixed  
19 prices set forth in the applicable rate tables for up to fifteen years from the date the QF’s  
20 facility achieved commercial operation and that it could elect to continue to sell its net  
21 output to at the Mid-C price for up to an additional five years after the fifteen years of  
22 fixed price sales.

23 **Q. Please describe how you prepared PPAs using the contract forms.**

24 **A.** The contract forms are “fill-in-the-blank” PPAs, which contain the vast majority of the  
25 terms and contractual language. There are only about seventeen blanks for the seller to  
26 fill in. These blanks include a mix of basic information (such as the county of the



1 proposed facility, the interconnecting utility, energy production amounts, and nameplate  
2 capacity), as well as the Effective Date, the Termination Date, and the deadline for the  
3 seller to achieve commercial operation. I completed these with the relevant information  
4 and returned them to PGE.

5 **Q. What did you choose as the termination date for the Wasco, Dayton, and Tygh**  
6 **Valley PPAs?**

7 **A.** I chose “the completion of the last day of the twentieth contract year.”

8 **Q. Why didn’t you include a specific date?**

9 **A.** PGE’s contract forms refer to “Contract Year” seventeen different times and all refer to  
10 matters related to the performance of the facility or Seller subsequent to the Commercial  
11 Operation Date. My understanding was that the most relevant performance obligations of  
12 the power purchase agreement ran in increments of “Contract Years”, per its own  
13 definitions, so using full Contract Years as the basic increment of the contract seemed  
14 most natural. It also corresponded with my understanding of the contract forms’  
15 construct, per Schedule 201, and my understanding of Commission policy—that a QF  
16 could sell power for twenty full years, of which the first fifteen would have fixed pricing.  
17 In my view, this naturally corresponds with Contract Years. Contract Years also seem to  
18 memorialize the mutual recognition in the contract the start of the core period of  
19 performance of the Agreement, the period of power sales/purchase and regular energy  
20 delivery from a PGE-affirmed operational facility.

21 I obviously knew the termination date would cut off the Seller’s right to sell  
22 power to PGE pursuant to the terms of the PPAs and I wanted to be sure each of the  
23 NewSun Parties would be able to sell power to PGE at PGE’s fixed prices set forth in  
24 Tables 6a and 6b for a full fifteen years. Referencing “Contract Years”—a defined term  
25 in the contract forms that corresponded naturally to the desired term length—made the  
26 most sense to me.

1           Initially, I also wanted each of the NewSun Parties to be able to sell power to  
2 PGE for an additional five years at the Mid-C Index Price. Because I did not know when  
3 PGE would execute the PPAs and because it was impossible to know in advance what  
4 precise date the facility would obtain PGE's acceptance of all of the conditions necessary  
5 for establishment of the Commercial Operation Date under Section 1.5 of the PPA, I  
6 decided not select a specific date and instead proposed to tie the Termination Date to the  
7 date that would ultimately be twenty years after the QF achieved the Commercial  
8 Operation Date. Using "Contract Years" allowed me to do this. Because the first  
9 "Contract Year" begins on the Commercial Operation Date, which is the date that the  
10 conditions in Section 1.5 are met and accepted by PGE, specifying that the PPAs would  
11 terminate on the completion of the last day of the twentieth Contract Year meant that  
12 each PPA would terminate twenty years after the Commercial Operation Date.

13 **Q. Once you had completed the contract forms, what did you do with the PPAs?**

14 **A.** After completing the contract forms, I submitted the PPAs and other required paperwork  
15 to Mr. True. I submitted the Wasco PPA on October 19, 2015, followed by the Dayton  
16 and Tygh Valley PPAs on October 21, 2015. Copies of the email submitting the Wasco  
17 PPA and the attached PPA are attached as NewSun Exhibits 105 and 106 ; copies of the  
18 email submitting the Dayton PPA and the attached PPA are attached as NewSun Exhibits  
19 107 and 108; copies of the email submitting the Tygh Valley PPA and the attached PPA  
20 are attached as NewSun Exhibits 109 and 110.

21 **Q. Did Mr. True respond?**

22 **A.** Yes. I received an email from Mr. True on October 21, 2015, in which he stated: "the  
23 contract must run no more than 20 years from EXECUTION, not commercial operation."  
24 A copy of the email is attached as NewSun Exhibit 111. A week later, on October 28, I  
25 received three nearly identical emails from Mr. True in response to the emails I had sent  
26 attaching the Wasco, Dayton, and Tygh Valley PPAs. In each email, Mr. True stated "the

1 end date should be the 20th anniversary of the effective date, not the 20th contract year in  
2 Section 2.3. The contract years begin at the commercial operation, so the language as  
3 submitted would mean a contract more than 20 years in length.” Copies of those emails  
4 are attached as NewSun Exhibits 112, 113, and 114.

5 **Q. Did you follow up with Mr. True?**

6 **A.** Yes. I wanted to make sure I understood PGE’s position, so I sent Mr. True an email on  
7 November 3, 2015, asking whether his comments meant each PPA “would then be a 15  
8 year fixed price schedule after COD, but subject to a 20 year term length limit based on  
9 PPA Effective Date?” A copy of my email is attached as NewSun Exhibit 115. I then had  
10 a telephone call with Mr. True on November 12. For the first time, he told me PGE  
11 interprets its contract forms to not allow for payment of fixed prices for a period longer  
12 than fifteen years after the date of execution, as opposed to allowing for payment at fixed  
13 prices for fifteen years of power deliveries after the Commercial Operation Date.

14 **Q. How did you respond?**

15 **A.** I told Mr. True I disagreed and that, in my view, the contract forms and Schedule 201  
16 plainly contemplated that a QF would receive twenty-year terms starting on the  
17 Commercial Operation Date, including fixed prices for the first fifteen years. Later in the  
18 evening of November 12, I sent Mr. True an email pointing out that PGE had entered  
19 into PPAs with several other QFs that expressly stated PGE would pay the fixed prices  
20 for fifteen years after the Commercial Operation Date. More importantly, I stated that  
21 Commission policy required PGE to offer fifteen years of fixed prices after operations  
22 and that, in my view, the Commission plainly had concluded in Order 05-584 that QFs  
23 needed to be able to sell net output to a utility at a fixed price for fifteen years to obtain  
24 financing. I further noted that “[i]t would be burdensome to the QF to have only 12 years  
25 of energy sales to finance the project against.” A copy of my email is attached as  
26 NewSun Exhibit 116.

1 **Q. What happened next?**

2 **A.** Having not heard from Mr. True since my November 12 email, I sent Mr. True another  
3 email on November 19, 2015, to ask whether he had had an opportunity to review and  
4 consider my November 12 email. I further stated: “Sorry about the contract length issue;  
5 but after reading the original OPUC decision on contract length, it was pretty clear that  
6 the whole logic was to provide [a] 15 year term of fixed pricing operations for financing  
7 purposes; too big of an impact for me to just ignore, especially with prior PGE 15 and  
8 20-year precedent. But I appreciate your consideration and time on the matter.” A copy  
9 of my email is attached as NewSun Exhibit 117.

10 **Q. Did Mr. True respond?**

11 **A.** Yes. I received an email from Mr. True on November 20, 2015, in which he stated that  
12 “under the current form contract, PGE provides a 15 year fixed price term starting on the  
13 Effective Date.” Mr. True added that PGE believed its interpretation of its contract forms  
14 was “consistent with Commission Order 05-584” and that PGE “need[ed] to ensure that  
15 our contracting process is consistent with Commission orders and fair to our retail  
16 customers.” A copy of the email is attached as NewSun Exhibit 118.

17 **Q. Did you agree with the statements Mr. True made in his November 20 email?**

18 **A.** No, I did not agree. Indeed, I found it noteworthy that Mr. True failed to identify any  
19 provision in PGE’s contract forms to support his contention that the fixed-price period  
20 must end fifteen years after the Effective Date. Instead, he pointed only to Schedule 201,  
21 which states that the fixed price option is “available for a maximum term of 15 years”  
22 and that “prices will be established at the time the Standard PPA is executed.” In my  
23 view, those statements did not support PGE’s position. Instead, my understanding was  
24 that Schedule 201 provides that the maximum term *of the period of fixed-price payments*  
25 is fifteen years, and that nothing in Schedule 201 or in PGE’s contract forms indicates  
26 that the fifteen-year fixed-price period ends fifteen years after the Effective Date. I knew

1 that prices would be established when a PPA was executed, but I understood that to mean  
2 only that the fixed prices a QF would receive are set—and therefore known to the QF  
3 and to PGE—at the time of execution. I did not and do not believe this means that the  
4 fifteen-year fixed-price period begins to run at that time and ends precisely fifteen years  
5 after that time. In my experience, in the absence of any express statement to the contrary,  
6 the default expectation is that the type of language used in Schedule 201 provides for  
7 fifteen years of fixed prices starting when a QF is operational and delivering power to  
8 PGE. My understanding was further confirmed and informed, among other things, by the  
9 fact that, as I noted earlier, Schedule 201 does not allow for payment at the full avoided  
10 costs for On-Peak and Off-Peak fixed prices in Tables 6a and 6b until the Commercial  
11 Operation Date.

12 **Q. Did you have any reason to doubt the genuineness of Mr. True's asserted**  
13 **interpretation of the standard PPA and Schedule 201?**

14 **A.** Yes. I had met several representatives of PGE, including John Morton, at a Western  
15 Systems Power Pool conference in Tucson, Arizona, in October 2015. Mr. Morton and  
16 other representatives (whose names I do not recall) expressed that PGE generally  
17 disliked QF contracting and that it preferred and encouraged independent power  
18 producers to negotiate bilateral agreements with PGE rather than exercise their rights  
19 under PURPA to sell power to PGE. Based on that conversation, I believed that PGE  
20 may have purported to believe that the fixed-price period in its contract forms begins at  
21 contract execution to dissuade QFs from entering into standard PURPA contracts with  
22 PGE.

23 **Q. What happened after you received Mr. True's November 20 email?**

24 **A.** I wanted to take some time to consider how to address NewSun's disagreement with  
25 PGE regarding the fixed-price period, so I did not immediately respond to Mr. True on  
26 that issue. Instead, on December 3, 2015, the NewSun Parties' attorney, Greg Adams,

1 called PGE's assistant general counsel, Denise Saunders, to discuss the issue. Later that  
2 day, Mr. Adams sent Ms. Saunders a letter in which he made the same points I  
3 previously had made to Mr. True.

4           Given that PGE had expressed views that I disagreed with about the term length,  
5 I felt an explicit clarification of the point would be ideal. So, Mr. Adams prefaced the  
6 points raised in his letter by stating: "While we do not agree with Mr. True's  
7 interpretation of the standard contract, the point must now be clarified through the  
8 language necessary to complete the standard contract's terms in order ensure that there is  
9 no disagreement after execution." Mr. Adams thereafter made the following points—  
10 that: (1) the Commission policy expressed in Order No. 05-584 requires Oregon utilities  
11 to offer to purchase a QF's net output at a fixed price for fifteen years from the date the  
12 QF achieves operation; and (2) PGE's contract forms and Schedule 201 in fact obligate  
13 PGE to purchase a QF's net output at a fixed price for fifteen years from the date the QF  
14 achieves commercial operation. A copy of Mr. Adams' letter was attached as PGE  
15 Exhibit 212 to the Direct Testimony of Bruce True.

16           On the second point, in addition to the reasons I set forth in my email  
17 correspondence with Mr. True, Mr. Adams' letter further noted that the provision of  
18 PGE's contract forms "regarding renewable portfolio standard ('RPS') attributes  
19 unambiguously demonstrates that the 15-year term of fixed renewable rates runs from the  
20 commercial operation date because it provides that the QF will convey the RPS attributes  
21 to PGE from the point of the beginning of the renewable deficiency period until a full 15  
22 years *after commercial operation*." Mr. Adams also explained that the corresponding  
23 provision of Schedule 201 provided that the date of change in ownership of the RPS  
24 Attributes, which is 15 years after commercial operation, is the same date that prices  
25 change from the renewable fixed prices to the Mid-C Index Prices.

26

1 Mr. Adams' letter concluded with a "request that PGE clarify its position and  
2 allow [Tygh Valley, Dayton, and Wasco] to obtain standard contracts that clearly explain  
3 that the QF will sell its output under the fixed prices for a period of fifteen years after the  
4 commercial operation date and an additional five years at market prices."

5 **Q. Why did you have the NewSun Parties' attorney send this letter?**

6 **A.** We wanted to avoid the exact situation the NewSun Parties find themselves in now—a  
7 post-execution dispute with PGE about whether the renewable fixed price period ends  
8 fifteen years after execution of the agreement or fifteen years after achieving commercial  
9 operation. Indeed, while I believe (and Mr. Adams' letter stated) that PGE's contract  
10 forms and Schedule 201 unambiguously obligate PGE to purchase a QF's net output at  
11 fixed prices for fifteen years after the Commercial Operation Date, the fact that PGE was  
12 disputing what appeared to be the clear meaning of its contract forms was troubling. We  
13 hoped that if we called this to PGE's attention, PGE would agree to further clarify the  
14 language in the NewSun PPAs "to ensure there [would be] no disagreement after  
15 execution."

16 **Q. Did PGE respond to Mr. Adams' letter?**

17 **A.** Yes. We received a letter from Ms. Saunders addressed to Mr. Adams dated December  
18 14, 2015. A copy of Ms. Saunders' letter was attached as PGE Exhibit 214 to the Direct  
19 Testimony of Bruce True.

20 **Q. What was PGE's response?**

21 **A.** Ms. Saunders' letter asserted that Order No. 05-584 "makes clear that the Commission  
22 intended that the term of the standard contract not exceed 20 years." She also restated the  
23 arguments I previously had heard from Mr. True as to why PGE purportedly believed the  
24 fixed-price period in its contract forms and Schedule 201 begins to run at execution,  
25 including that "[t]he Commission clearly did not intend to guarantee every project 15  
26 years of fixed prices." However, neither Ms. Saunders, Mr. True, nor anyone else from

1 PGE, ever explained to me how to reconcile the assertion in Mr. Adams' letter that the  
2 change in ownership of the RPS Attributes occurs at the same time as the change in  
3 pricing from renewable fixed pricing to market-based index pricing, and that the standard  
4 contract form states that time occurs fifteen years after the Commercial Operation Date.  
5 To date, three years later, I have still never received any response from PGE for this  
6 argument contained in Mr. Adams' letter dated December 3, 2015.

7 **Q. What was your reaction to Ms. Saunders' letter?**

8 **A.** Even today, I still find PGE's position absurd and contrary to the common understanding  
9 of the same terminology concepts used for new power facility contracting, which even  
10 PGE uses in PGE's own pro forma PPAs provided with its requests for proposals for  
11 generation supply (examples of which are included in the record as Exhibits G and H of  
12 the Declaration of Gregory M. Adams in Support of the Defendants' Motion for  
13 Summary Disposition filed on July 2, 2018).

14 **Q. Were there any significant developments between the time Mr. Adams sent his  
15 letter and the time you received Ms. Saunders' response?**

16 **A.** Yes. On December 3, 2015, the same day Mr. Adams spoke to Ms. Saunders, and just  
17 hours after Mr. Adams sent his letter, PGE filed an out-of-cycle proposal to reduce its  
18 avoided cost rates. I have attached PGE's filing, which was lodged in Commission  
19 Docket No. UM 1728 as NewSun Exhibit 119. My understanding is that this filing was  
20 out-of-cycle because the normal times for avoided cost rate changes in Oregon are: (i) on  
21 May 1 of each year to make annual updates to a limited set of rate inputs and (ii) after the  
22 Commission acknowledges PGE's integrated resource plan. Neither of these normal  
23 triggers for a rate change had occurred prior to PGE's December 3, 2015 filing, and I did  
24 not anticipate the rates would be changing until the filing that would be due on May 1,  
25 2016. Even though I had been in regular contact with Mr. True for weeks, and Mr.  
26 Adams had spoken to Ms. Saunders just hours before PGE made the filing, no one from



1 PGE informed either Mr. Adams or me that this significant rate reduction proposal was  
2 planned or would be filed. I learned that PGE had filed the proposed rate change only  
3 after the filing was made, the evening of December 3, 2015.

4 **Q. What was your reaction to learning of PGE's proposed out-of-cycle rate change?**

5 **A.** Candidly, I was shocked that PGE did not even mention to me that it planned to propose  
6 a major change to its QF contracts, particularly given the significance of the rate changes  
7 PGE proposed to make.

8 **Q. Would PGE's proposed out-of-cycle rate change have affected the NewSun Parties?**

9 **A.** Yes. If approved by the Commission, PGE's proposed rate change would have resulted  
10 in significantly lower fixed avoided-cost rates for renewable QFs—such as the NewSun  
11 Parties—who entered into a standard PURPA contract with PGE after the new rates took  
12 effect. Because PGE proposed that the new rates take effect in January 13, 2016, it  
13 became imperative to conclude agreements with PGE before the new rates took effect.

14 **Q. What did you do after you learned about PGE's proposed out-of-cycle rate change?**

15 **A.** One of the first things I did was to begin preparing PPAs for three additional projects that  
16 NewSun was developing. The first PPA I prepared was for Starvation. The Starvation  
17 PPA was based on the Standard Renewable Off-System Variable Power Purchase  
18 Agreement.

19 **Q. Was the Starvation PPA functionally identical to the three PPAs you previously  
20 submitted?**

21 **A.** No. I now knew that PGE would refuse to execute any PPA with a termination date more  
22 than twenty years after the Effective Date. I also knew that to ensure we obtained the  
23 rates that were in effect before PGE's proposed rate change, we needed to obtain fully  
24 executed PPAs with PGE before the new rates went into effect, which PGE asked to have  
25 occur on January 13, 2016.

26

1           While I disagreed with PGE’s position and felt it was based at best on a  
2           misinterpretation of Commission policy as well as PGE’s own contract forms and  
3           Schedule 201, I wanted to avoid giving PGE an excuse to refuse to execute the proposed  
4           PPAs (even though I believed they would have been wrong to do so) and to thereby  
5           delay the contracting process. I also, however, wanted to preserve the NewSun Parties’  
6           right to receive fixed, avoid-cost rates for a full fifteen years. To accomplish this, I chose  
7           as the termination date in Section 2.3 “the completion of the last day of the *sixteenth*  
8           contract year” (rather than the completion of the last day of the twentieth contract year,  
9           which I had chosen for three previous PPAs I had submitted). Because my understanding  
10          was that PGE’s contract forms provide that a QF has three years to achieve commercial  
11          operation, plus an additional year to cure if the QF misses the three-year deadline, a  
12          contract that terminated after sixteen Contract Years would not extend more than twenty  
13          years past the Effective Date.

14           At the same time, if—as I believed—I was correct that the fixed-price period ran  
15          for fifteen years after the Commercial Operation Date, Starvation still would be able to  
16          sell its net output to PGE for a full fifteen years at fixed prices based on PGE’s avoid-  
17          cost rate, although only for one year at Mid-C prices. In other words, Starvation  
18          effectively was forced to give up four years of net output sales at Mid-C prices in order  
19          to avoid being forced to sell its net output at much lower fixed-price avoid cost rates if  
20          PGE’s proposed rate change were approved.

21   **Q. Did you submit the Starvation PPA to Mr. True?**

22   **A.** Yes. I submitted the Starvation PPA to Mr. True on December 4, 2015.

23   **Q. When you submitted the Starvation PPA to Mr. True, did you mention the NewSun**  
24   **Parties’ disagreement with the interpretation of PGE’s contract forms Mr. True**  
25   **articulated in his November 12 email?**

26

1 A. Yes. In my email to Mr. True, I stated that NewSun “disagree[d] [with PGE] on the  
2 OPUC requirements as relates term length and fixed pricing period,” but that the  
3 Starvation PPA avoided the need to resolve the issue at that time because it “provide[d]  
4 for a term ending 16 years after the Effective Date ....” While I mistakenly wrote  
5 “Effective Date,” the Starvation PPA in fact provided that the agreement would terminate  
6 at the end of the sixteenth Contract Year, which is sixteen years after the Commercial  
7 Operation Date. Copies of my email and the attached Starvation PPA are attached as  
8 NewSun Exhibits 120 and 121.

9 **Q. Did PGE’s attitude toward the NewSun Parties change after it received Mr. Adams**  
10 **letter?**

11 A. Yes. Several PGE employees told me they could not meet with me while a dispute was  
12 ongoing. Indeed, just an hour before it was set to begin, John Morton, in PGE’s  
13 Structuring and Origination Department, cancelled a meeting we had scheduled to  
14 discuss potential non-QF projects that NewSun might pursue with PGE, which was  
15 disappointing as I had flown in from Arizona for the meeting and was attempting to  
16 engage with PGE in good faith per their expressed preference to pursue bilateral  
17 negotiations over QF contracting. A copy of Mr. Morton’s email to me cancelling our  
18 scheduled meeting is attached as NewSun Exhibit 122.

19 **Q. Did you continue to work on the NewSun PPAs?**

20 A. Yes. Mr. True and I continued to work through other unrelated issues on the PPAs I had  
21 submitted. I was eager to resolve these issues because I wanted to be sure the PPAs were  
22 finalized before PGE’s rates changed.

23 **Q. Does anything stand out in your memory about your interactions with Mr. True**  
24 **during this time?**

25 A. Yes. I met with Mr. True at a coffee shop near PGE’s offices in Portland on December  
26 14, 2015. When I mentioned the NewSun Parties’ disagreement with PGE about the

1 fixed-price period, Mr. True told me that he previously had been reprimanded by a high-  
2 level PGE executive after a representative of a QF counterparty had expressed to the  
3 PGE executive that Mr. True had been “easy to work with” in connection with the QF  
4 contracting process. Mr. True said he understood this reprimand as clear direction not to  
5 be “easy to work with” and expressed that he “just wanted to get to retirement without  
6 getting fired” and accordingly felt constrained in the extent to which he could be helpful  
7 to me in the contracting process.

8 **Q. What did you make of Mr. True’s comments?**

9 **A.** They furthered my belief that PGE’s position regarding the fixed-price period was meant  
10 to dissuade QFs from entering into standard PURPA contracts with PGE and to diminish  
11 the chances for QFs that did enter into contracts with PGE to be successful.

12 **Q. During the time you were negotiating the NewSun PPAs with PGE, did you ever**  
13 **express your feeling that PGE was attempting to prevent QFs from entering into**  
14 **PPAs with PGE?**

15 **A.** Yes. I submitted a letter to the Commission responding to PGE’s proposed out-of-cycle  
16 rate change in which I explained some of the ways in which I felt PGE was attempting to  
17 make it difficult or impossible for the NewSun Parties and other QFs to contract with  
18 PGE. A copy of my letter is attached as NewSun Exhibit 123.

19 **Q. Did you hear from Mr. True after your December 14 meeting?**

20 **A.** Yes. I received an email from Mr. True on December 17, 2015, stating that PGE was  
21 prepared to move forward with the Starvation PPA, but not the other PPAs, which he  
22 stated had “issues we have discussed.” A copy of Mr. True’s email is attached as  
23 NewSun Exhibit 124.

24 **Q. What did you understand that to mean?**

25 **A.** By this time, we had received Ms. Saunders’ letter. I understood from that letter and  
26 from Mr. True’s statement that PGE was not going to agree to change its position

1 regarding the fixed-price period and it was not going to move forward with execution of  
2 any PPA with a termination date more than twenty years after the contract was executed.  
3 I was faced with the possibility of litigating against PGE at the Commission for the right  
4 to have a full twenty years of power sales after the Commercial Operation Date,  
5 including the last five years of sales at the Mid-C Index Price.

6 **Q. Mr. True states in his testimony that he told you that if you disagreed with his**  
7 **position on the fifteen-year fixed price term you should “adjudicate” the question.**  
8 **Why did you not attempt to adjudicate that question against PGE at that time?**

9 **A.** I did not understand the fifteen-year fixed-price issue to be controlled by the words used  
10 to complete any of the blank spaces in the standard contract and I believed that, despite  
11 PGE’s assertions, that the Commission’s policy and the standard contract provided for  
12 the fixed prices for fifteen years after the Commercial Operation Date. I did not perceive  
13 any need to engage in any adjudication to resolve the issue at the time and to execute the  
14 standard contract. I believed that the courts or the Commission would eventually clarify  
15 the appropriate policy and that this issue could be resolved at a later time.

16 Additionally, I believed that if I delayed execution of the PPAs to first engage in  
17 such adjudication, I could be tied up for unknown periods of time, at great cost and  
18 expense, and thus put the pricing and contracts at risk. My understanding is that such  
19 litigation at the Commission could have lasted months or years. This understanding was  
20 later confirmed by how long it took three industry trade groups to litigate that very issue  
21 against PGE in Docket No. UM 1805. Although the trade groups were ultimately  
22 successful in Docket No. UM 1805, the proceeding took from December 6, 2016, when  
23 the complaint was filed, until March 5, 2018, when the third and final order was issued  
24 rejecting PGE’s arguments regarding the requirements of Order No. 05-584. I note UM  
25 1805 case is now on appeal, which will further delay final resolution of that matter. Had I  
26

1 decided to litigate against PGE prior to PPA execution, I could still be litigating without  
2 any executed agreements.

3           Particularly in light of PGE's pending rate change proposal, any delay at all  
4 would have posed an unacceptable risk of losing the fixed prices available at the time.  
5 More generally, even in the absence of a rate change, a delay and litigation before  
6 executing the PPAs would have affected the overall viability of the development effort,  
7 as well as my own ability to proceed with development, including the required capital  
8 formation in order to fund successful ongoing development. I was not interested in taking  
9 on the risk of litigation at the time because executed PPAs are a critical aspect of the  
10 development process that supports ongoing development efforts.

11 **Q. What did you do?**

12 **A.** PGE's proposed out-of-cycle rate change was still pending, so I decided we would have  
13 to defer resolution of our disagreement with PGE in order to get the PPAs approved  
14 before the date PGE had proposed the rate change would take effect. As with the  
15 Starvation PPA, I made a strategic decision to accept a shorter contract term length than I  
16 believed QFs were entitled to, while maintaining the NewSun Parties' position that PGE  
17 is obligated to purchase their net output at PGE's renewable fixed prices for fifteen years,  
18 which still is possible even with agreements that terminate no later than twenty years  
19 after execution.

20           I did not believe that PGE had the authority to dictate what Commission policy is  
21 or means. Thus, I did not put much stock in PGE's statements about the PPA term  
22 length, or what its contract forms meant, because I did not believe that PGE was the final  
23 arbiter of what its Commission-approved contract forms meant. Additionally, I had  
24 documented my disagreement with their interpretation. Accordingly, I felt that PGE was  
25 on notice that the NewSun Parties had not conceded the issue and had preserved our  
26 position.

1 **Q. Did you prepare revised PPAs for the other three NewSun Parties?**

2 **A.** Yes. I revised the termination date in the Tygh Valley, Wasco, and Dayton PPAs to be  
3 the same as the termination date in the Starvation PPA—namely, “the completion of the  
4 last day of the sixteenth contract year.”

5 **Q. Did you submit the revised PPAs to PGE?**

6 **A.** Yes. I sent Mr. True revised PPAs for Tygh Valley, Wasco, and Dayton on December  
7 18, 2015. Copies of my email to Mr. True and the attached revised PPAs are attached as  
8 NewSun Exhibits 125, 126, 127, and 128.

9 **Q. Did you mention the NewSun Parties disagreement with PGE?**

10 **A.** Yes. I noted the NewSun Parties’ continued disagreement with PGE in the cover email,  
11 stating: “While we don’t agree with PGE’s position and interpretation on the matters of  
12 the outside allowable COD and termination date and the length of fixed pricing, changes  
13 acceptable to PGE have been made to COD and termination date to allow the process of  
14 finishing these contracts to move forward, as the development needs to move forward.”

15 **Q. What did you mean by that?**

16 **A.** I meant that I had revised the PPAs to comply with PGE’s demand that the scheduled  
17 Commercial Operation Date had to be within three years of the Effective Date and that  
18 the Termination Date could be no more than 20 years after the Effective Date. Both of  
19 those points turned on how the blanks were completed on the form, and PGE would not  
20 agree to execute the PPA without those revisions. However, I expressly reserved my  
21 disagreement with PGE as to the meaning of the fifteen-year fixed-price period, which I  
22 did not understand to be controlled by any blank spaces in the contract forms.

23 **Q. Did you submit any additional PPAs to PGE at that time?**

24 **A.** Yes. On December, 18, 2015, the same day I submitted the revised Tygh Valley, Wasco,  
25 and Dayton PPAs, I also submitted two new PPAs to Mr. True for Fort Rock I and Fort  
26 Rock II, bringing the total number of PPAs NewSun had submitted at that time to six.

1 Copies of my email to Mr. True and the attached PPAs are attached as NewSun Exhibits  
2 129, 130, and 131.

3 **Q. What was the termination date of the Fort Rock I and Fort Rock II PPAs?**

4 **A.** The termination date for the Fort Rock I and Fort Rock II PPAs was the same as the  
5 termination date for the Starvation PPA and the revised Tygh Valley, Wasco, and Dayton  
6 PPAs—namely, “the completion of the last day of the sixteenth contract year.”

7 **Q. Did you again mention the NewSun Parties’ disagreement with PGE?**

8 **A.** Yes. I noted the NewSun Parties’ continued disagreement with PGE in the cover email,  
9 stating: “While we don’t agree with PGE’s position and interpretation on the matters of  
10 the outside allowable COD and termination date and the length of fixed pricing, changes  
11 acceptable to PGE have been made to COD and termination date to allow the process of  
12 finishing these contracts to move forward, as the development needs to move forward.”

13 **Q. Did the NewSun Parties and PGE sign the Tygh Valley, Wasco, and Dayton,  
14 Starvation, Fort Rock I and Fort Rock II PPAs?**

15 **A.** Eventually, yes, PGE signed the PPAs I had attached to my email stating my  
16 disagreement with PGE’s position on the term length and fixed-price period. The PPAs  
17 for each of Dayton, Tygh Valley, Wasco, and Starvation, were executed on January 25,  
18 2016, which was the day before the date the Commission had set to decide whether to  
19 allow PGE’s proposed out-of-cycle avoided cost rate change at the regular public  
20 meeting on that date. I worked very hard to ensure that PGE would execute the  
21 agreements on or before January 26, 2015, in case the new proposed rates took effect on  
22 that date. As it turned out, the Commission rejected PGE’s proposed out-of-cycle rate  
23 change at its public meeting on January 26, 2016, the day after the Dayton, Tygh Valley,  
24 Wasco, and Starvation PPAs were executed. The other two PPAs submitted in December  
25 2015, Fort Rock I and Fort Rock II, were signed on April 27, 2016, after multiple  
26 additional delays in the execution process. There were several unrelated changes in some



1 of these PPAs before execution, which PGE insisted on despite having told me the PPAs  
2 were approved both before and after the January 25 hearing, but the termination dates  
3 remained the same in each PPA.

4 **Q. Did you submit any additional PPAs after December 2015?**

5 **A.** Yes. I submitted four additional PPAs for Alfalfa, Fort Rock IV, Harney, and Riley in  
6 the second quarter of 2016.

7 **Q. What were the termination dates of those four additional PPAs?**

8 **A.** The termination date for each of those PPAs was the same as the termination dates for all  
9 the other PPAs: “the completion of the last day of the sixteenth (16th) Contract Year.”

10 **Q. During or before June 2016, did you have any further discussions with Mr. True  
11 regarding the fixed-price period?**

12 **A.** No.

13 **Q. Did you ever tell Mr. True or anyone else at PGE that the NewSun Parties conceded  
14 their position with respect to the Renewable Fixed Price Option?**

15 **A.** No.

16 **Q. Did the NewSun Parties and PGE sign the four additional PPAs?**

17 **A.** Yes. They all were signed in June 2016, although not without challenges. After  
18 approving the remaining NewSun PPAs in writing in April and May, PGE subsequently  
19 attempted to apply new contracting standards to those already-approved PPAs after it  
20 filed its May 1, 2016 avoided cost pricing update, which was set to take effect on June  
21 22, 2016. I feared PGE would refuse to execute those four PPAs at all prior to the rate  
22 change, even with the language that limited the Seller’s right to sell for sixteen Contract  
23 Years instead of twenty Contract Years, as PGE had previously agreed to do for the  
24 initial six contracts. Because of that concern, on June 21, 2016, Harney and Riley each  
25 filed a complaint against PGE alleging they had established a legally enforceable  
26 obligation to sell under the terms previously agreed to despite PGE’s refusal to properly

1 execute a PPA. Those complaints were docketed in PUC Docket Nos. UM 1784 and  
2 1785. We filed those complaints purely as a protective measure in the event that we  
3 could not obtain PGE's agreement to execute the PPAs with the rates in effect before the  
4 rate change filed on May 1, 2016 would take effect. The Harney and Riley complaints  
5 did not raise the dispute regarding the fifteen-year price term because I understood that  
6 PGE was still willing the execute the PPAs with the Termination Date ending after  
7 sixteen Contract Years. Ultimately, after filing the complaints and making calls to PGE  
8 management to ensure PGE did not use these issues to delay our PPAs from being  
9 executed until after the new pricing took effect, PGE agreed to execute those four PPAs,  
10 and we voluntarily dismissed the complaints on June 27, 2016, before PGE even filed an  
11 answer or any other litigation took place.

12 **Q. During or before June 2016, did you have any further discussions with any other**  
13 **PGE personnel regarding the fixed-price period?**

14 **A.** Yes. In late January 2016, I had a meeting over lunch for a "get to know you" with Maria  
15 Pope, Brett Sims, and Jay Tinker at Veritable Quandary in Portland. As we were walking  
16 away from the restaurant, I expressed to Mr. Sims NewSun's disagreement with PGE's  
17 stated position regarding the commencement of the fifteen-year fixed-price period in its  
18 contract forms and Schedule 201. I believe it was during this conversation that I told Mr.  
19 Sims that, while I knew he could not comment on the issue, we both knew that PGE's  
20 position was absurd and contrary to standard industry practice as well as PUC policy.

21 **Q. Did Mr. Sims respond to your statement?**

22 **A.** Not verbally.

23 **Q. Did he respond in any way?**

24 **A.** He just shrugged in a way that conveyed to me that he could not comment on the issue,  
25 perhaps (as it seemed to me) because his views as a power contracting professional  
26

1 differed from PGE's position. He certainly did not express disagreement with my  
2 statement.

3  
4 **IV. RESPONSE TO TESTIMONY OF ROBERT MACFARLANE**

5 **Q. Mr. Macfarlane provides extensive testimony about PGE's contract forms that**  
6 **were available before PGE began offering the renewable contract forms in 2014.**  
7 **Did you have any communication with Mr. Macfarlane during the contracting**  
8 **process?**

9 **A.** No. I do not recall ever hearing of him until I read his testimony.

10 **Q. Did anyone else at PGE discuss those prior contract forms with you?**

11 **A.** No. Never.

12 **Q. Did anyone at PGE suggest that you should review those prior contract forms?**

13 **A.** No. In fact, when I pointed out the PaTu Wind Farm, LLC and One Energy Solar, LLC  
14 PPAs to Mr. True, I was told that PGE's prior PPAs were irrelevant.

15 **Q. Did anyone at PGE suggest that those prior contract forms somehow controlled the**  
16 **interpretation of the standard contract forms you were executing?**

17 **A.** No.

18 **Q. In his testimony on behalf of PGE, Robert Macfarlane suggests that the use of the**  
19 **phrase "maximum term of 15 years" in Schedule 201 is intended to use the**  
20 **definition of "Term" set forth in PGE's contract form and therefore curtail the**  
21 **fifteen-year fixed price period exactly fifteen years after the Effective Date. Was**  
22 **that your understanding when you reviewed PGE's standard contract form and**  
23 **Schedule 201?**

24 **A.** No. It seems that Mr. Macfarlane is conflating the *term of the effectiveness* of the  
25 agreement with the *term length of power sales* under the agreement. As noted above, I  
26 did not understand the word "term" in Schedule 201 to have the same meaning as the

1 defined term “Term” in the PPA. The term of effectiveness (the *commitment* to buy and  
2 sell power) commonly begins before the term of power sales.

3 To me, a twenty-year PPA term refers to the term of power sales, which is the  
4 whole point of the contract. In fact, the entire concept only makes sense to me in the  
5 context of when power sales are expected, or even *possible, i.e.* after the facility is  
6 operational. I believe this is consistent with industry understanding.

7 I understood the reference in Schedule 201 to a “maximum term of 15 years” in  
8 the context of page 1, which says: “The agreement will have a term of up to 20 years as  
9 selected by the QF,” which I understood to be the term of power sales. Accordingly, I  
10 understood that the “maximum term of 15 years” of fixed pricing would run from the  
11 Commercial Operation Date, i.e. beginning when the twenty-year term begins.

12 Further, as stated above, in the case of PGE’s Schedule 201, the document  
13 referred to the defined terms set forth in the PPA contract forms, but *all of the defined*  
14 *terms used in Schedule 201 were capitalized.* While the word “term” in the Renewable  
15 Fixed Price Option section was not capitalized. Accordingly, I did not understand its use  
16 in the Schedule 201 to refer to a defined term in the standard PPA contract forms. Rather,  
17 given the conventional understanding of the use of term to describe the length of a PPA’s  
18 power sales period, as well as surrounding policy and how the same Commission policy  
19 was implemented by the other Oregon investor-owned utilities, I naturally understood  
20 Schedule 201 to establish the maximum number of years during which a QF would  
21 receive the on-peak and off-peak renewable fixed prices for net output delivered to PGE,  
22 and to provide the price schedules applicable to that first 15 year period of initial power  
23 sales, which schedule would be set at PPA execution.

24  
25  
26

1 **Q. Mr. Macfarlane also suggests in his testimony that because Schedule 201 provides a**  
2 **“fixed price” by using the Off-Peak Prices in Table 6b for all energy delivered**  
3 **between the Effective Date but before the Commercial Operation Date, the QF is**  
4 **compensated at fixed prices only during the fifteen years after the Effective Date.**  
5 **Do you have any response?**

6 **A.** That’s silly. It is pretty normal for PPAs for new generation to have some period prior to  
7 commercial operations pertaining to the pricing, sale, and delivery of test energy from  
8 the newly built facility. After all, the facility has to be built first and operations have to  
9 be tested before it gets commissioned as fully operational. The facility isn’t reliable  
10 before then, though the energy does have some value, so usually that test energy has  
11 some lower price.

12 As I noted above, the NewSun Parties will respond to legal arguments in briefing,  
13 but I can comment on the practical implications of Mr. Macfarlane’s suggestion. Mr.  
14 Macfarlane’s (and PGE’s) position would result in virtually no newly developed QF *ever*  
15 being paid a full fifteen years of fixed prices for On-Peak and Off-Peak deliveries nor  
16 any QF ever being able to realize the full 20-year term length the Commission required  
17 when it ordered the investor-owned utilities to issue these standard contracts.

18 This seems particularly odd to me given the repeated emphasis that the same  
19 Commission order 05-584 places on “development” and “financing” of QFs. I read Order  
20 05-584 several times. The first paragraph of Order 05-584 states: “The Commission’s  
21 goal has been to encourage the economically efficient *development* of these qualifying  
22 facilities”<sup>4</sup> and the order repeatedly states that the Commission’s “intent and goal [is] to  
23 facilitate the *development* of QFs of all sizes”<sup>5</sup> and that the “Commission has  
24 consistently interpreted its PURPA mandate to be the adoption of policies and rules that  
25

26 <sup>4</sup> OPUC Order No. 05-584 at 1 (emphasis added).

<sup>5</sup> OPUC Order No. 05-584 at 3 (emphasis added).

1 promote *QF development*, using among other tactics, accurate price signals and full  
2 information to developers”.<sup>6</sup>

3 Additionally, as noted earlier, my understanding was that the Commission’s  
4 discussion and basis underlying its decision on the available term length centers  
5 predominantly around financing. The need to ensure the ability of power facility to  
6 secure financing is a concept almost exclusively specific to *new* power facilities.

7 It seems obvious to me that there is an assumption that these proposed contracts  
8 would be completed and signed (and their *term of effectiveness* would begin) before the  
9 term of power sales. If that is true, the term of power sales for these new, undeveloped  
10 facilities could not possibly begin on the same day a contract is signed.

11 In my view, it would have been strange for the Commission to mandate that  
12 undeveloped QFs, which require financing to be developed, have a right to twenty-year  
13 contracts—including fifteen years of fixed pricing—while simultaneously knowing that  
14 those same QFs would never have the benefit of a full twenty years of power sales that  
15 the Commission stated was necessary to support financing. Indeed, PGE’s own contract  
16 forms seem to recognize the impossibility of simultaneous execution of the PPA and the  
17 start of the power sales term, given that they provide the QF several years to complete  
18 development and start power sales.

19 Further, the prices during the period before the Commercial Operation Date under  
20 Mr. Macfarlane’s position are not the avoided costs which the QF is entitled to receive  
21 for a fifteen-year term. For a plant (like solar) generating test energy (or any energy prior  
22 to COD) during the day the rates the QF will get paid are “*Off-Peak*” avoided costs, even  
23 when the QF delivers energy in “*On-Peak*” hours. Although the Off-Peak prices in Table  
24 6b are fixed in the sense that they will not change, the Off-Peak fixed prices are far lower  
25 than the On-Peak fixed prices set forth in Table 6a. Most importantly they aren’t the  
26

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<sup>6</sup> OPUC Order No. 05-584 at 11 (emphasis added).

1 actual *avoided costs* due to the QF, but a temporary price before the *prospective* facility,  
2 pre-operations, becomes a fully operational *actual* facility.

3 Additionally, under Mr. Macfarlane's position, any QF that cannot achieve the  
4 requirements for the Commercial Operation Date contained in Section 1.5 on the same  
5 exact day that it executes the PPA will not be paid the full avoided costs to which it is  
6 entitled, i.e. the On-Peak and Off-Peak fixed prices, for the full fifteen years for which it  
7 is due them under Oregon's implementation of PURPA.

8 Even for a facility that is already operational, it is not practicable to expect to  
9 achieve *all* the requirements of Section 1.5 on the *same day it executes the PPA* because  
10 several of those items require submittals to PGE and PGE's response to such submittals,  
11 such as obtaining PGE's approval of reliability of the facility and numerous other  
12 conditions. Instead, under PGE's interpretation, the QF's right to fifteen years of  
13 payments will be reduced by the period of time during which it is paid only the lower  
14 Off-Peak fixed prices even when it delivers during On-Peak hours *and* the QF will be  
15 denied its right to receive projected avoided costs during that period. In sum, under Mr.  
16 Macfarlane's interpretation, virtually no QF would be realistically able to ever receive  
17 payment at the full On-Peak and Off-Peak fixed prices for a full fifteen-year period.  
18 Thus, Mr. Macfarlane's position seems to me to be a contrived reading of Schedule 201,  
19 PGE's contract forms, and also Order 05-584, not to mention how industry would  
20 normally understand all these documents.

21 To me, PGE is trying to argue about what black means, and why gray is actually  
22 black, when everyone knows what black is, at substantial cost imposition to others.

## 24 V. CONCLUSION

25 **Q. Does this complete your testimony?**

26 **A. Yes.**

**UM 1931 NewSun Parties Exhibit 101**

October 14, 2015, Email from  
Jake Stephens to Bruce True



Message

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**From:** Jake Stephens [jake@jakestephens.com]  
**Sent:** 10/14/2015 8:01:28 PM  
**To:** Bruce True [bruce.true@pgn.com]  
**Subject:** Schedule 201

Hi Bruce,

Good talking to you last week. I appreciate your thought and guidance as I move forward bringing my QFs to PGE. As discussed I'll have a couple for you shortly.

One question: Can you please send me a word copy of the latest Standard Variable PPAs for both in-system and out-of-system (<10 MW)? You mentioned you could do that on the call.

Thanks. And also, thanks again for the suggestion on the WSPP conference. I'm planning to attend.

Best,  
Jake

**UM 1931 NewSun Parties Exhibit 102**

October 15, 2015, Email from  
Bruce True to Jake Stephens

Message

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**From:** Bruce True [Bruce.True@pgn.com]  
**Sent:** 10/15/2015 8:33:14 AM  
**To:** Jake Stephens [jake@jakestephens.com]  
**Subject:** RE: Schedule 201  
**Attachments:** Doc 4-In-System Variable PPA\_Effective\_09.23.15.doc; Doc 6-RENEWABLE Off System Variable PPA\_Effective\_09.23.15.doc; Doc 7-RENEWABLE In System Variable PPA\_Effective\_09.23.15.doc; Doc 1-Off System Variable PPA\_Effective\_09.23.15.docx

You didn't say renewable or not, so I send both.

**From:** Jake Stephens [mailto:jake@jakestephens.com]  
**Sent:** Wednesday, October 14, 2015 8:01 PM  
**To:** Bruce True  
**Subject:** Schedule 201

Hi Bruce,

Good talking to you last week. I appreciate your thought and guidance as I move forward bringing my QFs to PGE. As discussed I'll have a couple for you shortly.

One question: Can you please send me a word copy of the latest Standard Variable PPAs for both in-system and out-of-system (<10 MW)? You mentioned you could do that on the call.

Thanks. And also, thanks again for the suggestion on the WSPP conference. I'm planning to attend.

Best,  
Jake

**UM 1931 NewSun Parties Exhibit 103**

Attachment #1 to Email in Exhibit 102:  
Standard Renewable In-System Variable PPA

Standard Renewable In-System Variable Power Purchase Agreement  
Form Effective September 23, 2015

**STANDARD RENEWABLE IN-SYSTEM VARIABLE POWER PURCHASE  
AGREEMENT**

THIS AGREEMENT, entered into this \_\_\_\_\_ day, \_\_\_\_\_ 20\_\_\_\_, is between \_\_\_\_\_ ("Seller") and Portland General Electric Company ("PGE") (hereinafter each a "Party" or collectively, "Parties").

**RECITALS**

Seller intends to construct, own, operate and maintain a \_\_\_\_\_ facility for the generation of electric power located in \_\_\_\_\_ County, \_\_\_\_\_ with a Nameplate Capacity Rating of \_\_\_\_\_ kilowatt ("kW"), as further described in Exhibit A ("Facility"); and

Seller intends to operate the Facility as a "Qualifying Facility," as such term is defined in Section 3.1.3, below.

Seller shall sell and PGE shall purchase the entire Net Output, as such term is defined in Section 1.21, below, from the Facility in accordance with the terms and conditions of this Agreement.

**AGREEMENT**

NOW, THEREFORE, the Parties mutually agree as follows:

**SECTION 1: DEFINITIONS**

When used in this Agreement, the following terms shall have the following meanings:

1.1. "As-built Supplement" means the supplement to Exhibit A provided by Seller in accordance with Section 4.3 following completion of construction of the Facility, describing the Facility as actually built.

1.2. "Base Hours" is defined as the total number of hours in each Contract Year (8,760 or 8,784 for leap year).

1.3. "Billing Period" means a period between PGE's readings of its power purchase billing meter at the Facility in the normal course of PGE's business. Such periods may vary and may not coincide with calendar months; however, PGE shall use best efforts to read the power purchase billing meter in 12 equally spaced periods per year.

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1.4. "Cash Escrow" means an agreement by two parties to place money into the custody of a third party for delivery to a grantee only after the fulfillment of the conditions specified.

1.5. "Commercial Operation Date" means the date that the Facility is deemed by PGE to be fully operational and reliable. PGE may, at its discretion, require, among other things, that all of the following events have occurred:

1.5.1. (facilities with nameplate under 500 kW exempt from following requirement) PGE has received a certificate addressed to PGE from a Licensed Professional Engineer ("LPE") acceptable to PGE in its reasonable judgment stating that the Facility is able to generate electric power reliably in accordance with the terms and conditions of this Agreement (certifications required under this Section 1.5 can be provided by one or more LPEs);

1.5.2. Start-Up Testing of the Facility has been completed in accordance with Section 1.36;

1.5.3. (facilities with nameplate under 500 kW exempt from following requirement) After PGE has received notice of completion of Start-Up Testing, PGE has received a certificate addressed to PGE from an LPE stating that the Facility has operated for testing purposes under this Agreement and was continuously mechanically available for operation for a minimum of 120 hours. The Facility must provide ten (10) working days written notice to PGE prior to the start of the initial testing period. If the mechanical availability of the Facility is interrupted during this initial testing period or any subsequent testing period, the Facility shall promptly start a new Test Period and provide PGE forty-eight (48) hours written notice prior to the start of such testing period;

1.5.4. (facilities with nameplate under 500 kW exempt from following requirement) PGE has received a certificate addressed to PGE from an LPE stating that in accordance with the Generation Interconnection Agreement, all required interconnection facilities have been constructed all required interconnection tests have been completed; and the Facility is physically interconnected with PGE's electric system.

1.5.5. (facilities with nameplate under 500kW exempt from following requirement) PGE has received a certificate addressed to PGE from an LPE stating that Seller has obtained all Required Facility Documents and, if requested by PGE in writing, has provided copies of any or all such requested Required Facility Documents;

1.6. "Contract Price" means the applicable price, including on-peak and off-peak prices, as specified in the Schedule.

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.

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

1.9. "Environmental Attributes" shall mean any and all claims, credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, resulting from the avoidance of the emission of any gas, chemical or other substance to the air, soil or water. Environmental Attributes include but are not limited to: (1) any avoided emissions of pollutants to the air, soil or water such as (subject to the foregoing) sulfur oxides (SO<sub>x</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO), and other pollutants; and (2) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), and other greenhouse gasses (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere.

1.10. "Facility" has the meaning set forth in the Recitals.

1.11. "Generation Interconnection Agreement" means the generation interconnection agreement to be entered into separately between Seller and PGE, providing for the construction, operation, and maintenance of interconnection facilities required to accommodate deliveries of Seller's Net Output.

1.12. "Generation Unit" means each separate electrical generator that contributes towards Nameplate Capacity Rating included in Exhibit A. For solar facilities, a generating unit is a complete solar electrical generation system within the Facility that is able to generate and deliver energy to the Point of Delivery independent of other Generation Units within the same Facility.

1.13. "Letter of Credit" means an engagement by a bank or other person made at the request of a customer that the issuer will honor drafts or other demands for payment upon compliance with the conditions specified in the letter of credit.

1.14. "Licensed Professional Engineer" or "LPE" means a person who is licensed to practice engineering in the state where the Facility is located, who has no economic relationship, association, or nexus with the Seller, and who is not a representative of a consulting engineer, contractor, designer or other individual involved in the development of the Facility, or of a manufacturer or supplier of any equipment installed in the Facility. Such Licensed Professional Engineer shall be licensed in an appropriate engineering discipline for the required certification being made and be acceptable to PGE in its reasonable judgment.

1.15. "Lost Energy" means ((the Guarantee of Mechanical Availability as set forth in 3.1.10 / MAP) X Net Output for a Calendar Year) – Net Output for the Calendar Year. Lost Energy shall be zero unless the result of the calculation in this subsection results in a positive number.

1.16. "Lost Energy Value" means Lost Energy X the excess of the annual time-weighted average Mid-C Index Price for On-Peak and Off-Peak Hours over the time-weighted average Contract Price for On-Peak and Off-Peak Hours for the

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corresponding time period (provided that such excess shall not exceed the Contract Price and further provided that Lost Energy is deemed to be zero prior to reaching the Commercial Operation Date) plus any reasonable costs incurred by PGE to purchase replacement power and/or transmission to deliver the replacement power to the Point of Delivery. (For Start-Up Lost Energy Value see Section 1.35).

1.17. "Mechanical Availability Percentage" or "MAP" shall mean that percentage for any Contract Year for the Facility calculated in accordance with the following formula:

$$\text{MAP} = 100 \times (\text{Operational Hours}) / (\text{Base Hours} \times \text{Number of Units})$$

1.18. "Mid-C Index Price" means the Day Ahead Intercontinental Exchange ("ICE") index price for the bilateral OTC market for energy at the Mid-C Physical for Average On Peak Power and Average Off Peak Power found on the following website: <https://www.theice.com/products/OTC/Physical-Energy/Electricity>. In the event ICE no longer publishes this index, PGE and the Seller agree to select an alternative successor index representative of the Mid-C trading hub.

1.19. "Nameplate Capacity Rating" means the maximum capacity of the Facility as stated by the manufacturer, expressed in kW, which shall not exceed 10,000 kW.

1.20. "Net Dependable Capacity" means the maximum capacity the Facility can sustain over a specified period modified for seasonal limitations, if any, and reduced by the capacity required for station service or auxiliaries.

1.21. "Net Output" means all energy expressed in kWhs produced by the Facility, less station and other onsite use and less transformation and transmission losses. Net Output does not include any environmental attributes.

1.22. "Number of Units" means the number of Generating Units in the Facility described in Exhibit A.

1.23. "Off-Peak Hours" has the meaning provided in the Schedule.

1.24. "On-Peak Hours" has the meaning provided in the Schedule.

1.25. "Operational Hours" for the Facility means the total across all Generating Units of the number of hours each of the Facility's Generating Units are potentially capable of producing power at its Nameplate Capacity Rating regardless of actual weather, season and time of day or night, without any mechanical operating constraint or restriction, and potentially capable of delivering such power to the Point of Delivery in a Contract Year. During up to, but not more than, 200 hours of Planned Maintenance during a Contract Year for each Generation Unit and hours during which an event of Force Majeure exists, a Generation Unit shall be considered potentially capable of delivering such power to the Point of Delivery. For example, in the absence of any Planned Maintenance beyond 200 hours on any Generation Unit of Event of Force



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Majeure, the Operational Hours for a wind farm with five separate two MW turbines would be 43,800 for a Contract Year.

1.26. "Planned Maintenance" means outages scheduled 90 days in advance, with PGE's prior written consent, which shall not be unreasonably withheld.

1.27. "Point of Delivery" means the high side of the generation step up transformer(s) located at the point of interconnection between the Facility and PGE's distribution or transmission system, as specified in the Generation Interconnection Agreement.

1.28. "Pre-Commercial Operation Date Minimum Net Output" shall mean, unless such MWh is specifically set forth by Seller in Exhibit A, an amount in MWh equal to seventy-five percent (75%) of the Nameplate Capacity Rating X thirty percent (30%) for a wind or other renewable QF or fifty percent (50%) for a solar QF X (whole months since the date selected in Section 2.2.1 / 12) X (8760 hours – 200 hours (assumed Planned Maintenance)) for each month. If Seller has provided specific expected monthly Net Output amounts for the Facility in Exhibit A, "Pre-Commercial Operation Date Minimum Net Output" shall mean seventy-five (75%) X expected Net Output set forth in Exhibit A for each month.

1.29. "Prime Rate" means the publicly announced prime rate or reference rate for commercial loans to large businesses with the highest credit rating in the United States in effect from time to time quoted by Citibank, N.A. If a Citibank, N.A. prime rate is not available, the applicable Prime Rate shall be the announced prime rate or reference rate for commercial loans in effect from time to time quoted by a bank with \$10 billion or more in assets in New York City, N.Y., selected by the Party to whom interest based on the prime rate is being paid.

1.30. "Prudent Electrical Practices" means those practices, methods, standards and acts engaged in or approved by a significant portion of the electric power industry in the Western Electricity Coordinating Council that at the relevant time period, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with good business practices, reliability, economy, safety and expedition, and which practices, methods, standards and acts reflect due regard for operation and maintenance standards recommended by applicable equipment suppliers and manufacturers, operational limits, and all applicable laws and regulations. Prudent Electrical Practices are not intended to be limited to the optimum practice, method, standard or act to the exclusion of all others, but rather to those practices, methods and acts generally acceptable or approved by a significant portion of the electric power generation industry in the relevant region, during the relevant period, as described in the immediate preceding sentence.

1.31. "Required Facility Documents" means all licenses, permits, authorizations, and agreements necessary for construction, operation, interconnection, and maintenance of the Facility including without limitation those set forth in Exhibit B.

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1.32. "RPS Attributes" means all attributes related to the Net Output generated by the Facility that are required in order to provide PGE with "qualifying electricity," as that term is defined in Oregon's Renewable Portfolio Standard Act, Ore. Rev. Stat. 469A.010, in effect at the time of execution of this Agreement. RPS Attributes do not include Environmental Attributes that are greenhouse gas offsets from methane capture not associated with the generation of electricity and not needed to ensure that there are zero net emissions associated with the generation of electricity.

1.33. "Schedule" shall mean PGE Schedule 201 filed with the Oregon Public Utilities Commission ("Commission") in effect on the Effective Date of this Agreement and attached hereto as Exhibit D, the terms of which are hereby incorporated by reference.

1.34. "Senior Lien" means a prior lien which has precedence as to the property under the lien over another lien or encumbrance.

1.35. "Start-Up Lost Energy Value" means for the period after the date specified in Section 2.2.2 but prior to achievement of the Commercial Operation Date: zero, unless the Net Output is less than the pro-rated Pre-Commercial Operation Date Minimum Net Output for the applicable delay period, and the time-weighted average of the delay period's Mid-C Index Price for On-Peak Hours and Off-Peak Hours is greater than the time-weighted average of the delay period's Contract Price for On-Peak Hours and Off-Peak Hours, in which case Startup Lost Energy Value equals: (pro-rated Pre-Commercial Operation Date Minimum Net Output for the applicable period - Net Output for the applicable period) X (the lower of: the time-weighted average of the Contract Price for On-Peak hours and Off-Peak Hours during the applicable period; or (the time-weighted average of the Mid-C Index Price for On-Peak Hours and Off-Peak Hours during the applicable period - the time-weighted average of the Contract Price for On-Peak Hours and Off-Peak Hours during the applicable period)). The time-weighted average in this section will reflect the relative proportions of On-Peak Hours and Off-Peak Hours in each day.

1.36. "Start-Up Testing" means the completion of applicable required factory and start-up tests as set forth in Exhibit C.

1.37. "Step-in Rights" means the right of one party to assume an intervening position to satisfy all terms of an agreement in the event the other party fails to perform its obligations under the agreement.

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

1.39. "Test Period" shall mean a period of sixty (60) days or a commercially reasonable period determined by the Seller.

References to Recitals, Sections, and Exhibits are to be the recitals, sections and exhibits of this Agreement.

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## SECTION 2: TERM; COMMERCIAL OPERATION DATE

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

2.2. Time is of the essence of this Agreement, and Seller's ability to meet certain requirements prior to the Commercial Operation Date and to complete all requirements to establish the Commercial Operation Date is critically important. Therefore,

2.2.1 By \_\_\_\_\_ [date to be determined by the Seller] Seller shall begin initial deliveries of Net Output; and

2.2.2 By \_\_\_\_\_ [date to be determined by the Seller subject to Section 2.2.3 below] Seller shall have completed all requirements under Section 1.5 and shall have established the Commercial Operation Date.

2.2.3 Unless the Parties agree in writing that a later Commercial Operation Date is reasonable and necessary, the Commercial Operation Date shall be no more than three (3) years from the Effective Date. PGE will not unreasonably withhold agreement to a Commercial Operation Date that is more than three (3) years from the Effective date if the Seller has demonstrated that a later Commercial Operation Date is reasonable and necessary.

2.3. This Agreement shall terminate on \_\_\_\_\_, \_\_\_\_\_ [date to be chosen by Seller], or the date the Agreement is terminated in accordance with Section 9 or 11, whichever is earlier ("Termination Date").

## SECTION 3: REPRESENTATIONS AND WARRANTIES

3.1. Seller and PGE represent, covenant, and warrant as follows:

3.1.1. Seller warrants it is a \_\_\_\_\_ duly organized under the laws of \_\_\_\_\_.

3.1.2. Seller warrants that the execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on Seller or any valid order of any court, or any regulatory agency or other body having authority to which Seller is subject.

3.1.3. Seller warrants that the Facility is and shall for the Term of this Agreement continue to be a "Qualifying Facility" ("QF") as that term is defined in the version of 18 C.F.R. Part 292 in effect on the Effective Date. Seller has provided the appropriate QF certification, which may include a Federal Energy Regulatory Commission ("FERC") self-certification to PGE prior to PGE's execution of this Agreement. At any time during the Term of this Agreement, PGE may require Seller to provide PGE with evidence satisfactory to PGE in its reasonable discretion that the Facility continues to qualify as a QF under all applicable requirements.

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3.1.4. Seller warrants that it has not within the past two (2) years been the debtor in any bankruptcy proceeding, and Seller is and will continue to be for the Term of this Agreement current on all of its financial obligations.

3.1.5. Seller warrants that during the Term of this Agreement, all of Seller's right, title and interest in and to the Facility shall be free and clear of all liens and encumbrances other than liens and encumbrances arising from third-party financing of the Facility other than workers', mechanics', suppliers' or similar liens, or tax liens, in each case arising in the ordinary course of business that are either not yet due and payable or that have been released by means of a performance bond acceptable to PGE posted within eight (8) calendar days of the commencement of any proceeding to foreclose the lien.

3.1.6. Seller warrants that it will design and operate the Facility consistent with Prudent Electrical Practices.

3.1.7. Seller warrants that the Facility has a Nameplate Capacity Rating not greater than 10,000 kW.

3.1.8. Seller warrants that Net Dependable Capacity of the Facility is \_\_\_\_\_ kW.

3.1.9. Seller estimates that the average annual Net Output to be delivered by the Facility to PGE is \_\_\_\_\_ kilowatt-hours ("kWh"), which amount PGE will include in its resource planning.

3.1.10. Seller represents and warrants that the Facility shall achieve the following Mechanical Availability Percentages ("Guarantee of Mechanical Availability"):

3.1.10.1 Ninety percent (90%) beginning in the first Contract Year and extending through the Term for the Facility, if the Facility was operational and sold electricity to PGE or another buyer prior to the Effective Date of this Agreement; or

3.1.10.2 Ninety percent (90%) beginning in Contract Year three and extending throughout the remainder of the Term.

3.1.10.3 Annually, within 90 days of the end of each Contract Year Seller shall send to PGE a detailed written report demonstrating and providing evidence of the actual MAP for the previous Contract Year.

3.1.10.4 Seller's failure to meet the Guarantee of Mechanical Availability in a Calendar Year shall result in damages payable to PGE by Seller equal to the Lost Energy Value. PGE shall bill Seller for such damages in accordance with Section 8.

3.1.11. Seller will deliver from the Facility to PGE at the Point of Delivery Net Output not to exceed a maximum of \_\_\_\_\_ kWh of Net Output during each Contract Year ("Maximum Net Output").

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3.1.12. By the Commercial Operation Date, Seller has entered into a Generation Interconnection Agreement for a term not less than the term of this Agreement.

3.1.13. PGE warrants that it has not within the past two (2) years been the debtor in any bankruptcy proceeding, and PGE is and will continue to be for the Term of this Agreement current on all of its financial obligations.

3.1.14. Seller warrants that (i) the Facility satisfies the eligibility requirements specified in the Definition of a Small Cogeneration Facility or Small Power Production Facility Eligible to Receive the Standard Renewable Rates and Standard Renewable PPA in PGE's Schedule and (ii) Seller will not make any changes in its ownership, control or management during the term of this Agreement that would cause it to not be in compliance with the Definition of a Small Cogeneration Facility or Small Power Production Facility Eligible to Receive the Standard Renewable Rates and Standard Renewable PPA in PGE's Schedule. Seller will provide, upon request by PGE not more frequently than every 36 months, such documentation and information as may be reasonably required to establish Seller's continued compliance with such Definition. PGE agrees to take reasonable steps to maintain the confidentiality of any portion of the above described documentation and information that the Seller identifies as confidential except PGE will provide all such confidential information to the Public Utility Commission of Oregon upon the Commission's request.

3.1.15. Seller warrants that it will comply with all requirements necessary for all Transferred RECs (as defined in Section 4.5) associated with Net Output to be issued, monitored, accounted for, and transferred by and through the Western Renewable Energy Generation System consistent with the provisions of OAR 330-160-0005 through OAR 330-160-0050. PGE warrants that it will reasonably cooperate in Seller's efforts to meet such requirements, including, for example serving as the qualified reporting entity for the Facility if the Facility is located in PGE's balancing authority.

#### 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.

4.3. Upon completion of construction of the Facility, Seller shall provide PGE an As-built Supplement to specify the actual Facility as built. Seller shall not increase the Nameplate Capacity Rating above that specified in Exhibit A or increase the ability of the Facility to deliver Net Output in quantities in excess of the Net Dependable Capacity, or the Maximum Net Output as described in Section 3.1.11 above, through any means including, but not limited to, replacement, modification, or addition of existing equipment, except with prior written notice to PGE. In the event Seller increases the Nameplate Capacity Rating of the Facility to no more than 10,000 kW

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pursuant to this section, PGE shall pay the Contract Price for the additional delivered Net Output. In the event Seller increases the Nameplate Capacity Rating to greater than 10,000 kW, then Seller shall be required to enter into a new power purchase agreement for all delivered Net Output proportionally related to the increase of Nameplate Capacity above 10,000 kW.

4.4. To the extent not otherwise provided in the Generation Interconnection Agreement, all costs associated with the modifications to PGE's interconnection facilities or electric system occasioned by or related to the interconnection of the Facility with PGE's system, or any increase in generating capability of the Facility, or any increase of delivery of Net Dependable Capacity from the Facility, shall be borne by Seller.

4.5. During the Renewable Resource Deficiency Period, Seller shall provide and PGE shall acquire the RPS Attributes for the Contract Years as specified in the Schedule and Seller shall retain ownership of all other Environmental Attributes (if any). During the Renewable Resource Sufficiency Period, 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. With respect to Environmental Attributes not transferred to PGE under this Agreement ("Seller-Retained Environmental Attributes") Seller may report under §1605(b) of the Energy Policy Act of 1992 or under any applicable program as belonging to Seller any of the Seller-Retained Environmental Attributes, and PGE shall not report under such program that such Seller-Retained Environmental Attributes belong to it. With respect to RPS Attributes transferred to PGE under this Agreement ("Transferred RECs"), PGE may report under §1605(b) of the Energy Policy Act of 1992 or under any applicable program as belonging to it any of the Transferred RECs, and Seller shall not report under such program that such Transferred RECs belong to it.

#### SECTION 5: OPERATION AND CONTROL

5.1. Seller shall operate and maintain the Facility in a safe manner in accordance with the Generation Interconnection Agreement, and Prudent Electrical Practices. PGE shall have no obligation to purchase Net Output from the Facility to the extent the interconnection of the Facility to PGE's electric system is disconnected, suspended or interrupted, in whole or in part, pursuant to the Generation Interconnection Agreement, or to the extent generation curtailment is required as a result of Seller's noncompliance with the Generation Interconnection Agreement. Seller is solely responsible for the operation and maintenance of the Facility. PGE shall not, by reason of its decision to inspect or not to inspect the Facility, or by any action or inaction taken with respect to any such inspection, assume or be held responsible for any liability or occurrence arising from the operation and maintenance by Seller of the Facility.

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5.2. Seller agrees to provide sixty (60) days advance written notice of any scheduled maintenance that would require shut down of the Facility for any period of time.

5.3. If the Facility ceases operation for unscheduled maintenance, Seller immediately shall notify PGE of the necessity of such unscheduled maintenance, the time when such maintenance has occurred or will occur, and the anticipated duration of such maintenance. Seller shall take all reasonable measures and exercise its best efforts to avoid unscheduled maintenance, to limit the duration of such unscheduled maintenance, and to perform unscheduled maintenance during Off-Peak hours.

#### SECTION 6: CREDITWORTHINESS

In the event Seller: a) is unable to represent or warrant as required by Section 3 that it has not been a debtor in any bankruptcy proceeding within the past two (2) years; b) becomes such a debtor during the Term; or c) is not or will not be current on all its financial obligations, Seller shall immediately notify PGE and shall promptly (and in no less than 10 days after notifying PGE) provide default security in an amount reasonably acceptable to PGE in one of the following forms: Senior Lien, Step-in Rights, a Cash Escrow or Letter of Credit. The amount of such default security that shall be acceptable to PGE shall be equal to: (annual On Peak Hours) X (On Peak Price – Off Peak Price) X (Net Dependable Capacity). Notwithstanding the foregoing, in the event Seller is not current on construction related financial obligations, Seller shall notify PGE of such delinquency and PGE may, in its discretion, grant an exception to the requirements to provide default security if the QF has negotiated financial arrangements with the construction loan lender that mitigate Seller's financial risk to PGE.

#### SECTION 7: METERING

7.1. PGE shall design, furnish, install, own, inspect, test, maintain and replace all metering equipment at Seller's cost and as required pursuant to the Generation Interconnection Agreement.

7.2. Metering shall be performed at the location and in a manner consistent with this Agreement and as specified in the Generation Interconnection Agreement. All Net Output purchased hereunder shall be adjusted to account for electrical losses, if any, between the point of metering and the Point of Delivery, so that the purchased amount reflects the net amount of power flowing into PGE's system at the Point of Delivery.

7.3. PGE shall periodically inspect, test, repair and replace the metering equipment as provided in the Generation Interconnection Agreement. If any of the inspections or tests discloses an error exceeding two (2%) percent of the actual energy delivery, either fast or slow, proper correction, based upon the inaccuracy found, shall be made of previous readings for the actual period during which the metering equipment rendered inaccurate measurements if that period can be ascertained. If the

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actual period cannot be ascertained, the proper correction shall be made to the measurements taken during the time the metering equipment was in service since last tested, but not exceeding three (3) months, in the amount the metering equipment shall have been shown to be in error by such test. Any correction in billings or payments resulting from a correction in the meter records shall be made in the next monthly billing or payment rendered. Such correction, when made, shall constitute full adjustment of any claim between Seller and PGE arising out of such inaccuracy of metering equipment.

7.4. To the extent not otherwise provided in the Generation Interconnection Agreement, all of PGE's costs relating to all metering equipment installed to accommodate Seller's Facility shall be borne by Seller.

#### SECTION 8: BILLINGS, COMPUTATIONS AND PAYMENTS

8.1. On or before the thirtieth (30<sup>th</sup>) day following the end of each Billing Period, PGE shall send to Seller payment for Seller's deliveries of Net Output to PGE, together with computations supporting such payment. PGE may offset any such payment to reflect amounts owing from Seller to PGE pursuant to this Agreement, the Generation Interconnection Agreement, and any other agreement related to the Facility between the Parties or otherwise. On or before the thirtieth (30<sup>th</sup>) day following the end of each Contract Year, PGE shall bill for any Lost Energy Value accrued pursuant to this Agreement.

8.2. Any amounts owing after the due date thereof shall bear interest at the Prime Rate plus two percent (2%) from the date due until paid; provided, however, that the interest rate shall at no time exceed the maximum rate allowed by applicable law.

#### SECTION 9: DEFAULT, REMEDIES AND TERMINATION

9.1. In addition to any other event that may constitute a default under this Agreement, the following events shall constitute defaults under this Agreement:

9.1.1. Breach by Seller or PGE of a representation or warranty, except for Section 3.1.4, set forth in this Agreement.

9.1.2. Seller's failure to provide default security, if required by Section 6, prior to delivery of any Net Output to PGE or within 10 days of notice.

9.1.3. Seller's failure to meet the Guarantee of Mechanical Availability established in Section 3.1.10 for two consecutive Contract Years or Seller's failure to provide any written report required by that section.

9.1.4. If Seller is no longer a Qualifying Facility.

9.1.5. Failure of PGE to make any required payment pursuant to Section 8.1.

9.1.6. Seller's failure to meet the Commercial Operation Date.



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9.2. In the event of a default under Section 9.1.6, PGE may provide Seller with written notice of default. Seller shall have one year in which to cure the default during which time the Seller shall pay PGE damages equal to the Lost Energy Value. If Seller is unable to cure the default, PGE may immediately terminate this Agreement as provided in Section 9.3. PGE's resource sufficiency/deficiency position shall have no bearing on PGE's right to terminate the Agreement under this Section 9.2.

9.3. In the event of a default under this Agreement, except as otherwise provided in this Agreement, the non-defaulting party may immediately terminate this Agreement at its sole discretion by delivering written notice to the other Party. In addition, the non-defaulting party may pursue any and all legal or equitable remedies provided by law or pursuant to this Agreement including damages related to the need to procure replacement power. A termination hereunder shall be effective upon the date of delivery of notice, as provided in Section 20. The rights provided in this Section 9 are cumulative such that the exercise of one or more rights shall not constitute a waiver of any other rights.

9.4. If this Agreement is terminated as provided in this Section 9 PGE shall make all payments, within thirty (30) days, that, pursuant to the terms of this Agreement, are owed to Seller as of the time of receipt of notice of default. PGE shall not be required to pay Seller for any Net Output delivered by Seller after such notice of default.

9.5. In the event PGE terminates this Agreement pursuant to this Section 9, and Seller wishes to again sell Net Output to PGE following such termination, PGE in its sole discretion may require that Seller shall do so subject to the terms of this Agreement, including but not limited to the Contract Price until the Term of this Agreement (as set forth in Section 2.3) would have run in due course had the Agreement remained in effect. At such time Seller and PGE agree to execute a written document ratifying the terms of this Agreement.

9.6. Sections 9.1, 9.4, 9.5, 10, and 19.2 shall survive termination of this Agreement.

#### SECTION 10: INDEMNIFICATION AND LIABILITY

10.1. Seller agrees to defend, indemnify and hold harmless PGE, its directors, officers, agents, and representatives against and from any and all loss, claims, actions or suits, including costs and attorney's fees, both at trial and on appeal, resulting from, or arising out of or in any way connected with Seller's delivery of electric power to PGE or with the facilities at or prior to the Point of Delivery, or otherwise arising out of this Agreement, including without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property belonging to PGE, Seller or others, excepting to the extent such loss, claim, action or suit may be caused by the negligence of PGE, its directors, officers, employees, agents or representatives.

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10.2. PGE agrees to defend, indemnify and hold harmless Seller, its directors, officers, agents, and representatives against and from any and all loss, claims, actions or suits, including costs and attorney's fees, both at trial and on appeal, resulting from, or arising out of or in any way connected with PGE's receipt of electric power from Seller or with the facilities at or after the Point of Delivery, or otherwise arising out of this Agreement, including without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property belonging to PGE, Seller or others, excepting to the extent such loss, claim, action or suit may be caused by the negligence of Seller, its directors, officers, employees, agents or representatives.

10.3. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a Party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or to the public, nor affect the status of PGE as an independent public utility corporation or Seller as an independent individual or entity.

10.4. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR SPECIAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES, WHETHER ARISING FROM CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.

#### SECTION 11: INSURANCE

11.1. Prior to the connection of the Facility to PGE's electric system, provided such Facility has a design capacity of 200 kW or more, Seller shall secure and continuously carry for the Term hereof, with an insurance company or companies rated not lower than "B+" by the A. M. Best Company, insurance policies for bodily injury and property damage liability. Such insurance shall include provisions or endorsements naming PGE, its directors, officers and employees as additional insureds; provisions that such insurance is primary insurance with respect to the interest of PGE and that any insurance or self-insurance maintained by PGE is excess and not contributory insurance with the insurance required hereunder; a cross-liability or severability of insurance interest clause; and provisions that such policies shall not be canceled or their limits of liability reduced without thirty (30) days' prior written notice to PGE. Initial limits of liability for all requirements under this section shall be \$1,000,000 million single limit, which limits may be required to be increased or decreased by PGE as PGE determines in its reasonable judgment economic conditions or claims experience may warrant.

11.2. Prior to the connection of the Facility to PGE's electric system, provided such facility has a design capacity of 200 kW or more, Seller shall secure and continuously carry for the Term hereof, in an insurance company or companies rated not lower than "B+" by the A. M. Best Company, insurance acceptable to PGE against property damage or destruction in an amount not less than the cost of replacement of the Facility. Seller promptly shall notify PGE of any loss or damage to the Facility.

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Unless the Parties agree otherwise, Seller shall repair or replace the damaged or destroyed Facility, or if the facility is destroyed or substantially destroyed, it may terminate this Agreement. Such termination shall be effective upon receipt by PGE of written notice from Seller. Seller shall waive its insurers' rights of subrogation against PGE regarding Facility property losses.

11.3. Prior to the connection of the Facility to PGE's electric system and at all other times such insurance policies are renewed or changed, Seller shall provide PGE with a copy of each insurance policy required under this Section, certified as a true copy by an authorized representative of the issuing insurance company or, at the discretion of PGE, in lieu thereof, a certificate in a form satisfactory to PGE certifying the issuance of such insurance. If Seller fails to provide PGE with copies of such currently effective insurance policies or certificates of insurance, PGE at its sole discretion and without limitation of other remedies, may upon ten (10) days advance written notice by certified or registered mail to Seller either withhold payments due Seller until PGE has received such documents, or purchase the satisfactory insurance and offset the cost of obtaining such insurance from subsequent power purchase payments under this Agreement.

## SECTION 12: FORCE MAJEURE

12.1. As used in this Agreement, "Force Majeure" or "an event of Force Majeure" means any cause beyond the reasonable control of the Seller or of PGE which, despite the exercise of due diligence, such Party is unable to prevent or overcome. By way of example, Force Majeure may include but is not limited to acts of God, fire, flood, storms, wars, hostilities, civil strife, strikes, and other labor disturbances, earthquakes, fires, lightning, epidemics, sabotage, restraint by court order or other delay or failure in the performance as a result of any action or inaction on behalf of a public authority which by the exercise of reasonable foresight such Party could not reasonably have been expected to avoid and by the exercise of due diligence, it shall be unable to overcome, subject, in each case, to the requirements of the first sentence of this paragraph. Force Majeure, however, specifically excludes the cost or availability of resources to operate the Facility, changes in market conditions that affect the price of energy or transmission, wind or water droughts, and obligations for the payment of money when due.

12.2. If either Party is rendered wholly or in part unable to perform its obligation under this Agreement because of an event of Force Majeure, that Party shall be excused from whatever performance is affected by the event of Force Majeure to the extent and for the duration of the Force Majeure, after which such Party shall recommence performance of such obligation, provided that:

12.2.1. the non-performing Party shall, promptly, but in any case within one (1) week after the occurrence of the Force Majeure, give the other Party written notice describing the particulars of the occurrence; and

12.2.2. the suspension of performance shall be of no greater scope and of no longer duration than is required by the Force Majeure; and

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12.2.3. the non-performing Party uses its best efforts to remedy its inability to perform its obligations under this Agreement.

12.3. No obligations of either Party which arose before the Force Majeure causing the suspension of performance shall be excused as a result of the Force Majeure.

12.4. Neither Party shall be required to settle any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to the Party's best interests.

### SECTION 13: SEVERAL OBLIGATIONS

Nothing contained in this Agreement shall ever be construed to create an association, trust, partnership or joint venture or to impose a trust or partnership duty, obligation or liability between the Parties. If Seller includes two or more parties, each such party shall be jointly and severally liable for Seller's obligations under this Agreement.

### SECTION 14: CHOICE OF LAW

This Agreement shall be interpreted and enforced in accordance with the laws of the state of Oregon, excluding any choice of law rules which may direct the application of the laws of another jurisdiction.

### SECTION 15: PARTIAL INVALIDITY AND PURPA REPEAL

It is not the intention of the Parties to violate any laws governing the subject matter of this Agreement. If any of the terms of the Agreement are finally held or determined to be invalid, illegal or void as being contrary to any applicable law or public policy, all other terms of the Agreement shall remain in effect. If any terms are finally held or determined to be invalid, illegal or void, the Parties shall enter into negotiations concerning the terms affected by such decision for the purpose of achieving conformity with requirements of any applicable law and the intent of the Parties to this Agreement.

In the event the Public Utility Regulatory Policies Act (PURPA) is repealed, this Agreement shall not terminate prior to the Termination Date, unless such termination is mandated by state or federal law.

### SECTION 16: WAIVER

Any waiver at any time by either Party of its rights with respect to a default under this Agreement or with respect to any other matters arising in connection with this Agreement must be in writing, and such waiver shall not be deemed a waiver with respect to any subsequent default or other matter.

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**SECTION 17: GOVERNMENTAL JURISDICTION AND AUTHORIZATIONS**

This Agreement is subject to the jurisdiction of those governmental agencies having control over either Party or this Agreement. Seller shall at all times maintain in effect all local, state and federal licenses, permits and other approvals as then may be required by law for the construction, operation and maintenance of the Facility, and shall provide upon request copies of the same to PGE.

**SECTION 18: SUCCESSORS AND ASSIGNS**

This Agreement and all of the terms hereof shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties. No assignment hereof by either Party shall become effective without the written consent of the other Party being first obtained and such consent shall not be unreasonably withheld. Notwithstanding the foregoing, either Party may assign this Agreement without the other Party's consent as part of (a) a sale of all or substantially all of the assigning Party's assets, or (b) a merger, consolidation or other reorganization of the assigning Party.

**SECTION 19: ENTIRE AGREEMENT**

19.1. This Agreement supersedes all prior agreements, proposals, representations, negotiations, discussions or letters, whether oral or in writing, regarding PGE's purchase of Net Output from the Facility. No modification of this Agreement shall be effective unless it is in writing and signed by both Parties.

19.2. By executing this Agreement, Seller releases PGE from any third party claims related to the Facility, known or unknown, which may have arisen prior to the Effective Date.

**SECTION 20: NOTICES**

20.1. All notices except as otherwise provided in this Agreement shall be in writing, shall be directed as follows and shall be considered delivered if delivered in person or when deposited in the U.S. Mail, postage prepaid by certified or registered mail and return receipt requested:

To Seller:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

with a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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To PGE:                    Contracts Manager  
                                 QF Contracts, 3WTC0306  
                                 PGE - 121 SW Salmon St.  
                                 Portland, Oregon 97204

20.2 The Parties may change the person to whom such notices are addressed, or their addresses, by providing written notices thereof in accordance with this Section 20.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in their respective names as of the Effective Date.

PGE

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
(Name Seller)

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

EXHIBIT A  
DESCRIPTION OF SELLER'S FACILITY

**[Seller to Complete]**

**[Sellers may include reasonable expected monthly Net Output for purposes of Section 1.35 (Start-Up Lost Energy Value). Amounts may vary by month and shall be assumed repeated for each Contract Year, unless amounts for each Contract Year of this Agreement are set forth in this Exhibit A. Such amounts, if provided, shall exceed zero, and shall be established in accordance with Prudent Electrical Practices and documentation supporting such a determination shall be provided to PGE upon execution of this Agreement. Such documentation shall be commercially reasonable, and may include, but is not limited to, documents used in financing the project, and data on output of similar projects operated by seller, PGE or others.]**

**EXHIBIT B  
REQUIRED FACILITY DOCUMENTS**

**[Seller list all permits and authorizations required for this project]**

Sellers Generation Interconnection Agreement



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**EXHIBIT C  
START-UP TESTING**

**[Seller identify appropriate tests]**

Required factory testing includes such checks and tests necessary to determine that the equipment systems and subsystems have been properly manufactured and installed, function properly, and are in a condition to permit safe and efficient start-up of the Facility, which may include but are not limited to (as applicable):

1. Pressure tests of all steam system equipment;
2. Calibration of all pressure, level, flow, temperature and monitoring instruments;
3. Operating tests of all valves, operators, motor starters and motor;
4. Alarms, signals, and fail-safe or system shutdown control tests;
5. Insulation resistance and point-to-point continuity tests;
6. Bench tests of all protective devices;
7. Tests required by manufacturer of equipment; and
8. Complete pre-parallel checks with PGE.

Required start-up test are those checks and tests necessary to determine that all features and equipment, systems, and subsystems have been properly designed, manufactured, installed and adjusted, function properly, and are capable of operating simultaneously in such condition that the Facility is capable of continuous delivery into PGE's electrical system, which may include but are not limited to (as applicable):

1. Turbine/generator mechanical runs including shaft, vibration, and bearing temperature measurements;
2. Running tests to establish tolerances and inspections for final adjustment of bearings, shaft run-outs;
3. Brake tests;
4. Energization of transformers;
5. Synchronizing tests (manual and auto);
6. Stator windings dielectric test;
7. Armature and field windings resistance tests;
8. Load rejection tests in incremental stages from 5, 25, 50, 75 and 100 percent load;
9. Heat runs;
10. Tests required by manufacturer of equipment;
11. Excitation and voltage regulation operation tests;
12. Open circuit and short circuit; saturation tests;
13. Governor system steady state stability test;
14. Phase angle and magnitude of all PT and CT secondary voltages and currents to protective relays, indicating instruments and metering;
15. Auto stop/start sequence;
16. Level control system tests; and
17. Completion of all state and federal environmental testing requirements

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EXHIBIT D  
SCHEDULE

**[Attach currently in-effect Schedule 201]**

**UM 1931 NewSun Parties Exhibit 104**

Attachment #2 to Email in Exhibit 102:  
Standard Renewable Off-System Variable PPA

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**STANDARD RENEWABLE OFF-SYSTEM VARIABLE POWER PURCHASE  
AGREEMENT**

THIS AGREEMENT, entered into this \_\_\_\_\_ day, \_\_\_\_\_  
20\_\_\_\_, is between \_\_\_\_\_ ("Seller")  
and Portland General Electric Company ("PGE") (hereinafter each a "Party" or  
collectively, "Parties").

RECITALS

Seller intends to construct, own, operate and maintain a \_\_\_\_\_  
facility for the generation of electric power located in \_\_\_\_\_  
County, \_\_\_\_\_ with a Nameplate Capacity Rating of \_\_\_\_\_ kilowatt  
("kW"), as further described in Exhibit A ("Facility"); and

Seller intends to operate the Facility as a "Qualifying Facility," as such term is  
defined in Section 3.1.3, below.

Seller shall sell and PGE shall purchase the entire Net Output, as such term is  
defined in Section 1.21, below, from the Facility in accordance with the terms and  
conditions of this Agreement.

AGREEMENT

NOW, THEREFORE, the Parties mutually agree as follows:

SECTION 1: DEFINITIONS

When used in this Agreement, the following terms shall have the following  
meanings:

1.1. "As-built Supplement" means the supplement to Exhibit A provided by  
Seller in accordance with Section 4.3 following completion of construction of the  
Facility, describing the Facility as actually built.

1.2. "Base Hours" is defined as the total number of hours in each Contract  
Year (8,760 or 8,784 for leap year)

1.3. "Billing Period" means from the start of the first day of each calendar  
month to the end of the last day of each calendar month.

1.4. "Cash Escrow" means an agreement by two parties to place money into  
the custody of a third party for delivery to a grantee only after the fulfillment of the  
conditions specified.

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1.5. "Commercial Operation Date" means the date that the Facility is deemed by PGE to be fully operational and reliable. PGE may, at its discretion require, among other things, that all of the following events have occurred:

1.5.1. (facilities with nameplate under 500 kW exempt from following requirement) PGE has received a certificate addressed to PGE from a Licensed Professional Engineer ("LPE") acceptable to PGE in its reasonable judgment stating that the Facility is able to generate electric power reliably in accordance with the terms and conditions of this Agreement (certifications required under this Section 1.5 can be provided by one or more LPEs);

1.5.2. Start-Up Testing of the Facility has been completed in accordance with Section 1.36;

1.5.3. (facilities with nameplate under 500 kW exempt from following requirement) After PGE has received notice of completion of Start-Up Testing, PGE has received a certificate addressed to PGE from an LPE stating that the Facility has operated for testing purposes under this Agreement and was continuously mechanically available for operation for a minimum of 120 hours. The Facility must provide ten (10) working days written notice to PGE prior to the start of the initial testing period. If the mechanical availability of the Facility is interrupted during this initial testing period or any subsequent testing period, the Facility shall promptly start a new Test Period and provide PGE forty-eight (48) hours written notice prior to the start of such testing period;

1.5.4. (facilities with nameplate under 500 kW exempt from following requirement) PGE has received a certificate addressed to PGE from an LPE stating that all required interconnection facilities have been constructed and all required interconnection tests have been completed;

1.5.5. (facilities with nameplate under 500 kW exempt from following requirement) PGE has received a certificate addressed to PGE from an LPE stating that Seller has obtained all Required Facility Documents and, if requested by PGE in writing, has provided copies of any or all such requested Required Facility Documents;

1.5.6. PGE has received a copy of the executed Generation Interconnection and Transmission Agreements.

1.6. "Contract Price" means the applicable price, including on-peak and off-peak prices, as specified in the Schedule.

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.

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1.9. "Environmental Attributes" shall mean any and all claims, credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, resulting from the avoidance of the emission of any gas, chemical or other substance to the air, soil or water. Environmental Attributes include but are not limited to: (1) any avoided emissions of pollutants to the air, soil or water such as (subject to the foregoing) sulfur oxides (SO<sub>x</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO), and other pollutants; and (2) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), and other greenhouse gasses (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere.

1.10. "Facility" has the meaning set forth in the Recitals.

1.11. "Generation Interconnection Agreement" means an agreement governing the interconnection of the Facility with \_\_\_\_\_ electric system.

1.12. "Generation Unit" means each separate electrical generator that contributes toward Nameplate Capacity Rating included in Exhibit A. For solar facilities, a generating unit is a complete solar electrical generation system within the Facility that is able to generate and deliver energy to the Point of Delivery independent of other Generation Units within the same Facility.

1.13. "Letter of Credit" means an engagement by a bank or other person made at the request of a customer that the issuer will honor drafts or other demands for payment upon compliance with the conditions specified in the letter of credit.

1.14. "Licensed Professional Engineer" or "LPE" means a person who is licensed to practice engineering in the state where the Facility is located, who has no economic relationship, association, or nexus with the Seller, and who is not a representative of a consulting engineer, contractor, designer or other individual involved in the development of the Facility, or of a manufacturer or supplier of any equipment installed in the Facility. Such Licensed Professional Engineer shall be licensed in an appropriate engineering discipline for the required certification being made and be acceptable to PGE in its reasonable judgment.

1.15. "Lost Energy" means "Lost Energy" means ((the Guarantee of Mechanical Availability as set forth in 3.1.10 / MAP) X Net Output for a Calendar Year) – Net Output for the Calendar Year. Lost Energy shall be zero unless the result of the calculation in this subsection results in a positive number.

1.16. "Lost Energy Value" means Lost Energy X the excess of the annual time-weighted average Mid-C Index Price for On Peak Hours and Off Peak Hours over the time weighted average Contract Price for On Peak and Off Peak Hours for the corresponding time period (provided that such excess shall not exceed the Contract Price and further provided that Lost Energy is deemed to be zero prior to reaching the Commercial Operation Date) plus any reasonable costs incurred by PGE to purchase

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replacement power and/or transmission to deliver the replacement power to the Point of Delivery (For Start-Up Lost Energy Value See 1.35).

1.17. "Mechanical Availability Percentage" or "MAP" shall mean that percentage for any Contract Year for the Facility calculated in accordance with the following formula:

$$\text{MAP} = 100 \times (\text{Operational Hours}) / (\text{Base Hours} \times \text{Number of Units})$$

1.18. "Mid-C Index Price" means the Day Ahead Intercontinental Exchange ("ICE") index price for the bilateral OTC market for energy at the Mid-C Physical for Average On Peak Power and Average Off Peak Power found on the following website: <https://www.theice.com/products/OTC/Physical-Energy/Electricity>. In the event ICE no longer publishes this index, PGE and the Seller agree to select an alternative successor index representative of the Mid-C trading hub.

1.19. "Nameplate Capacity Rating" means the maximum capacity of the Facility as stated by the manufacturer, expressed in kW, which shall not exceed 10,000 kW.

1.20. "Net Dependable Capacity" means the maximum capacity the Facility can sustain over a specified period modified for seasonal limitations, if any, and reduced by the capacity required for station service or auxiliaries.

1.21. "Net Output" means all energy expressed in kWhs produced by the Facility, less station and other onsite use and less transformation and transmission losses.

1.22. "Number of Units" means the number of Generation Units in the Facility as specified in Exhibit A.

1.23. "Off-Peak Hours" has the meaning provided in the Schedule.

1.24. "On-Peak Hours" has the meaning provided in the Schedule.

1.25. "Operational Hours" for the Facility means the total across all Generation Units of the number of hours each of the Facility's Generation Units are potentially capable of producing power at its Nameplate Capacity Rating regardless of actual weather conditions, season and the time of day or night, without any mechanical operating constraint or restriction, and potentially capable of delivering such power to the Point of Delivery in a Contract Year. During up to, but not more than, two hundred (200) hours of Planned Maintenance during a Contract Year for each Generation Unit and hours during which an event of Force Majeure exists, a Generation Unit shall be considered potentially capable of delivering such power to the Point of Delivery. For example, in the absence of any Planned Maintenance beyond 200 hours on any Generation Unit or Event of Force Majeure, the Operational Hours for a wind farm with five (5) separate two (2) MW turbines would be 43,800 for a Contract Year.

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1.26. "Planned Maintenance" means outages scheduled ninety (90) days in advance, with PGE's prior written consent, which shall not be unreasonably withheld.

1.27. "Point of Delivery" means the PGE system.

1.28. "Pre-Commercial Operation Date Minimum Net Output" shall mean, unless such MWh is specifically set forth by Seller in Exhibit A, an amount in MWh equal to seventy-five percent (75%) of Nameplate Capacity Rating X thirty percent (30%) for a wind or other renewable QF or fifty percent (50%) for a solar QF X (whole months since the date selected in Section 2.2.1 / 12) X (8760 hours – 200 hours (assumed Planned Maintenance)) for each month. If Seller has provided specific expected monthly Net Output amounts for the Facility in Exhibit A, "Pre-Commercial Operation Date Minimum Net Output" shall mean seventy-five percent (75%) X expected net output set forth in Exhibit A for each month.

1.29. "Prime Rate" means the publicly announced prime rate or reference rate for commercial loans to large businesses with the highest credit rating in the United States in effect from time to time quoted by Citibank, N.A. If a Citibank, N.A. prime rate is not available, the applicable Prime Rate shall be the announced prime rate or reference rate for commercial loans in effect from time to time quoted by a bank with \$10 billion or more in assets in New York City, N.Y., selected by the Party to whom interest based on the prime rate is being paid.

1.30. "Prudent Electrical Practices" means those practices, methods, standards and acts engaged in or approved by a significant portion of the electric power industry in the Western Electricity Coordinating Council that at the relevant time period, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with good business practices, reliability, economy, safety and expedition, and which practices, methods, standards and acts reflect due regard for operation and maintenance standards recommended by applicable equipment suppliers and manufacturers, operational limits, and all applicable laws and regulations. Prudent Electrical Practices are not intended to be limited to the optimum practice, method, standard or act to the exclusion of all others, but rather to those practices, methods and acts generally acceptable or approved by a significant portion of the electric power generation industry in the relevant region, during the relevant period, as described in the immediate preceding sentence.

1.31. "Required Facility Documents" means all licenses, permits, authorizations, and agreements necessary for construction, operation, interconnection, and maintenance of the Facility including without limitation those set forth in Exhibit B.

1.32. "RPS Attributes" means all attributes related to the Net Output generated by the Facility that are required in order to provide PGE with "qualifying electricity," as that term is defined in Oregon's Renewable Portfolio Standard Act, Ore. Rev. Stat. 469A.010, in effect at the time of execution of this Agreement. RPS Attributes do not include Environmental Attributes that are greenhouse gas offsets from methane capture



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not associated with the generation of electricity and not needed to ensure that there are zero net emissions associated with the generation of electricity.

1.33. "Schedule" shall mean PGE Schedule 201 filed with the Oregon Public Utilities Commission ("Commission") in effect on the Effective Date of this Agreement and attached hereto as Exhibit D, the terms of which are hereby incorporated by reference.

1.34. "Senior Lien" means a prior lien which has precedence as to the property under the lien over another lien or encumbrance

1.35. "Start-Up Lost Energy Value" means for the period after the date specified in Section 2.2.2 but prior to achievement of the Commercial Operation Date: zero, unless the Net Output is less than the pro-rated Pre-Commercial Operation Date Minimum Net Output for the applicable delay period, and the time-weighted average of the delay period's Mid-C Index Price for On-Peak Hours and Off-Peak Hours is greater than the time-weighted average of the delay period's Contract Price for On-Peak Hours and Off-Peak Hours, in which case Startup Lost Energy Value equals: (pro-rated Pre-Commercial Operation Date Minimum Net Output for the applicable period - Net Output for the applicable period) X (the lower of: the time-weighted average of the Contract Price for On-Peak hours and Off-Peak Hours during the applicable period; or (the time-weighted average of the Mid-C Index Price for On-Peak Hours and Off-Peak Hours during the applicable period - the time-weighted average of the Contract Price for On-Peak Hours and Off-Peak Hours during the applicable period)). The time-weighted average in this section will reflect the relative proportions of On-Peak Hours and Off-Peak Hours in each day.

1.36. "Start-Up Testing" means the completion of applicable required factory and start-up tests as set forth in Exhibit C.

1.37. "Step-in Rights" means the right of one party to assume an intervening position to satisfy all terms of an agreement in the event the other party fails to perform its obligations under the agreement.

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

1.39. "Test Period" shall mean a period of sixty (60) days or a commercially reasonable period determined by the Seller.

1.40. "Transmission Agreement" means an agreement executed by the Seller and the Transmission Provider(s) for Transmission Services.

1.41. "Transmission Curtailment" means a limitation on Seller's ability to deliver any portion of the scheduled energy to PGE due to the unavailability of transmission to the Point of Delivery (for any reason other than Force Majeure).

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1.42. "Transmission Curtailment Replacement Energy Cost" means the greater of zero or the amount calculated as: ((Mid-C Index Price – Contract Price) X curtailed energy) for periods of Transmission Curtailment.

1.43. "Transmission Provider(s)" means the signatory (other than the Seller) to the Transmission Agreement.

1.44. "Transmission Services" means any and all services (including but not limited to ancillary services and control area services) required for the firm transmission and delivery of Energy from the Facility to the Point of Delivery for a term not less than the Term of this Agreement.

References to Recitals, Sections, and Exhibits are to be the recitals, sections and exhibits of this Agreement.

## SECTION 2: TERM; COMMERCIAL OPERATION DATE

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

2.2. Time is of the essence of this Agreement, and Seller's ability to meet certain requirements prior to the Commercial Operation Date and to complete all requirements to establish the Commercial Operation Date is critically important. Therefore,

2.2.1. By \_\_\_\_\_ [date to be determined by the Seller] Seller shall begin initial deliveries of Net Output; and

2.2.2. By \_\_\_\_\_ [date to be determined by the Seller subject to Section 2.2.3 below] Seller shall have completed all requirements under Section 1.5 and shall have established the Commercial Operation Date.

2.2.3. Unless the Parties agree in writing that a later Commercial Operation Date is reasonable and necessary, the Commercial Operation Date shall be no more than three (3) years from the Effective Date. PGE will not unreasonably withhold agreement to a Commercial Operation Date that is more than three (3) years from the Effective date if the Seller has demonstrated that a later Commercial Operation Date is reasonable and necessary.

2.3. This Agreement shall terminate on \_\_\_\_\_, \_\_\_\_\_ [date to be chosen by Seller], or the date the Agreement is terminated in accordance with Section 8 or 11, whichever is earlier ("Termination Date").

## SECTION 3: REPRESENTATIONS AND WARRANTIES

3.1. Seller and PGE represent, covenant, and warrant as follows:

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3.1.1. Seller warrants it is a \_\_\_\_\_ duly organized under the laws of \_\_\_\_\_.

3.1.2. Seller warrants that the execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on Seller or any valid order of any court, or any regulatory agency or other body having authority to which Seller is subject.

3.1.3. Seller warrants that the Facility is and shall for the Term of this Agreement continue to be a "Qualifying Facility" ("QF") as that term is defined in the version of 18 C.F.R. Part 292 in effect on the Effective Date. Seller has provided the appropriate QF certification, which may include a Federal Energy Regulatory Commission ("FERC") self-certification to PGE prior to PGE's execution of this Agreement. At any time during the Term of this Agreement, PGE may require Seller to provide PGE with evidence satisfactory to PGE in its reasonable discretion that the Facility continues to qualify as a QF under all applicable requirements.

3.1.4. Seller warrants that it has not within the past two (2) years been the debtor in any bankruptcy proceeding, and Seller is and will continue to be for the Term of this Agreement current on all of its financial obligations.

3.1.5. Seller warrants that during the Term of this Agreement, all of Seller's right, title and interest in and to the Facility shall be free and clear of all liens and encumbrances other than liens and encumbrances arising from third-party financing of the Facility other than workers', mechanics', suppliers' or similar liens, or tax liens, in each case arising in the ordinary course of business that are either not yet due and payable or that have been released by means of a performance bond acceptable to PGE posted within eight (8) calendar days of the commencement of any proceeding to foreclose the lien.

3.1.6. Seller warrants that it will design and operate the Facility consistent with Prudent Electrical Practices.

3.1.7. Seller warrants that the Facility has a Nameplate Capacity Rating not greater than 10,000 kW.

3.1.8. Seller warrants that Net Dependable Capacity of the Facility is \_\_\_\_\_ kW.

3.1.9. Seller estimates that the average annual Net Output to be delivered by the Facility to PGE is \_\_\_\_\_ kilowatt-hours ("kWh"), which amount PGE will include in its resource planning.

3.1.10. Seller represents and warrants that the Facility shall achieve the following Mechanical Availability Percentages ("Guarantee of Mechanical Availability"):

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3.1.10.1. Ninety percent (90%) beginning in the first Contract Year and extending through the Term for the Facility, if the Facility was operational and sold electricity to PGE or another buyer prior to the Effective Date of this Agreement; or

3.1.10.2. Ninety percent (90%) beginning in Contract Year three and extending throughout the remainder of the Term.

3.1.10.3. Annually, within 90 days of the end of each Contract Year, Seller shall send to PGE a detailed written report demonstrating and providing evidence of the actual MAP for the previous Contract Year.

3.1.10.4. Seller's failure to meet the Guarantee of Mechanical Availability in a Calendar Year shall result in damages payable to PGE by Seller equal to the Lost Energy Value. PGE shall bill Seller for such damages in accordance with Section 7.

3.1.11. Seller will deliver from the Facility to PGE at the Point of Delivery Net Output not to exceed a maximum of \_\_\_\_\_ kWh of Net Output during each Contract Year ("Maximum Net Output"). The cost of delivering energy from the Facility to PGE is the sole responsibility of the Seller.

3.1.12. By the Commercial Operation Date, Seller has entered into a Generation Interconnection Agreement for a term not less than the term of this Agreement.

3.1.13. PGE warrants that it has not within the past two (2) years been the debtor in any bankruptcy proceeding, and PGE is and will continue to be for the Term of this Agreement current on all of its financial obligations.

3.1.14. Seller warrants that the Facility satisfies the eligibility requirements specified in the Definition of a Small Cogeneration Facility or Small Power Production Facility Eligible to Receive the Standard Renewable Rates and Standard Renewable PPA in PGE's Schedule and Seller will not make any changes in its ownership, control or management during the term of this Agreement that would cause it to not be in compliance with the Definition of a Small Cogeneration Facility or Small Power Production Facility Eligible to Receive the Standard Renewable Rates and Standard Renewable PPA in PGE's Schedule. Seller will provide, upon request by PGE not more frequently than every 36 months, such documentation and information as may be reasonably required to establish Seller's continued compliance with such Definition. PGE agrees to take reasonable steps to maintain the confidentiality of any portion of the above described documentation and information that the Seller identifies as confidential except PGE will provide all such confidential information to the Commission upon the Commission's request.

3.1.15. Seller warrants that it will comply with all requirements necessary for all Transferred RECs (as defined in Section 4.5) associated with Net Output to be issued, monitored, accounted for, and transferred by and through the Western Renewable Energy Generation System consistent with the provisions of OAR 330-160-0005

through OAR 330-160-0050. PGE warrants that it will reasonably cooperate in Seller's efforts to meet such requirements, including, for example serving as the qualified reporting entity for the Facility if the Facility is located in PGE's balancing authority.

#### 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.

4.3. Upon completion of construction of the Facility, Seller shall provide PGE an As-built Supplement to specify the actual Facility as built. Seller shall not increase the Nameplate Capacity Rating above that specified in Exhibit A or increase the ability of the Facility to deliver Net Output in quantities in excess of the Net Dependable Capacity, or the Maximum Net Output as described in Section 3.1.11 above, through any means including, but not limited to, replacement, modification, or addition of existing equipment, except with prior written notice to PGE. In the event Seller increases the Nameplate Capacity Rating of the Facility to no more than 10,000 kW pursuant to this section, PGE shall pay the Contract Price for the additional delivered Net Output. In the event Seller increases the Nameplate Capacity Rating to greater than 10,000 kW, then Seller shall be required to enter into a new power purchase agreement for all delivered Net Output proportionally related to the increase of Nameplate Capacity above 10,000 kW.

4.4. Seller shall provide preschedules for all deliveries of energy hereunder, including identification of receiving and generating control areas, by 9:00:00 PPT on the last business day prior to the scheduled date of delivery. All energy shall be scheduled according to the most current North America Energy Reliability Corporation (NERC) and Western Electricity Coordinating Council (WECC) scheduling rules and practices. The Parties' respective representatives shall maintain hourly real-time schedule coordination; provided, however, that in the absence of such coordination, the hourly schedule established by the exchange of preschedules shall be considered final. Seller and PGE shall maintain records of hourly energy schedules for accounting and operating purposes. The final E-Tag shall be the controlling evidence of the Parties' schedule. All energy shall be prescheduled according to customary WECC scheduling practices. Seller shall make commercially reasonable efforts to schedule in any hour an amount equal to its expected Net Output for such hour. Seller shall maintain a minimum of two years records of Net Output and shall agree to allow PGE to have access to such records and to imbalance information kept by the Transmission Provider.

4.5. During the Renewable Resource Deficiency Period, Seller shall provide and PGE shall acquire the RPS Attributes for the Contract Years as specified in the Schedule and Seller shall retain ownership of all other Environmental Attributes (if any). During the Renewable Resource Sufficiency Period, and any period within the Term of

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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. With respect to Environmental Attributes not transferred to PGE under this Agreement ("Seller-Retained Environmental Attributes") Seller may report under §1605(b) of the Energy Policy Act of 1992 or under any applicable program as belonging to Seller any of the Seller-Retained Environmental Attributes, and PGE shall not report under such program that such Seller-Retained Environmental Attributes belong to it. With respect to RPS Attributes transferred to PGE under this Agreement ("Transferred RECs"), PGE may report under §1605(b) of the Energy Policy Act of 1992 or under any applicable program as belonging to it any of the Transferred RECs, and Seller shall not report under such program that such Transferred RECs belong to it.

#### SECTION 5: OPERATION AND CONTROL

5.1. Seller shall operate and maintain the Facility in a safe manner in accordance with the Generation Interconnection Agreement, and Prudent Electrical Practices. PGE shall have no obligation to purchase Net Output from the Facility to the extent the interconnection of the Facility to PGE's electric system is disconnected, suspended or interrupted, in whole or in part, pursuant to the Generation Interconnection Agreement, or to the extent generation curtailment is required as a result of Seller's noncompliance with the Generation Interconnection Agreement. Seller is solely responsible for the operation and maintenance of the Facility. PGE shall not, by reason of its decision to inspect or not to inspect the Facility, or by any action or inaction taken with respect to any such inspection, assume or be held responsible for any liability or occurrence arising from the operation and maintenance by Seller of the Facility.

5.2. Seller agrees to provide sixty (60) days advance written notice of any scheduled maintenance that would require shut down of the Facility for any period of time.

5.3. If the Facility ceases operation for unscheduled maintenance, Seller immediately shall notify PGE of the necessity of such unscheduled maintenance, the time when such maintenance has occurred or will occur, and the anticipated duration of such maintenance. Seller shall take all reasonable measures and exercise its best efforts to avoid unscheduled maintenance, to limit the duration of such unscheduled maintenance, and to perform unscheduled maintenance during Off-Peak hours.

#### SECTION 6: CREDITWORTHINESS

In the event Seller: a) is unable to represent or warrant as required by Section 3 that it has not been a debtor in any bankruptcy proceeding within the past two (2) years; b) becomes such a debtor during the Term; or c) is not or will not be current on all its financial obligations, Seller shall immediately notify PGE and shall promptly (and in no less than 10 days after notifying PGE) provide default security in an amount reasonably

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acceptable to PGE in one of the following forms: Senior Lien, Step-in Rights, a Cash Escrow or Letter of Credit. The amount of such default security that shall be acceptable to PGE shall be equal to: (annual On Peak Hours) X (On Peak Price – Off Peak Price) X (Net Dependable Capacity). Notwithstanding the foregoing, in the event Seller is not current on construction related financial obligations, Seller shall notify PGE of such delinquency and PGE may, in its discretion, grant an exception to the requirements to provide default security if the QF has negotiated financial arrangements with the construction loan lender that mitigate Seller's financial risk to PGE.

#### SECTION 7: BILLINGS, COMPUTATIONS AND PAYMENTS

7.1. On or before the thirtieth (30<sup>th</sup>) day following the end of each Billing Period, PGE shall send to Seller payment for Seller's deliveries of Net Output to PGE, together with computations supporting such payment. PGE may offset any such payment to reflect amounts owing from Seller to PGE pursuant to this Agreement and any other agreement related to the Facility between the Parties or otherwise. On or before the thirtieth (30<sup>th</sup>) day following the end of each Contract Year, PGE shall bill for any Lost Energy Value accrued pursuant to this Agreement.

7.2. Any amounts owing after the due date thereof shall bear interest at the Prime Rate plus two percent (2%) from the date due until paid; provided, however, that the interest rate shall at no time exceed the maximum rate allowed by applicable law.

#### SECTION 8: DEFAULT, REMEDIES AND TERMINATION

8.1. In addition to any other event that may constitute a default under this Agreement, the following events shall constitute defaults under this Agreement:

8.1.1. Breach by Seller or PGE of a representation or warranty, except for Section 3.1.4, set forth in this Agreement.

8.1.2. Seller's failure to provide default security, if required by Section 6, prior to delivery of any Net Output to PGE or within 10 days of notice.

8.1.3. Seller's failure to meet the Guarantee of Mechanical Availability established in Section 3.1.10 for two consecutive Contract Years or Seller's failure to provide any written report required by that section.

8.1.4. If Seller is no longer a Qualifying Facility.

8.1.5. Failure of PGE to make any required payment pursuant to Section 7.1.

8.1.6. Seller's failure to meet the Commercial Operation Date.

8.2. In the event of a default under Section 8.1.6, PGE may provide Seller with written notice of default. Seller shall have one year in which to cure the default during which time the Seller shall pay PGE damages equal to the Lost Energy Value. If Seller

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is unable to cure the default, PGE may immediately terminate this Agreement as provided in Section 8.3. PGE's resource sufficiency/deficiency position shall have no bearing on PGE's right to terminate the Agreement under this Section 8.2.

8.3. In the event of a default hereunder, except as otherwise provided in this Agreement, the non-defaulting party may immediately terminate this Agreement at its sole discretion by delivering written notice to the other Party. In addition, the non-defaulting Party may pursue any and all legal or equitable remedies provided by law or pursuant to this Agreement including damages related to the need to procure replacement power. A termination hereunder shall be effective upon the date of delivery of notice, as provided in Section 20. The rights provided in this Section 8 are cumulative such that the exercise of one or more rights shall not constitute a waiver of any other rights.

8.4. If this Agreement is terminated as provided in this Section 8, PGE shall make all payments, within thirty (30) days, that, pursuant to the terms of this Agreement, are owed to Seller as of the time of receipt of notice of default. PGE shall not be required to pay Seller for any Net Output delivered by Seller after such notice of default.

8.5. In the event PGE terminates this Agreement pursuant to this Section 8, and Seller wishes to again sell Net Output to PGE following such termination, PGE in its sole discretion may require that Seller shall do so subject to the terms of this Agreement, including but not limited to the Contract Price until the Term of this Agreement (as set forth in Section 2.3) would have run in due course had the Agreement remained in effect. At such time Seller and PGE agree to execute a written document ratifying the terms of this Agreement.

8.6. Sections 8.1, 8.4, 8.5, 10, and 19.2 shall survive termination of this Agreement.

#### SECTION 9: TRANSMISSION CURTAILMENTS

9.1. Seller shall give PGE notice as soon as reasonably practicable of any Transmission Curtailment that is likely to affect Seller's ability to deliver any portion of energy scheduled pursuant to Section 4.4 of this Agreement.

9.2. If as the result of a Transmission Curtailment, Seller does not deliver any portion of energy (including real-time adjustments), scheduled pursuant to Section 4.4 of this Agreement, Seller shall pay PGE the Transmission Curtailment Replacement Energy Cost for the number of MWh of energy reasonably determined by PGE as the difference between (i) the scheduled energy that would have been delivered to PGE under this Agreement during the period of Transmission Curtailment and (ii) the actual energy, if any, that was delivered to PGE for the period.



## SECTION 10: INDEMNIFICATION AND LIABILITY

10.1. Seller agrees to defend, indemnify and hold harmless PGE, its directors, officers, agents, and representatives against and from any and all loss, claims, actions or suits, including costs and attorney's fees, both at trial and on appeal, resulting from, or arising out of or in any way connected with Seller's delivery of electric power to PGE or with the facilities at or prior to the Point of Delivery, or otherwise arising out of this Agreement, including without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property belonging to PGE, Seller or others, excepting to the extent such loss, claim, action or suit may be caused by the negligence of PGE, its directors, officers, employees, agents or representatives.

10.2. PGE agrees to defend, indemnify and hold harmless Seller, its directors, officers, agents, and representatives against and from any and all loss, claims, actions or suits, including costs and attorney's fees, both at trial and on appeal, resulting from, or arising out of or in any way connected with PGE's receipt of electric power from Seller or with the facilities at or after the Point of Delivery, or otherwise arising out of this Agreement, including without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property belonging to PGE, Seller or others, excepting to the extent such loss, claim, action or suit may be caused by the negligence of Seller, its directors, officers, employees, agents or representatives.

10.3. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a Party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or to the public, nor affect the status of PGE as an independent public utility corporation or Seller as an independent individual or entity.

10.4. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR SPECIAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES, WHETHER ARISING FROM CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.

## SECTION 11: INSURANCE

11.1. Prior to the connection of the Facility to PGE's electric system, provided such Facility has a design capacity of 200 kW or more, Seller shall secure and continuously carry for the Term hereof, with an insurance company or companies rated not lower than "B+" by the A. M. Best Company, insurance policies for bodily injury and property damage liability. Such insurance shall include provisions or endorsements naming PGE, its directors, officers and employees as additional insureds; provisions that such insurance is primary insurance with respect to the interest of PGE and that any insurance or self-insurance maintained by PGE is excess and not contributory insurance with the insurance required hereunder; a cross-liability or severability of

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insurance interest clause; and provisions that such policies shall not be canceled or their limits of liability reduced without thirty (30) days' prior written notice to PGE. Initial limits of liability for all requirements under this section shall be \$1,000,000 million single limit, which limits may be required to be increased or decreased by PGE as PGE determines in its reasonable judgment economic conditions or claims experience may warrant.

11.2. Prior to the connection of the Facility to PGE's electric system, provided such facility has a design capacity of 200 kW or more, Seller shall secure and continuously carry for the Term hereof, in an insurance company or companies rated not lower than "B+" by the A. M. Best Company, insurance acceptable to PGE against property damage or destruction in an amount not less than the cost of replacement of the Facility. Seller promptly shall notify PGE of any loss or damage to the Facility. Unless the Parties agree otherwise, Seller shall repair or replace the damaged or destroyed Facility, or if the facility is destroyed or substantially destroyed, it may terminate this Agreement. Such termination shall be effective upon receipt by PGE of written notice from Seller. Seller shall waive its insurers' rights of subrogation against PGE regarding Facility property losses.

11.3. Prior to the connection of the Facility to PGE's electric system and at all other times such insurance policies are renewed or changed, Seller shall provide PGE with a copy of each insurance policy required under this Section, certified as a true copy by an authorized representative of the issuing insurance company or, at the discretion of PGE, in lieu thereof, a certificate in a form satisfactory to PGE certifying the issuance of such insurance. If Seller fails to provide PGE with copies of such currently effective insurance policies or certificates of insurance, PGE at its sole discretion and without limitation of other remedies, may upon ten (10) days advance written notice by certified or registered mail to Seller either withhold payments due Seller until PGE has received such documents, or purchase the satisfactory insurance and offset the cost of obtaining such insurance from subsequent power purchase payments under this Agreement.

## SECTION 12: FORCE MAJEURE

12.1. As used in this Agreement, "Force Majeure" or "an event of Force Majeure" means any cause beyond the reasonable control of the Seller or of PGE which, despite the exercise of due diligence, such Party is unable to prevent or overcome. By way of example, Force Majeure may include but is not limited to acts of God, fire, flood, storms, wars, hostilities, civil strife, strikes, and other labor disturbances, earthquakes, fires, lightning, epidemics, sabotage, restraint by court order or other delay or failure in the performance as a result of any action or inaction on behalf of a public authority which by the exercise of reasonable foresight such Party could not reasonably have been expected to avoid and by the exercise of due diligence, it shall be unable to overcome, subject, in each case, to the requirements of the first sentence of this paragraph. Force Majeure, however, specifically excludes the cost or availability of resources to operate the Facility, changes in market conditions that affect

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the price of energy or transmission, wind or water droughts, and obligations for the payment of money when due.

12.2. If either Party is rendered wholly or in part unable to perform its obligation under this Agreement because of an event of Force Majeure, that Party shall be excused from whatever performance is affected by the event of Force Majeure to the extent and for the duration of the Force Majeure, after which such Party shall recommence performance of such obligation, provided that:

12.2.1. the non-performing Party, shall, promptly, but in any case within one (1) week after the occurrence of the Force Majeure, give the other Party written notice describing the particulars of the occurrence; and

12.2.2. the suspension of performance shall be of no greater scope and of no longer duration than is required by the Force Majeure; and

12.2.3. the non-performing Party uses its best efforts to remedy its inability to perform its obligations under this Agreement.

12.3. No obligations of either Party which arose before the Force Majeure causing the suspension of performance shall be excused as a result of the Force Majeure.

12.4. Neither Party shall be required to settle any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to the Party's best interests.

### SECTION 13: SEVERAL OBLIGATIONS

Nothing contained in this Agreement shall ever be construed to create an association, trust, partnership or joint venture or to impose a trust or partnership duty, obligation or liability between the Parties. If Seller includes two or more parties, each such party shall be jointly and severally liable for Seller's obligations under this Agreement.

### SECTION 14: CHOICE OF LAW

This Agreement shall be interpreted and enforced in accordance with the laws of the state of Oregon, excluding any choice of law rules which may direct the application of the laws of another jurisdiction.

### SECTION 15: PARTIAL INVALIDITY AND PURPA REPEAL

It is not the intention of the Parties to violate any laws governing the subject matter of this Agreement. If any of the terms of the Agreement are finally held or determined to be invalid, illegal or void as being contrary to any applicable law or public policy, all other terms of the Agreement shall remain in effect. If any terms are finally held or determined to be invalid, illegal or void, the Parties shall enter into negotiations

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concerning the terms affected by such decision for the purpose of achieving conformity with requirements of any applicable law and the intent of the Parties to this Agreement.

In the event the Public Utility Regulatory Policies Act (PURPA) is repealed, this Agreement shall not terminate prior to the Termination Date, unless such termination is mandated by state or federal law.

#### SECTION 16: WAIVER

Any waiver at any time by either Party of its rights with respect to a default under this Agreement or with respect to any other matters arising in connection with this Agreement must be in writing, and such waiver shall not be deemed a waiver with respect to any subsequent default or other matter.

#### SECTION 17: GOVERNMENTAL JURISDICTION AND AUTHORIZATIONS

This Agreement is subject to the jurisdiction of those governmental agencies having control over either Party or this Agreement. Seller shall at all times maintain in effect all local, state and federal licenses, permits and other approvals as then may be required by law for the construction, operation and maintenance of the Facility, and shall provide upon request copies of the same to PGE.

#### SECTION 18: SUCCESSORS AND ASSIGNS

This Agreement and all of the terms hereof shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties. No assignment hereof by either Party shall become effective without the written consent of the other Party being first obtained and such consent shall not be unreasonably withheld. Notwithstanding the foregoing, either Party may assign this Agreement without the other Party's consent as part of (a) a sale of all or substantially all of the assigning Party's assets, or (b) a merger, consolidation or other reorganization of the assigning Party.

#### SECTION 19: ENTIRE AGREEMENT

19.1. This Agreement supersedes all prior agreements, proposals, representations, negotiations, discussions or letters, whether oral or in writing, regarding PGE's purchase of Net Output from the Facility. No modification of this Agreement shall be effective unless it is in writing and signed by both Parties.

19.2. By executing this Agreement, Seller releases PGE from any third party claims related to the Facility, known or unknown, which may have arisen prior to the Effective Date.

#### SECTION 20: NOTICES

20.1. All notices except as otherwise provided in this Agreement shall be in writing, shall be directed as follows and shall be considered delivered if delivered in

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person or when deposited in the U.S. Mail, postage prepaid by certified or registered mail and return receipt requested:

To Seller: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

with a copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To PGE:               Contracts Manager  
                          QF Contracts, 3WTC0306  
                          PGE - 121 SW Salmon St.  
                          Portland, Oregon 97204

20.2 The Parties may change the person to whom such notices are addressed, or their addresses, by providing written notices thereof in accordance with this Section 20.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in their respective names as of the Effective Date.

PGE

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
(Name Seller)

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

EXHIBIT A  
DESCRIPTION OF SELLER'S FACILITY

**[Seller to Complete]**

**[Sellers may include reasonable expected monthly Net Output for purposes of Section 1.35 (Start-Up Lost Energy Value). Amounts may vary by month and shall be assumed repeated for each Contract Year, unless amounts for each Contract Year of this Agreement are set forth in this Exhibit A. Such amounts, if provided, shall exceed zero, and shall be established in accordance with Prudent Electrical Practices and documentation supporting such a determination shall be provided to PGE upon execution of this Agreement. Such documentation shall be commercially reasonable, and may include, but is not limited to, documents used in financing the project, and data on output of similar projects operated by seller, PGE or others.]**

EXHIBIT B  
REQUIRED FACILITY DOCUMENTS

**[Seller list all permits and authorizations required for this project]**

Sellers Generation Interconnection Agreement

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**EXHIBIT C  
START-UP TESTING**

**[Seller identify appropriate tests]**

Required factory testing includes such checks and tests necessary to determine that the equipment systems and subsystems have been properly manufactured and installed, function properly, and are in a condition to permit safe and efficient start-up of the Facility, which may include but are not limited to (as applicable):

1. Pressure tests of all steam system equipment;
2. Calibration of all pressure, level, flow, temperature and monitoring instruments;
3. Operating tests of all valves, operators, motor starters and motor;
4. Alarms, signals, and fail-safe or system shutdown control tests;
5. Insulation resistance and point-to-point continuity tests;
6. Bench tests of all protective devices;
7. Tests required by manufacturer of equipment; and
8. Complete pre-parallel checks with PGE.

Required start-up test are those checks and tests necessary to determine that all features and equipment, systems, and subsystems have been properly designed, manufactured, installed and adjusted, function properly, and are capable of operating simultaneously in such condition that the Facility is capable of continuous delivery into PGE's electrical system, which may include but are not limited to (as applicable):

1. Turbine/generator mechanical runs including shaft, vibration, and bearing temperature measurements;
2. Running tests to establish tolerances and inspections for final adjustment of bearings, shaft run-outs;
3. Brake tests;
4. Energization of transformers;
5. Synchronizing tests (manual and auto);
6. Stator windings dielectric test;
7. Armature and field windings resistance tests;
8. Load rejection tests in incremental stages from 5, 25, 50, 75 and 100 percent load;
9. Heat runs;
10. Tests required by manufacturer of equipment;
11. Excitation and voltage regulation operation tests;
12. Open circuit and short circuit; saturation tests;
13. Governor system steady state stability test;
14. Phase angle and magnitude of all PT and CT secondary voltages and currents to protective relays, indicating instruments and metering;
15. Auto stop/start sequence;
16. Level control system tests; and
17. Completion of all state and federal environmental testing requirements.



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**EXHIBIT D  
SCHEDULE**

**[Attach currently in-effect Schedule 201]**

**UM 1931 NewSun Parties Exhibit 105**

October 19, 2015, Email from  
Jake Stephens to Bruce True

Message

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**From:** Jake Stephens [jake@jakestephens.com]  
**Sent:** 10/19/2015 2:33:22 PM  
**To:** Bruce True [bruce.true@pgn.com]  
**Subject:** Wasco Solar I  
**Attachments:** Form 556 - Wasco Solar I - 2015.10.19 Filed & Accepted by FERC.pdf; Exhibit D - PGE Sched\_201 less than 10 MW (Effective 2015.09.23).pdf; Schedule 201 RENEWABLE Off System Variable PPA\_Effective\_09.23.15 - WASCO SOLAR I v1.doc

Dear Bruce,

As regards the planned 10 MW QF "Wasco Solar I", owned by Wasco Solar I LLC, and planned for construction in Wasco County, OR by end of calendar year 2019 (pending PPA's Effective Date), please find attached:

- 1) Form 556, as filed with FERC.
- 2) The PGE Schedule 201 Standard Renewable Off-System Variable Power Purchase Agreement for the facility, completed for the Facility and which Agreement Wasco Solar I LLC considers to be complete and acceptable as presented.

Please let me know if you have any questions. I think it should be pretty straightforward. I put a couple brief comments in there for clarification's sake. The interconnection may change from initially being Wasco Coop to later a direct BPA connection -- and I think the phrasing I chose when specifying the interconnecting utility should cover that.

I appreciate your assistance and look forward to the formal execution of this agreement by PGE. I presume that if the document is signed earlier or later by PGE that the Effective Date will be updated accordingly.

Best regards,

Jake Stephens  
520-981-7303

**UM 1931 NewSun Parties Exhibit 106**

Attachment to Email in Exhibit 105:  
Wasco Solar I LLC PPA

Standard Renewable Off-System Variable Power Purchase Agreement  
Form Effective September 23, 2015**STANDARD RENEWABLE OFF-SYSTEM VARIABLE POWER PURCHASE  
AGREEMENT**

THIS AGREEMENT, entered into this 15th day, November 2015, is between WASCO SOLAR I LLC ("Seller") and Portland General Electric Company ("PGE") (hereinafter each a "Party" or collectively, "Parties").

**RECITALS**

Seller intends to construct, own, operate and maintain a photovoltaics-based solar generation facility for the generation of electric power located in \_\_\_\_\_ Wasco County, Oregon with a Nameplate Capacity Rating of 10,000 kilowatt-AC ("kW"), as further described in Exhibit A ("Facility"); and

Seller intends to operate the Facility as a "Qualifying Facility," as such term is defined in Section 3.1.3, below.

Seller shall sell and PGE shall purchase the entire Net Output, as such term is defined in Section 1.21, below, from the Facility in accordance with the terms and conditions of this Agreement.

**AGREEMENT**

NOW, THEREFORE, the Parties mutually agree as follows:

**SECTION 1: DEFINITIONS**

When used in this Agreement, the following terms shall have the following meanings:

1.1. "As-built Supplement" means the supplement to Exhibit A provided by Seller in accordance with Section 4.3 following completion of construction of the Facility, describing the Facility as actually built.

1.2. "Base Hours" is defined as the total number of hours in each Contract Year (8,760 or 8,784 for leap year)

1.3. "Billing Period" means from the start of the first day of each calendar month to the end of the last day of each calendar month.

1.4. "Cash Escrow" means an agreement by two parties to place money into the custody of a third party for delivery to a grantee only after the fulfillment of the conditions specified.

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1.5. "Commercial Operation Date" means the date that the Facility is deemed by PGE to be fully operational and reliable. PGE may, at its discretion require, among other things, that all of the following events have occurred:

1.5.1. (facilities with nameplate under 500 kW exempt from following requirement) PGE has received a certificate addressed to PGE from a Licensed Professional Engineer ("LPE") acceptable to PGE in its reasonable judgment stating that the Facility is able to generate electric power reliably in accordance with the terms and conditions of this Agreement (certifications required under this Section 1.5 can be provided by one or more LPEs);

1.5.2. Start-Up Testing of the Facility has been completed in accordance with Section 1.36;

1.5.3. (facilities with nameplate under 500 kW exempt from following requirement) After PGE has received notice of completion of Start-Up Testing, PGE has received a certificate addressed to PGE from an LPE stating that the Facility has operated for testing purposes under this Agreement and was continuously mechanically available for operation for a minimum of 120 hours. The Facility must provide ten (10) working days written notice to PGE prior to the start of the initial testing period. If the mechanical availability of the Facility is interrupted during this initial testing period or any subsequent testing period, the Facility shall promptly start a new Test Period and provide PGE forty-eight (48) hours written notice prior to the start of such testing period;

1.5.4. (facilities with nameplate under 500 kW exempt from following requirement) PGE has received a certificate addressed to PGE from an LPE stating that all required interconnection facilities have been constructed and all required interconnection tests have been completed;

1.5.5. (facilities with nameplate under 500 kW exempt from following requirement) PGE has received a certificate addressed to PGE from an LPE stating that Seller has obtained all Required Facility Documents and, if requested by PGE in writing, has provided copies of any or all such requested Required Facility Documents;

1.5.6. PGE has received a copy of the executed Generation Interconnection and Transmission Agreements.

1.6. "Contract Price" means the applicable price, including on-peak and off-peak prices, as specified in the Schedule.

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.

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1.9. "Environmental Attributes" shall mean any and all claims, credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, resulting from the avoidance of the emission of any gas, chemical or other substance to the air, soil or water. Environmental Attributes include but are not limited to: (1) any avoided emissions of pollutants to the air, soil or water such as (subject to the foregoing) sulfur oxides (SO<sub>x</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO), and other pollutants; and (2) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), and other greenhouse gasses (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere.

1.10. "Facility" has the meaning set forth in the Recitals.

1.11. "Generation Interconnection Agreement" means an agreement governing the interconnection of the Facility with (as may be applicable during the term) either Bonneville Power Administration's or Wasco Electric Cooperative's electric system.

1.12. "Generation Unit" means each separate electrical generator that contributes toward Nameplate Capacity Rating included in Exhibit A. For solar facilities, a generating unit is a complete solar electrical generation system within the Facility that is able to generate and deliver energy to the Point of Delivery independent of other Generation Units within the same Facility.

1.13. "Letter of Credit" means an engagement by a bank or other person made at the request of a customer that the issuer will honor drafts or other demands for payment upon compliance with the conditions specified in the letter of credit.

1.14. "Licensed Professional Engineer" or "LPE" means a person who is licensed to practice engineering in the state where the Facility is located, who has no economic relationship, association, or nexus with the Seller, and who is not a representative of a consulting engineer, contractor, designer or other individual involved in the development of the Facility, or of a manufacturer or supplier of any equipment installed in the Facility. Such Licensed Professional Engineer shall be licensed in an appropriate engineering discipline for the required certification being made and be acceptable to PGE in its reasonable judgment.

1.15. "Lost Energy" means "Lost Energy" means ((the Guarantee of Mechanical Availability as set forth in 3.1.10 / MAP) X Net Output for a Calendar Year) – Net Output for the Calendar Year. Lost Energy shall be zero unless the result of the calculation in this subsection results in a positive number.

1.16. "Lost Energy Value" means Lost Energy X the excess of the annual time-weighted average Mid-C Index Price for On Peak Hours and Off Peak Hours over the time weighted average Contract Price for On Peak and Off Peak Hours for the corresponding time period (provided that such excess shall not exceed the Contract Price and further provided that Lost Energy is deemed to be zero prior to reaching the Commercial Operation Date) plus any reasonable costs incurred by PGE to purchase

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replacement power and/or transmission to deliver the replacement power to the Point of Delivery (For Start-Up Lost Energy Value See 1.35).

1.17. "Mechanical Availability Percentage" or "MAP" shall mean that percentage for any Contract Year for the Facility calculated in accordance with the following formula:

$$\text{MAP} = 100 \times (\text{Operational Hours}) / (\text{Base Hours} \times \text{Number of Units})$$

1.18. "Mid-C Index Price" means the Day Ahead Intercontinental Exchange ("ICE") index price for the bilateral OTC market for energy at the Mid-C Physical for Average On Peak Power and Average Off Peak Power found on the following website: <https://www.theice.com/products/OTC/Physical-Energy/Electricity>. In the event ICE no longer publishes this index, PGE and the Seller agree to select an alternative successor index representative of the Mid-C trading hub.

1.19. "Nameplate Capacity Rating" means the maximum capacity of the Facility as stated by the manufacturer, expressed in kW, which shall not exceed 10,000 kW.

1.20. "Net Dependable Capacity" means the maximum capacity the Facility can sustain over a specified period modified for seasonal limitations, if any, and reduced by the capacity required for station service or auxiliaries.

1.21. "Net Output" means all energy expressed in kWhs produced by the Facility, less station and other onsite use and less transformation and transmission losses.

1.22. "Number of Units" means the number of Generation Units in the Facility as specified in Exhibit A.

1.23. "Off-Peak Hours" has the meaning provided in the Schedule.

1.24. "On-Peak Hours" has the meaning provided in the Schedule.

1.25. "Operational Hours" for the Facility means the total across all Generation Units of the number of hours each of the Facility's Generation Units are potentially capable of producing power at its Nameplate Capacity Rating regardless of actual weather conditions, season and the time of day or night, without any mechanical operating constraint or restriction, and potentially capable of delivering such power to the Point of Delivery in a Contract Year. During up to, but not more than, two hundred (200) hours of Planned Maintenance during a Contract Year for each Generation Unit and hours during which an event of Force Majeure exists, a Generation Unit shall be considered potentially capable of delivering such power to the Point of Delivery. For example, in the absence of any Planned Maintenance beyond 200 hours on any Generation Unit or Event of Force Majeure, the Operational Hours for a wind farm with five (5) separate two (2) MW turbines would be 43,800 for a Contract Year.



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1.26. "Planned Maintenance" means outages scheduled ninety (90) days in advance, with PGE's prior written consent, which shall not be unreasonably withheld.

1.27. "Point of Delivery" means the PGE system.

1.28. "Pre-Commercial Operation Date Minimum Net Output" shall mean, unless such MWh is specifically set forth by Seller in Exhibit A, an amount in MWh equal to seventy-five percent (75%) of Nameplate Capacity Rating X thirty percent (30%) for a wind or other renewable QF or fifty percent (50%) for a solar QF X (whole months since the date selected in Section 2.2.1 / 12) X (8760 hours – 200 hours (assumed Planned Maintenance)) for each month. If Seller has provided specific expected monthly Net Output amounts for the Facility in Exhibit A, "Pre-Commercial Operation Date Minimum Net Output" shall mean seventy-five percent (75%) X expected net output set forth in Exhibit A for each month.

1.29. "Prime Rate" means the publicly announced prime rate or reference rate for commercial loans to large businesses with the highest credit rating in the United States in effect from time to time quoted by Citibank, N.A. If a Citibank, N.A. prime rate is not available, the applicable Prime Rate shall be the announced prime rate or reference rate for commercial loans in effect from time to time quoted by a bank with \$10 billion or more in assets in New York City, N.Y., selected by the Party to whom interest based on the prime rate is being paid.

1.30. "Prudent Electrical Practices" means those practices, methods, standards and acts engaged in or approved by a significant portion of the electric power industry in the Western Electricity Coordinating Council that at the relevant time period, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with good business practices, reliability, economy, safety and expedition, and which practices, methods, standards and acts reflect due regard for operation and maintenance standards recommended by applicable equipment suppliers and manufacturers, operational limits, and all applicable laws and regulations. Prudent Electrical Practices are not intended to be limited to the optimum practice, method, standard or act to the exclusion of all others, but rather to those practices, methods and acts generally acceptable or approved by a significant portion of the electric power generation industry in the relevant region, during the relevant period, as described in the immediate preceding sentence.

1.31. "Required Facility Documents" means all licenses, permits, authorizations, and agreements necessary for construction, operation, interconnection, and maintenance of the Facility including without limitation those set forth in Exhibit B.

1.32. "RPS Attributes" means all attributes related to the Net Output generated by the Facility that are required in order to provide PGE with "qualifying electricity," as that term is defined in Oregon's Renewable Portfolio Standard Act, Ore. Rev. Stat. 469A.010, in effect at the time of execution of this Agreement. RPS Attributes do not include Environmental Attributes that are greenhouse gas offsets from methane capture

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not associated with the generation of electricity and not needed to ensure that there are zero net emissions associated with the generation of electricity.

1.33. "Schedule" shall mean PGE Schedule 201 filed with the Oregon Public Utilities Commission ("Commission") in effect on the Effective Date of this Agreement and attached hereto as Exhibit D, the terms of which are hereby incorporated by reference.

1.34. "Senior Lien" means a prior lien which has precedence as to the property under the lien over another lien or encumbrance

1.35. "Start-Up Lost Energy Value" means for the period after the date specified in Section 2.2.2 but prior to achievement of the Commercial Operation Date: zero, unless the Net Output is less than the pro-rated Pre-Commercial Operation Date Minimum Net Output for the applicable delay period, and the time-weighted average of the delay period's Mid-C Index Price for On-Peak Hours and Off-Peak Hours is greater than the time-weighted average of the delay period's Contract Price for On-Peak Hours and Off-Peak Hours, in which case Startup Lost Energy Value equals: (pro-rated Pre-Commercial Operation Date Minimum Net Output for the applicable period - Net Output for the applicable period) X (the lower of: the time-weighted average of the Contract Price for On-Peak hours and Off-Peak Hours during the applicable period; or (the time-weighted average of the Mid-C Index Price for On-Peak Hours and Off-Peak Hours during the applicable period - the time-weighted average of the Contract Price for On-Peak Hours and Off-Peak Hours during the applicable period)). The time-weighted average in this section will reflect the relative proportions of On-Peak Hours and Off-Peak Hours in each day.

1.36. "Start-Up Testing" means the completion of applicable required factory and start-up tests as set forth in Exhibit C.

1.37. "Step-in Rights" means the right of one party to assume an intervening position to satisfy all terms of an agreement in the event the other party fails to perform its obligations under the agreement.

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

1.39. "Test Period" shall mean a period of sixty (60) days or a commercially reasonable period determined by the Seller.

1.40. "Transmission Agreement" means an agreement executed by the Seller and the Transmission Provider(s) for Transmission Services.

1.41. "Transmission Curtailment" means a limitation on Seller's ability to deliver any portion of the scheduled energy to PGE due to the unavailability of transmission to the Point of Delivery (for any reason other than Force Majeure).

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1.42. "Transmission Curtailment Replacement Energy Cost" means the greater of zero or the amount calculated as: ((Mid-C Index Price – Contract Price) X curtailed energy) for periods of Transmission Curtailment.

1.43. "Transmission Provider(s)" means the signatory (other than the Seller) to the Transmission Agreement.

1.44. "Transmission Services" means any and all services (including but not limited to ancillary services and control area services) required for the firm transmission and delivery of Energy from the Facility to the Point of Delivery for a term not less than the Term of this Agreement.

References to Recitals, Sections, and Exhibits are to be the recitals, sections and exhibits of this Agreement.

## SECTION 2: TERM; COMMERCIAL OPERATION DATE

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

2.2. Time is of the essence of this Agreement, and Seller's ability to meet certain requirements prior to the Commercial Operation Date and to complete all requirements to establish the Commercial Operation Date is critically important. Therefore,

2.2.1. By thirty-five (35) months after the Effective Date Seller shall begin initial deliveries of Net Output; and

2.2.2. By the third calendar-year anniversary of the Effective Date, *subject to Section 2.2.3 below*, Seller shall have completed all requirements under Section 1.5 and shall have established the Commercial Operation Date.

2.2.3. Unless the Parties agree in writing that a later Commercial Operation Date is reasonable and necessary, the Commercial Operation Date shall be no more than three (3) years from the Effective Date. PGE will not unreasonably withhold agreement to a Commercial Operation Date that is more than three (3) years from the Effective date if the Seller has demonstrated that a later Commercial Operation Date is reasonable and necessary.

2.3. This Agreement shall terminate on the completion of the last day of the twentieth contract year, or the date the Agreement is terminated in accordance with Section 8 or 11, whichever is earlier ("Termination Date").

## SECTION 3: REPRESENTATIONS AND WARRANTIES

3.1. Seller and PGE represent, covenant, and warrant as follows:

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3.1.1. Seller warrants it is a Limited Liability Corporation duly organized under the laws of Delaware.

3.1.2. Seller warrants that the execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on Seller or any valid order of any court, or any regulatory agency or other body having authority to which Seller is subject.

3.1.3. Seller warrants that the Facility is and shall for the Term of this Agreement continue to be a "Qualifying Facility" ("QF") as that term is defined in the version of 18 C.F.R. Part 292 in effect on the Effective Date. Seller has provided the appropriate QF certification, which may include a Federal Energy Regulatory Commission ("FERC") self-certification to PGE prior to PGE's execution of this Agreement. At any time during the Term of this Agreement, PGE may require Seller to provide PGE with evidence satisfactory to PGE in its reasonable discretion that the Facility continues to qualify as a QF under all applicable requirements.

3.1.4. Seller warrants that it has not within the past two (2) years been the debtor in any bankruptcy proceeding, and Seller is and will continue to be for the Term of this Agreement current on all of its financial obligations.

3.1.5. Seller warrants that during the Term of this Agreement, all of Seller's right, title and interest in and to the Facility shall be free and clear of all liens and encumbrances other than liens and encumbrances arising from third-party financing of the Facility other than workers', mechanics', suppliers' or similar liens, or tax liens, in each case arising in the ordinary course of business that are either not yet due and payable or that have been released by means of a performance bond acceptable to PGE posted within eight (8) calendar days of the commencement of any proceeding to foreclose the lien.

3.1.6. Seller warrants that it will design and operate the Facility consistent with Prudent Electrical Practices.

3.1.7. Seller warrants that the Facility has a Nameplate Capacity Rating not greater than 10,000 kW.

3.1.8. Seller warrants that Net Dependable Capacity of the Facility is \_(during periods of peak local solar resource availability)\_9,920\_\_\_ kW.

3.1.9. Seller estimates that the average annual Net Output to be delivered by the Facility to PGE is 18,500,000 kilowatt-hours ("kWh"), which amount PGE will include in its resource planning.

3.1.10. Seller represents and warrants that the Facility shall achieve the following Mechanical Availability Percentages ("Guarantee of Mechanical Availability"):

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3.1.10.1. Ninety percent (90%) beginning in the first Contract Year and extending through the Term for the Facility, if the Facility was operational and sold electricity to PGE or another buyer prior to the Effective Date of this Agreement; or

3.1.10.2. Ninety percent (90%) beginning in Contract Year three and extending throughout the remainder of the Term.

3.1.10.3. Annually, within 90 days of the end of each Contract Year, Seller shall send to PGE a detailed written report demonstrating and providing evidence of the actual MAP for the previous Contract Year.

3.1.10.4. Seller's failure to meet the Guarantee of Mechanical Availability in a Calendar Year shall result in damages payable to PGE by Seller equal to the Lost Energy Value. PGE shall bill Seller for such damages in accordance with Section 7.

3.1.11. Seller will deliver from the Facility to PGE at the Point of Delivery Net Output not to exceed a maximum of 27,000,000 kWh of Net Output during each Contract Year ("Maximum Net Output"). The cost of delivering energy from the Facility to PGE is the sole responsibility of the Seller.

3.1.12. By the Commercial Operation Date, Seller has entered into a Generation Interconnection Agreement for a term not less than the term of this Agreement.

3.1.13. PGE warrants that it has not within the past two (2) years been the debtor in any bankruptcy proceeding, and PGE is and will continue to be for the Term of this Agreement current on all of its financial obligations.

3.1.14. Seller warrants that the Facility satisfies the eligibility requirements specified in the Definition of a Small Cogeneration Facility or Small Power Production Facility Eligible to Receive the Standard Renewable Rates and Standard Renewable PPA in PGE's Schedule and Seller will not make any changes in its ownership, control or management during the term of this Agreement that would cause it to not be in compliance with the Definition of a Small Cogeneration Facility or Small Power Production Facility Eligible to Receive the Standard Renewable Rates and Standard Renewable PPA in PGE's Schedule. Seller will provide, upon request by PGE not more frequently than every 36 months, such documentation and information as may be reasonably required to establish Seller's continued compliance with such Definition. PGE agrees to take reasonable steps to maintain the confidentiality of any portion of the above described documentation and information that the Seller identifies as confidential except PGE will provide all such confidential information to the Commission upon the Commission's request.

3.1.15. Seller warrants that it will comply with all requirements necessary for all Transferred RECs (as defined in Section 4.5) associated with Net Output to be issued, monitored, accounted for, and transferred by and through the Western Renewable Energy Generation System consistent with the provisions of OAR 330-160-0005

through OAR 330-160-0050. PGE warrants that it will reasonably cooperate in Seller's efforts to meet such requirements, including, for example serving as the qualified reporting entity for the Facility if the Facility is located in PGE's balancing authority.

#### 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.

4.3. Upon completion of construction of the Facility, Seller shall provide PGE an As-built Supplement to specify the actual Facility as built. Seller shall not increase the Nameplate Capacity Rating above that specified in Exhibit A or increase the ability of the Facility to deliver Net Output in quantities in excess of the Net Dependable Capacity, or the Maximum Net Output as described in Section 3.1.11 above, through any means including, but not limited to, replacement, modification, or addition of existing equipment, except with prior written notice to PGE. In the event Seller increases the Nameplate Capacity Rating of the Facility to no more than 10,000 kW pursuant to this section, PGE shall pay the Contract Price for the additional delivered Net Output. In the event Seller increases the Nameplate Capacity Rating to greater than 10,000 kW, then Seller shall be required to enter into a new power purchase agreement for all delivered Net Output proportionally related to the increase of Nameplate Capacity above 10,000 kW.

4.4. Seller shall provide preschedules for all deliveries of energy hereunder, including identification of receiving and generating control areas, by 9:00:00 PPT on the last business day prior to the scheduled date of delivery. All energy shall be scheduled according to the most current North America Energy Reliability Corporation (NERC) and Western Electricity Coordinating Council (WECC) scheduling rules and practices. The Parties' respective representatives shall maintain hourly real-time schedule coordination; provided, however, that in the absence of such coordination, the hourly schedule established by the exchange of preschedules shall be considered final. Seller and PGE shall maintain records of hourly energy schedules for accounting and operating purposes. The final E-Tag shall be the controlling evidence of the Parties' schedule. All energy shall be prescheduled according to customary WECC scheduling practices. Seller shall make commercially reasonable efforts to schedule in any hour an amount equal to its expected Net Output for such hour. Seller shall maintain a minimum of two years records of Net Output and shall agree to allow PGE to have access to such records and to imbalance information kept by the Transmission Provider.

4.5. During the Renewable Resource Deficiency Period, Seller shall provide and PGE shall acquire the RPS Attributes for the Contract Years as specified in the Schedule and Seller shall retain ownership of all other Environmental Attributes (if any). During the Renewable Resource Sufficiency Period, and any period within the Term of

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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. With respect to Environmental Attributes not transferred to PGE under this Agreement ("Seller-Retained Environmental Attributes") Seller may report under §1605(b) of the Energy Policy Act of 1992 or under any applicable program as belonging to Seller any of the Seller-Retained Environmental Attributes, and PGE shall not report under such program that such Seller-Retained Environmental Attributes belong to it. With respect to RPS Attributes transferred to PGE under this Agreement ("Transferred RECs"), PGE may report under §1605(b) of the Energy Policy Act of 1992 or under any applicable program as belonging to it any of the Transferred RECs, and Seller shall not report under such program that such Transferred RECs belong to it.

#### SECTION 5: OPERATION AND CONTROL

5.1. Seller shall operate and maintain the Facility in a safe manner in accordance with the Generation Interconnection Agreement, and Prudent Electrical Practices. PGE shall have no obligation to purchase Net Output from the Facility to the extent the interconnection of the Facility to PGE's electric system is disconnected, suspended or interrupted, in whole or in part, pursuant to the Generation Interconnection Agreement, or to the extent generation curtailment is required as a result of Seller's noncompliance with the Generation Interconnection Agreement. Seller is solely responsible for the operation and maintenance of the Facility. PGE shall not, by reason of its decision to inspect or not to inspect the Facility, or by any action or inaction taken with respect to any such inspection, assume or be held responsible for any liability or occurrence arising from the operation and maintenance by Seller of the Facility.

5.2. Seller agrees to provide sixty (60) days advance written notice of any scheduled maintenance that would require shut down of the Facility for any period of time.

5.3. If the Facility ceases operation for unscheduled maintenance, Seller immediately shall notify PGE of the necessity of such unscheduled maintenance, the time when such maintenance has occurred or will occur, and the anticipated duration of such maintenance. Seller shall take all reasonable measures and exercise its best efforts to avoid unscheduled maintenance, to limit the duration of such unscheduled maintenance, and to perform unscheduled maintenance during Off-Peak hours.

#### SECTION 6: CREDITWORTHINESS

In the event Seller: a) is unable to represent or warrant as required by Section 3 that it has not been a debtor in any bankruptcy proceeding within the past two (2) years; b) becomes such a debtor during the Term; or c) is not or will not be current on all its financial obligations, Seller shall immediately notify PGE and shall promptly (and in no less than 10 days after notifying PGE) provide default security in an amount reasonably

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acceptable to PGE in one of the following forms: Senior Lien, Step-in Rights, a Cash Escrow or Letter of Credit. The amount of such default security that shall be acceptable to PGE shall be equal to: (annual On Peak Hours) X (On Peak Price – Off Peak Price) X (Net Dependable Capacity). Notwithstanding the foregoing, in the event Seller is not current on construction related financial obligations, Seller shall notify PGE of such delinquency and PGE may, in its discretion, grant an exception to the requirements to provide default security if the QF has negotiated financial arrangements with the construction loan lender that mitigate Seller's financial risk to PGE.

#### SECTION 7: BILLINGS, COMPUTATIONS AND PAYMENTS

7.1. On or before the thirtieth (30<sup>th</sup>) day following the end of each Billing Period, PGE shall send to Seller payment for Seller's deliveries of Net Output to PGE, together with computations supporting such payment. PGE may offset any such payment to reflect amounts owing from Seller to PGE pursuant to this Agreement and any other agreement related to the Facility between the Parties or otherwise. On or before the thirtieth (30<sup>th</sup>) day following the end of each Contract Year, PGE shall bill for any Lost Energy Value accrued pursuant to this Agreement.

7.2. Any amounts owing after the due date thereof shall bear interest at the Prime Rate plus two percent (2%) from the date due until paid; provided, however, that the interest rate shall at no time exceed the maximum rate allowed by applicable law.

#### SECTION 8: DEFAULT, REMEDIES AND TERMINATION

8.1. In addition to any other event that may constitute a default under this Agreement, the following events shall constitute defaults under this Agreement:

8.1.1. Breach by Seller or PGE of a representation or warranty, except for Section 3.1.4, set forth in this Agreement.

8.1.2. Seller's failure to provide default security, if required by Section 6, prior to delivery of any Net Output to PGE or within 10 days of notice.

8.1.3. Seller's failure to meet the Guarantee of Mechanical Availability established in Section 3.1.10 for two consecutive Contract Years or Seller's failure to provide any written report required by that section.

8.1.4. If Seller is no longer a Qualifying Facility.

8.1.5. Failure of PGE to make any required payment pursuant to Section 7.1.

8.1.6. Seller's failure to meet the Commercial Operation Date.

8.2. In the event of a default under Section 8.1.6, PGE may provide Seller with written notice of default. Seller shall have one year in which to cure the default during which time the Seller shall pay PGE damages equal to the Lost Energy Value. If Seller



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is unable to cure the default, PGE may immediately terminate this Agreement as provided in Section 8.3. PGE's resource sufficiency/deficiency position shall have no bearing on PGE's right to terminate the Agreement under this Section 8.2.

8.3. In the event of a default hereunder, except as otherwise provided in this Agreement, the non-defaulting party may immediately terminate this Agreement at its sole discretion by delivering written notice to the other Party. In addition, the non-defaulting Party may pursue any and all legal or equitable remedies provided by law or pursuant to this Agreement including damages related to the need to procure replacement power. A termination hereunder shall be effective upon the date of delivery of notice, as provided in Section 20. The rights provided in this Section 8 are cumulative such that the exercise of one or more rights shall not constitute a waiver of any other rights.

8.4. If this Agreement is terminated as provided in this Section 8, PGE shall make all payments, within thirty (30) days, that, pursuant to the terms of this Agreement, are owed to Seller as of the time of receipt of notice of default. PGE shall not be required to pay Seller for any Net Output delivered by Seller after such notice of default.

8.5. In the event PGE terminates this Agreement pursuant to this Section 8, and Seller wishes to again sell Net Output to PGE following such termination, PGE in its sole discretion may require that Seller shall do so subject to the terms of this Agreement, including but not limited to the Contract Price until the Term of this Agreement (as set forth in Section 2.3) would have run in due course had the Agreement remained in effect. At such time Seller and PGE agree to execute a written document ratifying the terms of this Agreement.

8.6. Sections 8.1, 8.4, 8.5, 10, and 19.2 shall survive termination of this Agreement.

#### SECTION 9: TRANSMISSION CURTAILMENTS

9.1. Seller shall give PGE notice as soon as reasonably practicable of any Transmission Curtailment that is likely to affect Seller's ability to deliver any portion of energy scheduled pursuant to Section 4.4 of this Agreement.

9.2. If as the result of a Transmission Curtailment, Seller does not deliver any portion of energy (including real-time adjustments), scheduled pursuant to Section 4.4 of this Agreement, Seller shall pay PGE the Transmission Curtailment Replacement Energy Cost for the number of MWh of energy reasonably determined by PGE as the difference between (i) the scheduled energy that would have been delivered to PGE under this Agreement during the period of Transmission Curtailment and (ii) the actual energy, if any, that was delivered to PGE for the period.

## SECTION 10: INDEMNIFICATION AND LIABILITY

10.1. Seller agrees to defend, indemnify and hold harmless PGE, its directors, officers, agents, and representatives against and from any and all loss, claims, actions or suits, including costs and attorney's fees, both at trial and on appeal, resulting from, or arising out of or in any way connected with Seller's delivery of electric power to PGE or with the facilities at or prior to the Point of Delivery, or otherwise arising out of this Agreement, including without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property belonging to PGE, Seller or others, excepting to the extent such loss, claim, action or suit may be caused by the negligence of PGE, its directors, officers, employees, agents or representatives.

10.2. PGE agrees to defend, indemnify and hold harmless Seller, its directors, officers, agents, and representatives against and from any and all loss, claims, actions or suits, including costs and attorney's fees, both at trial and on appeal, resulting from, or arising out of or in any way connected with PGE's receipt of electric power from Seller or with the facilities at or after the Point of Delivery, or otherwise arising out of this Agreement, including without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property belonging to PGE, Seller or others, excepting to the extent such loss, claim, action or suit may be caused by the negligence of Seller, its directors, officers, employees, agents or representatives.

10.3. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a Party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or to the public, nor affect the status of PGE as an independent public utility corporation or Seller as an independent individual or entity.

10.4. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR SPECIAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES, WHETHER ARISING FROM CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.

## SECTION 11: INSURANCE

11.1. Prior to the connection of the Facility to PGE's electric system, provided such Facility has a design capacity of 200 kW or more, Seller shall secure and continuously carry for the Term hereof, with an insurance company or companies rated not lower than "B+" by the A. M. Best Company, insurance policies for bodily injury and property damage liability. Such insurance shall include provisions or endorsements naming PGE, its directors, officers and employees as additional insureds; provisions that such insurance is primary insurance with respect to the interest of PGE and that any insurance or self-insurance maintained by PGE is excess and not contributory insurance with the insurance required hereunder; a cross-liability or severability of

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insurance interest clause; and provisions that such policies shall not be canceled or their limits of liability reduced without thirty (30) days' prior written notice to PGE. Initial limits of liability for all requirements under this section shall be \$1,000,000 million single limit, which limits may be required to be increased or decreased by PGE as PGE determines in its reasonable judgment economic conditions or claims experience may warrant.

11.2. Prior to the connection of the Facility to PGE's electric system, provided such facility has a design capacity of 200 kW or more, Seller shall secure and continuously carry for the Term hereof, in an insurance company or companies rated not lower than "B+" by the A. M. Best Company, insurance acceptable to PGE against property damage or destruction in an amount not less than the cost of replacement of the Facility. Seller promptly shall notify PGE of any loss or damage to the Facility. Unless the Parties agree otherwise, Seller shall repair or replace the damaged or destroyed Facility, or if the facility is destroyed or substantially destroyed, it may terminate this Agreement. Such termination shall be effective upon receipt by PGE of written notice from Seller. Seller shall waive its insurers' rights of subrogation against PGE regarding Facility property losses.

11.3. Prior to the connection of the Facility to PGE's electric system and at all other times such insurance policies are renewed or changed, Seller shall provide PGE with a copy of each insurance policy required under this Section, certified as a true copy by an authorized representative of the issuing insurance company or, at the discretion of PGE, in lieu thereof, a certificate in a form satisfactory to PGE certifying the issuance of such insurance. If Seller fails to provide PGE with copies of such currently effective insurance policies or certificates of insurance, PGE at its sole discretion and without limitation of other remedies, may upon ten (10) days advance written notice by certified or registered mail to Seller either withhold payments due Seller until PGE has received such documents, or purchase the satisfactory insurance and offset the cost of obtaining such insurance from subsequent power purchase payments under this Agreement.

## SECTION 12: FORCE MAJEURE

12.1. As used in this Agreement, "Force Majeure" or "an event of Force Majeure" means any cause beyond the reasonable control of the Seller or of PGE which, despite the exercise of due diligence, such Party is unable to prevent or overcome. By way of example, Force Majeure may include but is not limited to acts of God, fire, flood, storms, wars, hostilities, civil strife, strikes, and other labor disturbances, earthquakes, fires, lightning, epidemics, sabotage, restraint by court order or other delay or failure in the performance as a result of any action or inaction on behalf of a public authority which by the exercise of reasonable foresight such Party could not reasonably have been expected to avoid and by the exercise of due diligence, it shall be unable to overcome, subject, in each case, to the requirements of the first sentence of this paragraph. Force Majeure, however, specifically excludes the cost or availability of resources to operate the Facility, changes in market conditions that affect

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the price of energy or transmission, wind or water droughts, and obligations for the payment of money when due.

12.2. If either Party is rendered wholly or in part unable to perform its obligation under this Agreement because of an event of Force Majeure, that Party shall be excused from whatever performance is affected by the event of Force Majeure to the extent and for the duration of the Force Majeure, after which such Party shall recommence performance of such obligation, provided that:

12.2.1. the non-performing Party, shall, promptly, but in any case within one (1) week after the occurrence of the Force Majeure, give the other Party written notice describing the particulars of the occurrence; and

12.2.2. the suspension of performance shall be of no greater scope and of no longer duration than is required by the Force Majeure; and

12.2.3. the non-performing Party uses its best efforts to remedy its inability to perform its obligations under this Agreement.

12.3. No obligations of either Party which arose before the Force Majeure causing the suspension of performance shall be excused as a result of the Force Majeure.

12.4. Neither Party shall be required to settle any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to the Party's best interests.

### SECTION 13: SEVERAL OBLIGATIONS

Nothing contained in this Agreement shall ever be construed to create an association, trust, partnership or joint venture or to impose a trust or partnership duty, obligation or liability between the Parties. If Seller includes two or more parties, each such party shall be jointly and severally liable for Seller's obligations under this Agreement.

### SECTION 14: CHOICE OF LAW

This Agreement shall be interpreted and enforced in accordance with the laws of the state of Oregon, excluding any choice of law rules which may direct the application of the laws of another jurisdiction.

### SECTION 15: PARTIAL INVALIDITY AND PURPA REPEAL

It is not the intention of the Parties to violate any laws governing the subject matter of this Agreement. If any of the terms of the Agreement are finally held or determined to be invalid, illegal or void as being contrary to any applicable law or public policy, all other terms of the Agreement shall remain in effect. If any terms are finally held or determined to be invalid, illegal or void, the Parties shall enter into negotiations

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concerning the terms affected by such decision for the purpose of achieving conformity with requirements of any applicable law and the intent of the Parties to this Agreement.

In the event the Public Utility Regulatory Policies Act (PURPA) is repealed, this Agreement shall not terminate prior to the Termination Date, unless such termination is mandated by state or federal law.

#### SECTION 16: WAIVER

Any waiver at any time by either Party of its rights with respect to a default under this Agreement or with respect to any other matters arising in connection with this Agreement must be in writing, and such waiver shall not be deemed a waiver with respect to any subsequent default or other matter.

#### SECTION 17: GOVERNMENTAL JURISDICTION AND AUTHORIZATIONS

This Agreement is subject to the jurisdiction of those governmental agencies having control over either Party or this Agreement. Seller shall at all times maintain in effect all local, state and federal licenses, permits and other approvals as then may be required by law for the construction, operation and maintenance of the Facility, and shall provide upon request copies of the same to PGE.

#### SECTION 18: SUCCESSORS AND ASSIGNS

This Agreement and all of the terms hereof shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties. No assignment hereof by either Party shall become effective without the written consent of the other Party being first obtained and such consent shall not be unreasonably withheld. Notwithstanding the foregoing, either Party may assign this Agreement without the other Party's consent as part of (a) a sale of all or substantially all of the assigning Party's assets, or (b) a merger, consolidation or other reorganization of the assigning Party.

#### SECTION 19: ENTIRE AGREEMENT

19.1. This Agreement supersedes all prior agreements, proposals, representations, negotiations, discussions or letters, whether oral or in writing, regarding PGE's purchase of Net Output from the Facility. No modification of this Agreement shall be effective unless it is in writing and signed by both Parties.

19.2. By executing this Agreement, Seller releases PGE from any third party claims related to the Facility, known or unknown, which may have arisen prior to the Effective Date.

#### SECTION 20: NOTICES

20.1. All notices except as otherwise provided in this Agreement shall be in writing, shall be directed as follows and shall be considered delivered if delivered in

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person or when deposited in the U.S. Mail, postage prepaid by certified or registered mail and return receipt requested:

To Seller: Wasco Solar I LLC  
c/o Jacob Stephens  
3033 E Hawthorne St  
Tucson, AZ 85716

with a copy to: Stephane Nguyen  
c/o Reed Smith  
1901 Avenue of the Stars #700  
Los Angeles, CA 90067-6078

To PGE: Contracts Manager  
QF Contracts, 3WTC0306  
PGE - 121 SW Salmon St.  
Portland, Oregon 97204

20.2 The Parties may change the person to whom such notices are addressed, or their addresses, by providing written notices thereof in accordance with this Section 20.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in their respective names as of the Effective Date.

PGE

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

WASCO SOLAR I LLC  
(Name Seller)

By: \_\_\_\_\_  
Name: Jacob Stephens  
Title: Authorized Representative  
Date: \_\_\_\_\_

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**EXHIBIT A  
DESCRIPTION OF SELLER'S FACILITY**

Wasco Solar I is a photovoltaics-based solar generating facility which upon reaching full commercial operations have nameplate capacity of 10 MW-AC net output at the point of interconnection subject to available solar energy input. The facility will consist of the following primary equipment:

1. PV Modules - Commercially-available photovoltaic modules for utility-scale DC energy production. Nominal per module DC production rating of 350W +/-50W-DC. Qty <= [14MM/(module rating)].
2. Inverter AC Generator Units: Commercially-available string inverter (90kW-AC, nominal) convert DC to AC power, collected by AC wiring to switchboard. Each such collected aggregation of inverters shall constitute a single sub-generator for the facility, which once all aggregated shall constitute the entire generator for the facility.
3. Pad-mounted transformers: for each sub-generator shall transform inverter output voltage to plant AC collection voltage (12.47 KV, nominally)
4. Racking systems, commercially-available, will mount the PV Modules and direct them and control their angle to receive light from the sun. Racking systems will be arranged in generally uniform rows on the facility site.
5. Additional interconnection, transformation, switching, storage, metering, communications, tie-line, and meteorological observations facilities as may be required, subject to final interconnection, permitting, and design requirements.

**EXHIBIT B  
REQUIRED FACILITY DOCUMENTS**

1. Seller's Generation Interconnection Agreement
2. Wasco County CUP & Building Permits
3. BPA: Transmission Service Agreement
4. EFSC Site Certificate (if final project footprint > 100 acres)



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5. Additional as may be determined by Seller to be required for facility permitting, construction, and interconnection.

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EXHIBIT C  
START-UP TESTING

**Seller-identified start-up tests**

As part of the start-up of Facility, Seller will perform the following tests, in addition to any further tests deemed required in coordination with EPC contractor (the Facility's manufacturer) and primary supply vendors (PV modules, inverters, transformers) and interconnecting utility. This will include required factory checks and tests necessary to determine that the equipment systems and subsystems have been properly manufactured and installed, function properly, and are in a condition to permit safe and efficient start-up of the Facility, which may include but are not limited to (as applicable). This will include required start-up tests and checks which necessary to determine that all features and equipment, systems, and subsystems have been properly designed, manufactured, installed and adjusted, function properly, and are capable of operating simultaneously in such condition that the Facility is capable of continuous delivery into PGE's electrical system, which may include but are not limited to (as applicable):

1. Validation of mechanical assembly completion for sign-off on EPC vendor warranty of mechanical completion and workmanship, including racking system, wiring (module connections, DC collection, string terminations, inverter connections to collected strings, AC delivery to switchboard and step-up/collection transformers, and AC collection system deliver to interconnection facilities), inverter mounting, and module installation.
2. Electrical performance validation by facility PV string and sub-generator, per insolation input, including:
  - a) DC wiring inputs to inverters
  - b) AC wiring delivery to transformers
3. Inverter Commissioning, per manufacturer specifications, including commissioning report;
4. Facility daily start-up and shut-down automation confirmed;
5. Energization of transformers;
6. Full system performance test;
7. Interconnection facilities: Commissioning of on-site, tie-line, and off-site interconnection facilities (as applicable), including switchyard, substation, breakers, and metering equipment (as applicable), in coordination with interconnecting utility and performing electrical contractor;
8. Cataloguing of installed equipment on-site, including primary equipment serial numbers and manufacturer information for O&M documentation;
9. Complete pre-parallel checks with PGE;
10. Test energy delivery and metering checks.
11. Excitation and voltage regulation operation tests per insolation inputs.
12. Meteorological station commissioning and report;
13. Facility communications equipment commissioning and report; and
14. Other tests as may be required by equipment manufacturers.

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**EXHIBIT D  
SCHEDULE**

**[Attach currently in-effect Schedule 201]**

**UM 1931 NewSun Parties Exhibit 107**

October 21, 2015, Email from  
Jake Stephens to Bruce True

Message

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**From:** Jake Stephens [jake@jakestephens.com]  
**Sent:** 10/21/2015 3:13:06 PM  
**To:** Bruce True [bruce.true@pgn.com]  
**Subject:** Dayton Solar I  
**Attachments:** Form 556 - Dayton Solar I - 2015.10.21 Filing w FERC.pdf; Form 556 - Dayton Solar I FERC filing submission confirmation 2015.10.21.pdf; RENEWABLE In System Variable PPA\_Effective\_09.23.15 - Dayton Solar I v1.doc; Exhibit D - PGE Sched\_201 less than 10 MW (Effective 2015.09.23).pdf

Dear Bruce,

Just one other submission for you, thanks (and sorry). This one is "In System". (Your comments on Wasco noted; I assume we'll discuss as we discuss all three submissions I've made.)

QF Schedule 201 Submission to PGE for: 10 MW QF "Dayton Solar I", owned by Dayton Solar I LLC, and planned for construction in Yamhill County, OR by end of calendar year 2020 (pending PPA's Effective Date), please find attached:

1a) Form 556, as filed with FERC; 1b) FERC 556 receipt confirmation;

2) The PGE Schedule 201 Standard Renewable \*In System\* Variable Power Purchase Agreement for the facility, completed for the Facility and which Agreement Dayton Solar I LLC considers to be complete and acceptable as presented.

Schedule proposed for this project: I also proposed herein a year later COD, per a few timing considerations including Section 2.2.3 language and discussions with Mr. Morton on timing considerations. Happy to discuss this further and other questions further (including your Wasco notes).

Interconnecting utility is PGE for this one. So this Form 556 notice and avoided cost request submission shall serve as notice to all affected utilities, per Form 556's notification requirements.

I appreciate your assistance and look forward to the formal execution of this agreement by PGE. As with Wasco and Tygh Valley, I presume that if the document is signed earlier or later by PGE that the Effective Date will be updated accordingly.

Best regards,

Jake Stephens

Authorized Representative, Dayton Solar I LLC  
520-981-7303

**UM 1931 NewSun Parties Exhibit 108**

Attachment to Email in Exhibit 107:  
Dayton Solar I LLC PPA

## STANDARD RENEWABLE IN-SYSTEM VARIABLE POWER PURCHASE AGREEMENT

THIS AGREEMENT, entered into this 15th day, November  
2015, is between Dayton Solar I LLC ("Seller") and  
Portland General Electric Company ("PGE") (hereinafter each a "Party" or collectively,  
"Parties").

### RECITALS

Seller intends to construct, own, operate and maintain a photovoltaic solar  
facility for the generation of electric power located in Yamhill  
County, Oregon with a Nameplate Capacity Rating of  
10,000 (AC) kilowatt ("kW"), as further described in Exhibit A ("Facility"); and

Seller intends to operate the Facility as a "Qualifying Facility," as such term is  
defined in Section 3.1.3, below.

Seller shall sell and PGE shall purchase the entire Net Output, as such term is  
defined in Section 1.21, below, from the Facility in accordance with the terms and  
conditions of this Agreement.

### AGREEMENT

NOW, THEREFORE, the Parties mutually agree as follows:

#### SECTION 1: DEFINITIONS

When used in this Agreement, the following terms shall have the following  
meanings:

1.1. "As-built Supplement" means the supplement to Exhibit A provided by  
Seller in accordance with Section 4.3 following completion of construction of the  
Facility, describing the Facility as actually built.

1.2. "Base Hours" is defined as the total number of hours in each Contract  
Year (8,760 or 8,784 for leap year).

1.3. "Billing Period" means a period between PGE's readings of its power  
purchase billing meter at the Facility in the normal course of PGE's business. Such  
periods may vary and may not coincide with calendar months; however, PGE shall use  
best efforts to read the power purchase billing meter in 12 equally spaced periods per  
year.

1.4. "Cash Escrow" means an agreement by two parties to place money into the custody of a third party for delivery to a grantee only after the fulfillment of the conditions specified.

1.5. "Commercial Operation Date" means the date that the Facility is deemed by PGE to be fully operational and reliable. PGE may, at its discretion, require, among other things, that all of the following events have occurred:

1.5.1. (facilities with nameplate under 500 kW exempt from following requirement) PGE has received a certificate addressed to PGE from a Licensed Professional Engineer ("LPE") acceptable to PGE in its reasonable judgment stating that the Facility is able to generate electric power reliably in accordance with the terms and conditions of this Agreement (certifications required under this Section 1.5 can be provided by one or more LPEs);

1.5.2. Start-Up Testing of the Facility has been completed in accordance with Section 1.36;

1.5.3. (facilities with nameplate under 500 kW exempt from following requirement) After PGE has received notice of completion of Start-Up Testing, PGE has received a certificate addressed to PGE from an LPE stating that the Facility has operated for testing purposes under this Agreement and was continuously mechanically available for operation for a minimum of 120 hours. The Facility must provide ten (10) working days written notice to PGE prior to the start of the initial testing period. If the mechanical availability of the Facility is interrupted during this initial testing period or any subsequent testing period, the Facility shall promptly start a new Test Period and provide PGE forty-eight (48) hours written notice prior to the start of such testing period;

1.5.4. (facilities with nameplate under 500 kW exempt from following requirement) PGE has received a certificate addressed to PGE from an LPE stating that in accordance with the Generation Interconnection Agreement, all required interconnection facilities have been constructed all required interconnection tests have been completed; and the Facility is physically interconnected with PGE's electric system.

1.5.5. (facilities with nameplate under 500kW exempt from following requirement) PGE has received a certificate addressed to PGE from an LPE stating that Seller has obtained all Required Facility Documents and, if requested by PGE in writing, has provided copies of any or all such requested Required Facility Documents;

1.6. "Contract Price" means the applicable price, including on-peak and off-peak prices, as specified in the Schedule.

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.

1.9. "Environmental Attributes" shall mean any and all claims, credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, resulting from the avoidance of the emission of any gas, chemical or other substance to the air, soil or water. Environmental Attributes include but are not limited to: (1) any avoided emissions of pollutants to the air, soil or water such as (subject to the foregoing) sulfur oxides (SO<sub>x</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO), and other pollutants; and (2) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), and other greenhouse gasses (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere.

1.10. "Facility" has the meaning set forth in the Recitals.

1.11. "Generation Interconnection Agreement" means the generation interconnection agreement to be entered into separately between Seller and PGE, providing for the construction, operation, and maintenance of interconnection facilities required to accommodate deliveries of Seller's Net Output.

1.12. "Generation Unit" means each separate electrical generator that contributes towards Nameplate Capacity Rating included in Exhibit A. For solar facilities, a generating unit is a complete solar electrical generation system within the Facility that is able to generate and deliver energy to the Point of Delivery independent of other Generation Units within the same Facility.

1.13. "Letter of Credit" means an engagement by a bank or other person made at the request of a customer that the issuer will honor drafts or other demands for payment upon compliance with the conditions specified in the letter of credit.

1.14. "Licensed Professional Engineer" or "LPE" means a person who is licensed to practice engineering in the state where the Facility is located, who has no economic relationship, association, or nexus with the Seller, and who is not a representative of a consulting engineer, contractor, designer or other individual involved in the development of the Facility, or of a manufacturer or supplier of any equipment installed in the Facility. Such Licensed Professional Engineer shall be licensed in an appropriate engineering discipline for the required certification being made and be acceptable to PGE in its reasonable judgment.

1.15. "Lost Energy" means ((the Guarantee of Mechanical Availability as set forth in 3.1.10 / MAP) X Net Output for a Calendar Year) – Net Output for the Calendar Year. Lost Energy shall be zero unless the result of the calculation in this subsection results in a positive number.

1.16. "Lost Energy Value" means Lost Energy X the excess of the annual time-weighted average Mid-C Index Price for On-Peak and Off-Peak Hours over the time-weighted average Contract Price for On-Peak and Off-Peak Hours for the

corresponding time period (provided that such excess shall not exceed the Contract Price and further provided that Lost Energy is deemed to be zero prior to reaching the Commercial Operation Date) plus any reasonable costs incurred by PGE to purchase replacement power and/or transmission to deliver the replacement power to the Point of Delivery. (For Start-Up Lost Energy Value see Section 1.35).

1.17. "Mechanical Availability Percentage" or "MAP" shall mean that percentage for any Contract Year for the Facility calculated in accordance with the following formula:

$$\text{MAP} = 100 \times (\text{Operational Hours}) / (\text{Base Hours} \times \text{Number of Units})$$

1.18. "Mid-C Index Price" means the Day Ahead Intercontinental Exchange ("ICE") index price for the bilateral OTC market for energy at the Mid-C Physical for Average On Peak Power and Average Off Peak Power found on the following website: <https://www.theice.com/products/OTC/Physical-Energy/Electricity>. In the event ICE no longer publishes this index, PGE and the Seller agree to select an alternative successor index representative of the Mid-C trading hub.

1.19. "Nameplate Capacity Rating" means the maximum capacity of the Facility as stated by the manufacturer, expressed in kW, which shall not exceed 10,000 kW.

1.20. "Net Dependable Capacity" means the maximum capacity the Facility can sustain over a specified period modified for seasonal limitations, if any, and reduced by the capacity required for station service or auxiliaries.

1.21. "Net Output" means all energy expressed in kWhs produced by the Facility, less station and other onsite use and less transformation and transmission losses. Net Output does not include any environmental attributes.

1.22. "Number of Units" means the number of Generating Units in the Facility described in Exhibit A.

1.23. "Off-Peak Hours" has the meaning provided in the Schedule.

1.24. "On-Peak Hours" has the meaning provided in the Schedule.

1.25. "Operational Hours" for the Facility means the total across all Generating Units of the number of hours each of the Facility's Generating Units are potentially capable of producing power at its Nameplate Capacity Rating regardless of actual weather, season and time of day or night, without any mechanical operating constraint or restriction, and potentially capable of delivering such power to the Point of Delivery in a Contract Year. During up to, but not more than, 200 hours of Planned Maintenance during a Contract Year for each Generation Unit and hours during which an event of Force Majeure exists, a Generation Unit shall be considered potentially capable of delivering such power to the Point of Delivery. For example, in the absence of any Planned Maintenance beyond 200 hours on any Generation Unit of Event of Force

Majeure, the Operational Hours for a wind farm with five separate two MW turbines would be 43,800 for a Contract Year.

1.26. "Planned Maintenance" means outages scheduled 90 days in advance, with PGE's prior written consent, which shall not be unreasonably withheld.

1.27. "Point of Delivery" means the high side of the generation step up transformer(s) located at the point of interconnection between the Facility and PGE's distribution or transmission system, as specified in the Generation Interconnection Agreement.

1.28. "Pre-Commercial Operation Date Minimum Net Output" shall mean, unless such MWh is specifically set forth by Seller in Exhibit A, an amount in MWh equal to seventy-five percent (75%) of the Nameplate Capacity Rating X thirty percent (30%) for a wind or other renewable QF or fifty percent (50%) for a solar QF X (whole months since the date selected in Section 2.2.1 / 12) X (8760 hours – 200 hours (assumed Planned Maintenance)) for each month. If Seller has provided specific expected monthly Net Output amounts for the Facility in Exhibit A, "Pre-Commercial Operation Date Minimum Net Output" shall mean seventy-five (75%) X expected Net Output set forth in Exhibit A for each month.

1.29. "Prime Rate" means the publicly announced prime rate or reference rate for commercial loans to large businesses with the highest credit rating in the United States in effect from time to time quoted by Citibank, N.A. If a Citibank, N.A. prime rate is not available, the applicable Prime Rate shall be the announced prime rate or reference rate for commercial loans in effect from time to time quoted by a bank with \$10 billion or more in assets in New York City, N.Y., selected by the Party to whom interest based on the prime rate is being paid.

1.30. "Prudent Electrical Practices" means those practices, methods, standards and acts engaged in or approved by a significant portion of the electric power industry in the Western Electricity Coordinating Council that at the relevant time period, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with good business practices, reliability, economy, safety and expedition, and which practices, methods, standards and acts reflect due regard for operation and maintenance standards recommended by applicable equipment suppliers and manufacturers, operational limits, and all applicable laws and regulations. Prudent Electrical Practices are not intended to be limited to the optimum practice, method, standard or act to the exclusion of all others, but rather to those practices, methods and acts generally acceptable or approved by a significant portion of the electric power generation industry in the relevant region, during the relevant period, as described in the immediate preceding sentence.

1.31. "Required Facility Documents" means all licenses, permits, authorizations, and agreements necessary for construction, operation, interconnection, and maintenance of the Facility including without limitation those set forth in Exhibit B.

1.32. "RPS Attributes" means all attributes related to the Net Output generated by the Facility that are required in order to provide PGE with "qualifying electricity," as that term is defined in Oregon's Renewable Portfolio Standard Act, Ore. Rev. Stat. 469A.010, in effect at the time of execution of this Agreement. RPS Attributes do not include Environmental Attributes that are greenhouse gas offsets from methane capture not associated with the generation of electricity and not needed to ensure that there are zero net emissions associated with the generation of electricity.

1.33. "Schedule" shall mean PGE Schedule 201 filed with the Oregon Public Utilities Commission ("Commission") in effect on the Effective Date of this Agreement and attached hereto as Exhibit D, the terms of which are hereby incorporated by reference.

1.34. "Senior Lien" means a prior lien which has precedence as to the property under the lien over another lien or encumbrance.

1.35. "Start-Up Lost Energy Value" means for the period after the date specified in Section 2.2.2 but prior to achievement of the Commercial Operation Date: zero, unless the Net Output is less than the pro-rated Pre-Commercial Operation Date Minimum Net Output for the applicable delay period, and the time-weighted average of the delay period's Mid-C Index Price for On-Peak Hours and Off-Peak Hours is greater than the time-weighted average of the delay period's Contract Price for On-Peak Hours and Off-Peak Hours, in which case Startup Lost Energy Value equals: (pro-rated Pre-Commercial Operation Date Minimum Net Output for the applicable period - Net Output for the applicable period) X (the lower of: the time-weighted average of the Contract Price for On-Peak hours and Off-Peak Hours during the applicable period; or (the time-weighted average of the Mid-C Index Price for On-Peak Hours and Off-Peak Hours during the applicable period - the time-weighted average of the Contract Price for On-Peak Hours and Off-Peak Hours during the applicable period)). The time-weighted average in this section will reflect the relative proportions of On-Peak Hours and Off-Peak Hours in each day.

1.36. "Start-Up Testing" means the completion of applicable required factory and start-up tests as set forth in Exhibit C.

1.37. "Step-in Rights" means the right of one party to assume an intervening position to satisfy all terms of an agreement in the event the other party fails to perform its obligations under the agreement.

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

1.39. "Test Period" shall mean a period of sixty (60) days or a commercially reasonable period determined by the Seller.

References to Recitals, Sections, and Exhibits are to be the recitals, sections and exhibits of this Agreement.

## SECTION 2: TERM; COMMERCIAL OPERATION DATE

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

2.2. Time is of the essence of this Agreement, and Seller's ability to meet certain requirements prior to the Commercial Operation Date and to complete all requirements to establish the Commercial Operation Date is critically important. Therefore,

2.2.1 By  fifty-eight (58) months after the Effective Date Seller shall begin initial deliveries of Net Output; and

2.2.2 By  the fifth calendar-year anniversary of the Effective Date  *subject to Section 2.2.3 below*, Seller shall have completed all requirements under Section 1.5 and shall have established the Commercial Operation Date.

2.2.3 Unless the Parties agree in writing that a later Commercial Operation Date is reasonable and necessary, the Commercial Operation Date shall be no more than three (3) years from the Effective Date. PGE will not unreasonably withhold agreement to a Commercial Operation Date that is more than three (3) years from the Effective date if the Seller has demonstrated that a later Commercial Operation Date is reasonable and necessary.

2.3. This Agreement shall terminate on the completion of the last day of the the twentieth contract year, or the date the Agreement is terminated in accordance with Section 9 or 11, whichever is earlier ("Termination Date").

## SECTION 3: REPRESENTATIONS AND WARRANTIES

3.1. Seller and PGE represent, covenant, and warrant as follows:

3.1.1. Seller warrants it is a  Limited Liability Corporation  duly organized under the laws of  Delaware .

3.1.2. Seller warrants that the execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on Seller or any valid order of any court, or any regulatory agency or other body having authority to which Seller is subject.

3.1.3. Seller warrants that the Facility is and shall for the Term of this Agreement continue to be a "Qualifying Facility" ("QF") as that term is defined in the version of 18 C.F.R. Part 292 in effect on the Effective Date. Seller has provided the appropriate QF certification, which may include a Federal Energy Regulatory Commission ("FERC") self-certification to PGE prior to PGE's execution of this Agreement. At any time during the Term of this Agreement, PGE may require Seller to

provide PGE with evidence satisfactory to PGE in its reasonable discretion that the Facility continues to qualify as a QF under all applicable requirements.

3.1.4. Seller warrants that it has not within the past two (2) years been the debtor in any bankruptcy proceeding, and Seller is and will continue to be for the Term of this Agreement current on all of its financial obligations.

3.1.5. Seller warrants that during the Term of this Agreement, all of Seller's right, title and interest in and to the Facility shall be free and clear of all liens and encumbrances other than liens and encumbrances arising from third-party financing of the Facility other than workers', mechanics', suppliers' or similar liens, or tax liens, in each case arising in the ordinary course of business that are either not yet due and payable or that have been released by means of a performance bond acceptable to PGE posted within eight (8) calendar days of the commencement of any proceeding to foreclose the lien.

3.1.6. Seller warrants that it will design and operate the Facility consistent with Prudent Electrical Practices.

3.1.7. Seller warrants that the Facility has a Nameplate Capacity Rating not greater than 10,000 kW.

3.1.8. Seller warrants that Net Dependable Capacity of the Facility is \_(during periods of peak local solar resource availability)\_ 9,820 \_\_\_\_\_ kW.

3.1.9. Seller estimates that the average annual Net Output to be delivered by the Facility to PGE is \_16,000,000 \_\_\_\_\_ kilowatt-hours ("kWh"), which amount PGE will include in its resource planning.

3.1.10. Seller represents and warrants that the Facility shall achieve the following Mechanical Availability Percentages ("Guarantee of Mechanical Availability"):

3.1.10.1 Ninety percent (90%) beginning in the first Contract Year and extending through the Term for the Facility, if the Facility was operational and sold electricity to PGE or another buyer prior to the Effective Date of this Agreement; or

3.1.10.2 Ninety percent (90%) beginning in Contract Year three and extending throughout the remainder of the Term.

3.1.10.3 Annually, within 90 days of the end of each Contract Year Seller shall send to PGE a detailed written report demonstrating and providing evidence of the actual MAP for the previous Contract Year.

3.1.10.4 Seller's failure to meet the Guarantee of Mechanical Availability in a Calendar Year shall result in damages payable to PGE by Seller equal to the Lost Energy Value. PGE shall bill Seller for such damages in accordance with Section 8.

3.1.11. Seller will deliver from the Facility to PGE at the Point of Delivery Net Output not to exceed a maximum of 24,000,000 kWh of Net Output during each Contract Year ("Maximum Net Output").

3.1.12. By the Commercial Operation Date, Seller has entered into a Generation Interconnection Agreement for a term not less than the term of this Agreement.

3.1.13. PGE warrants that it has not within the past two (2) years been the debtor in any bankruptcy proceeding, and PGE is and will continue to be for the Term of this Agreement current on all of its financial obligations.

3.1.14. Seller warrants that (i) the Facility satisfies the eligibility requirements specified in the Definition of a Small Cogeneration Facility or Small Power Production Facility Eligible to Receive the Standard Renewable Rates and Standard Renewable PPA in PGE's Schedule and (ii) Seller will not make any changes in its ownership, control or management during the term of this Agreement that would cause it to not be in compliance with the Definition of a Small Cogeneration Facility or Small Power Production Facility Eligible to Receive the Standard Renewable Rates and Standard Renewable PPA in PGE's Schedule. Seller will provide, upon request by PGE not more frequently than every 36 months, such documentation and information as may be reasonably required to establish Seller's continued compliance with such Definition. PGE agrees to take reasonable steps to maintain the confidentiality of any portion of the above described documentation and information that the Seller identifies as confidential except PGE will provide all such confidential information to the Public Utility Commission of Oregon upon the Commission's request.

3.1.15. Seller warrants that it will comply with all requirements necessary for all Transferred RECs (as defined in Section 4.5) associated with Net Output to be issued, monitored, accounted for, and transferred by and through the Western Renewable Energy Generation System consistent with the provisions of OAR 330-160-0005 through OAR 330-160-0050. PGE warrants that it will reasonably cooperate in Seller's efforts to meet such requirements, including, for example serving as the qualified reporting entity for the Facility if the Facility is located in PGE's balancing authority.

#### 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.

4.3. Upon completion of construction of the Facility, Seller shall provide PGE an As-built Supplement to specify the actual Facility as built. Seller shall not increase the Nameplate Capacity Rating above that specified in Exhibit A or increase the ability of the Facility to deliver Net Output in quantities in excess of the Net Dependable

Capacity, or the Maximum Net Output as described in Section 3.1.11 above, through any means including, but not limited to, replacement, modification, or addition of existing equipment, except with prior written notice to PGE. In the event Seller increases the Nameplate Capacity Rating of the Facility to no more than 10,000 kW pursuant to this section, PGE shall pay the Contract Price for the additional delivered Net Output. In the event Seller increases the Nameplate Capacity Rating to greater than 10,000 kW, then Seller shall be required to enter into a new power purchase agreement for all delivered Net Output proportionally related to the increase of Nameplate Capacity above 10,000 kW.

4.4. To the extent not otherwise provided in the Generation Interconnection Agreement, all costs associated with the modifications to PGE's interconnection facilities or electric system occasioned by or related to the interconnection of the Facility with PGE's system, or any increase in generating capability of the Facility, or any increase of delivery of Net Dependable Capacity from the Facility, shall be borne by Seller.

4.5. During the Renewable Resource Deficiency Period, Seller shall provide and PGE shall acquire the RPS Attributes for the Contract Years as specified in the Schedule and Seller shall retain ownership of all other Environmental Attributes (if any). During the Renewable Resource Sufficiency Period, 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. With respect to Environmental Attributes not transferred to PGE under this Agreement ("Seller-Retained Environmental Attributes") Seller may report under §1605(b) of the Energy Policy Act of 1992 or under any applicable program as belonging to Seller any of the Seller-Retained Environmental Attributes, and PGE shall not report under such program that such Seller-Retained Environmental Attributes belong to it. With respect to RPS Attributes transferred to PGE under this Agreement ("Transferred RECs"), PGE may report under §1605(b) of the Energy Policy Act of 1992 or under any applicable program as belonging to it any of the Transferred RECs, and Seller shall not report under such program that such Transferred RECs belong to it.

## SECTION 5: OPERATION AND CONTROL

5.1. Seller shall operate and maintain the Facility in a safe manner in accordance with the Generation Interconnection Agreement, and Prudent Electrical Practices. PGE shall have no obligation to purchase Net Output from the Facility to the extent the interconnection of the Facility to PGE's electric system is disconnected, suspended or interrupted, in whole or in part, pursuant to the Generation Interconnection Agreement, or to the extent generation curtailment is required as a result of Seller's noncompliance with the Generation Interconnection Agreement. Seller is solely responsible for the operation and maintenance of the Facility. PGE shall not, by reason of its decision to inspect or not to inspect the Facility, or by any action or



inaction taken with respect to any such inspection, assume or be held responsible for any liability or occurrence arising from the operation and maintenance by Seller of the Facility.

5.2. Seller agrees to provide sixty (60) days advance written notice of any scheduled maintenance that would require shut down of the Facility for any period of time.

5.3. If the Facility ceases operation for unscheduled maintenance, Seller immediately shall notify PGE of the necessity of such unscheduled maintenance, the time when such maintenance has occurred or will occur, and the anticipated duration of such maintenance. Seller shall take all reasonable measures and exercise its best efforts to avoid unscheduled maintenance, to limit the duration of such unscheduled maintenance, and to perform unscheduled maintenance during Off-Peak hours.

#### SECTION 6: CREDITWORTHINESS

In the event Seller: a) is unable to represent or warrant as required by Section 3 that it has not been a debtor in any bankruptcy proceeding within the past two (2) years; b) becomes such a debtor during the Term; or c) is not or will not be current on all its financial obligations, Seller shall immediately notify PGE and shall promptly (and in no less than 10 days after notifying PGE) provide default security in an amount reasonably acceptable to PGE in one of the following forms: Senior Lien, Step-in Rights, a Cash Escrow or Letter of Credit. The amount of such default security that shall be acceptable to PGE shall be equal to: (annual On Peak Hours) X (On Peak Price – Off Peak Price) X (Net Dependable Capacity). Notwithstanding the foregoing, in the event Seller is not current on construction related financial obligations, Seller shall notify PGE of such delinquency and PGE may, in its discretion, grant an exception to the requirements to provide default security if the QF has negotiated financial arrangements with the construction loan lender that mitigate Seller's financial risk to PGE.

#### SECTION 7: METERING

7.1. PGE shall design, furnish, install, own, inspect, test, maintain and replace all metering equipment at Seller's cost and as required pursuant to the Generation Interconnection Agreement.

7.2. Metering shall be performed at the location and in a manner consistent with this Agreement and as specified in the Generation Interconnection Agreement. All Net Output purchased hereunder shall be adjusted to account for electrical losses, if any, between the point of metering and the Point of Delivery, so that the purchased amount reflects the net amount of power flowing into PGE's system at the Point of Delivery.

7.3. PGE shall periodically inspect, test, repair and replace the metering equipment as provided in the Generation Interconnection Agreement. If any of the

inspections or tests discloses an error exceeding two (2%) percent of the actual energy delivery, either fast or slow, proper correction, based upon the inaccuracy found, shall be made of previous readings for the actual period during which the metering equipment rendered inaccurate measurements if that period can be ascertained. If the actual period cannot be ascertained, the proper correction shall be made to the measurements taken during the time the metering equipment was in service since last tested, but not exceeding three (3) months, in the amount the metering equipment shall have been shown to be in error by such test. Any correction in billings or payments resulting from a correction in the meter records shall be made in the next monthly billing or payment rendered. Such correction, when made, shall constitute full adjustment of any claim between Seller and PGE arising out of such inaccuracy of metering equipment.

7.4. To the extent not otherwise provided in the Generation Interconnection Agreement, all of PGE's costs relating to all metering equipment installed to accommodate Seller's Facility shall be borne by Seller.

#### SECTION 8: BILLINGS, COMPUTATIONS AND PAYMENTS

8.1. On or before the thirtieth (30th) day following the end of each Billing Period, PGE shall send to Seller payment for Seller's deliveries of Net Output to PGE, together with computations supporting such payment. PGE may offset any such payment to reflect amounts owing from Seller to PGE pursuant to this Agreement, the Generation Interconnection Agreement, and any other agreement related to the Facility between the Parties or otherwise. On or before the thirtieth (30<sup>th</sup>) day following the end of each Contract Year, PGE shall bill for any Lost Energy Value accrued pursuant to this Agreement.

8.2. Any amounts owing after the due date thereof shall bear interest at the Prime Rate plus two percent (2%) from the date due until paid; provided, however, that the interest rate shall at no time exceed the maximum rate allowed by applicable law.

#### SECTION 9: DEFAULT, REMEDIES AND TERMINATION

9.1. In addition to any other event that may constitute a default under this Agreement, the following events shall constitute defaults under this Agreement:

9.1.1. Breach by Seller or PGE of a representation or warranty, except for Section 3.1.4, set forth in this Agreement.

9.1.2. Seller's failure to provide default security, if required by Section 6, prior to delivery of any Net Output to PGE or within 10 days of notice.

9.1.3. Seller's failure to meet the Guarantee of Mechanical Availability established in Section 3.1.10 for two consecutive Contract Years or Seller's failure to provide any written report required by that section.

9.1.4. If Seller is no longer a Qualifying Facility.

9.1.5. Failure of PGE to make any required payment pursuant to Section 8.1.

9.1.6. Seller's failure to meet the Commercial Operation Date.

9.2. In the event of a default under Section 9.1.6, PGE may provide Seller with written notice of default. Seller shall have one year in which to cure the default during which time the Seller shall pay PGE damages equal to the Lost Energy Value. If Seller is unable to cure the default, PGE may immediately terminate this Agreement as provided in Section 9.3. PGE's resource sufficiency/deficiency position shall have no bearing on PGE's right to terminate the Agreement under this Section 9.2.

9.3. In the event of a default under this Agreement, except as otherwise provided in this Agreement, the non-defaulting party may immediately terminate this Agreement at its sole discretion by delivering written notice to the other Party. In addition, the non-defaulting party may pursue any and all legal or equitable remedies provided by law or pursuant to this Agreement including damages related to the need to procure replacement power. A termination hereunder shall be effective upon the date of delivery of notice, as provided in Section 20. The rights provided in this Section 9 are cumulative such that the exercise of one or more rights shall not constitute a waiver of any other rights.

9.4. If this Agreement is terminated as provided in this Section 9 PGE shall make all payments, within thirty (30) days, that, pursuant to the terms of this Agreement, are owed to Seller as of the time of receipt of notice of default. PGE shall not be required to pay Seller for any Net Output delivered by Seller after such notice of default.

9.5. In the event PGE terminates this Agreement pursuant to this Section 9, and Seller wishes to again sell Net Output to PGE following such termination, PGE in its sole discretion may require that Seller shall do so subject to the terms of this Agreement, including but not limited to the Contract Price until the Term of this Agreement (as set forth in Section 2.3) would have run in due course had the Agreement remained in effect. At such time Seller and PGE agree to execute a written document ratifying the terms of this Agreement.

9.6. Sections 9.1, 9.4, 9.5, 10, and 19.2 shall survive termination of this Agreement.

#### SECTION 10: INDEMNIFICATION AND LIABILITY

10.1. Seller agrees to defend, indemnify and hold harmless PGE, its directors, officers, agents, and representatives against and from any and all loss, claims, actions or suits, including costs and attorney's fees, both at trial and on appeal, resulting from, or arising out of or in any way connected with Seller's delivery of electric power to PGE or with the facilities at or prior to the Point of Delivery, or otherwise arising out of this Agreement, including without limitation any loss, claim, action or suit, for or on account

of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property belonging to PGE, Seller or others, excepting to the extent such loss, claim, action or suit may be caused by the negligence of PGE, its directors, officers, employees, agents or representatives.

10.2. PGE agrees to defend, indemnify and hold harmless Seller, its directors, officers, agents, and representatives against and from any and all loss, claims, actions or suits, including costs and attorney's fees, both at trial and on appeal, resulting from, or arising out of or in any way connected with PGE's receipt of electric power from Seller or with the facilities at or after the Point of Delivery, or otherwise arising out of this Agreement, including without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property belonging to PGE, Seller or others, excepting to the extent such loss, claim, action or suit may be caused by the negligence of Seller, its directors, officers, employees, agents or representatives.

10.3. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a Party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or to the public, nor affect the status of PGE as an independent public utility corporation or Seller as an independent individual or entity.

10.4. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR SPECIAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES, WHETHER ARISING FROM CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.

#### SECTION 11: INSURANCE

11.1. Prior to the connection of the Facility to PGE's electric system, provided such Facility has a design capacity of 200 kW or more, Seller shall secure and continuously carry for the Term hereof, with an insurance company or companies rated not lower than "B+" by the A. M. Best Company, insurance policies for bodily injury and property damage liability. Such insurance shall include provisions or endorsements naming PGE, its directors, officers and employees as additional insureds; provisions that such insurance is primary insurance with respect to the interest of PGE and that any insurance or self-insurance maintained by PGE is excess and not contributory insurance with the insurance required hereunder; a cross-liability or severability of insurance interest clause; and provisions that such policies shall not be canceled or their limits of liability reduced without thirty (30) days' prior written notice to PGE. Initial limits of liability for all requirements under this section shall be \$1,000,000 million single limit, which limits may be required to be increased or decreased by PGE as PGE determines in its reasonable judgment economic conditions or claims experience may warrant.

11.2. Prior to the connection of the Facility to PGE's electric system, provided such facility has a design capacity of 200 kW or more, Seller shall secure and continuously carry for the Term hereof, in an insurance company or companies rated not lower than "B+" by the A. M. Best Company, insurance acceptable to PGE against property damage or destruction in an amount not less than the cost of replacement of the Facility. Seller promptly shall notify PGE of any loss or damage to the Facility. Unless the Parties agree otherwise, Seller shall repair or replace the damaged or destroyed Facility, or if the facility is destroyed or substantially destroyed, it may terminate this Agreement. Such termination shall be effective upon receipt by PGE of written notice from Seller. Seller shall waive its insurers' rights of subrogation against PGE regarding Facility property losses.

11.3. Prior to the connection of the Facility to PGE's electric system and at all other times such insurance policies are renewed or changed, Seller shall provide PGE with a copy of each insurance policy required under this Section, certified as a true copy by an authorized representative of the issuing insurance company or, at the discretion of PGE, in lieu thereof, a certificate in a form satisfactory to PGE certifying the issuance of such insurance. If Seller fails to provide PGE with copies of such currently effective insurance policies or certificates of insurance, PGE at its sole discretion and without limitation of other remedies, may upon ten (10) days advance written notice by certified or registered mail to Seller either withhold payments due Seller until PGE has received such documents, or purchase the satisfactory insurance and offset the cost of obtaining such insurance from subsequent power purchase payments under this Agreement.

## SECTION 12: FORCE MAJEURE

12.1. As used in this Agreement, "Force Majeure" or "an event of Force Majeure" means any cause beyond the reasonable control of the Seller or of PGE which, despite the exercise of due diligence, such Party is unable to prevent or overcome. By way of example, Force Majeure may include but is not limited to acts of God, fire, flood, storms, wars, hostilities, civil strife, strikes, and other labor disturbances, earthquakes, fires, lightning, epidemics, sabotage, restraint by court order or other delay or failure in the performance as a result of any action or inaction on behalf of a public authority which by the exercise of reasonable foresight such Party could not reasonably have been expected to avoid and by the exercise of due diligence, it shall be unable to overcome, subject, in each case, to the requirements of the first sentence of this paragraph. Force Majeure, however, specifically excludes the cost or availability of resources to operate the Facility, changes in market conditions that affect the price of energy or transmission, wind or water droughts, and obligations for the payment of money when due.

12.2. If either Party is rendered wholly or in part unable to perform its obligation under this Agreement because of an event of Force Majeure, that Party shall be excused from whatever performance is affected by the event of Force Majeure to the extent and for the duration of the Force Majeure, after which such Party shall recommence performance of such obligation, provided that:

12.2.1. the non-performing Party shall, promptly, but in any case within one (1) week after the occurrence of the Force Majeure, give the other Party written notice describing the particulars of the occurrence; and

12.2.2. the suspension of performance shall be of no greater scope and of no longer duration than is required by the Force Majeure; and

12.2.3. the non-performing Party uses its best efforts to remedy its inability to perform its obligations under this Agreement.

12.3. No obligations of either Party which arose before the Force Majeure causing the suspension of performance shall be excused as a result of the Force Majeure.

12.4. Neither Party shall be required to settle any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to the Party's best interests.

### SECTION 13: SEVERAL OBLIGATIONS

Nothing contained in this Agreement shall ever be construed to create an association, trust, partnership or joint venture or to impose a trust or partnership duty, obligation or liability between the Parties. If Seller includes two or more parties, each such party shall be jointly and severally liable for Seller's obligations under this Agreement.

### SECTION 14: CHOICE OF LAW

This Agreement shall be interpreted and enforced in accordance with the laws of the state of Oregon, excluding any choice of law rules which may direct the application of the laws of another jurisdiction.

### SECTION 15: PARTIAL INVALIDITY AND PURPA REPEAL

It is not the intention of the Parties to violate any laws governing the subject matter of this Agreement. If any of the terms of the Agreement are finally held or determined to be invalid, illegal or void as being contrary to any applicable law or public policy, all other terms of the Agreement shall remain in effect. If any terms are finally held or determined to be invalid, illegal or void, the Parties shall enter into negotiations concerning the terms affected by such decision for the purpose of achieving conformity with requirements of any applicable law and the intent of the Parties to this Agreement.

In the event the Public Utility Regulatory Policies Act (PURPA) is repealed, this Agreement shall not terminate prior to the Termination Date, unless such termination is mandated by state or federal law.

### SECTION 16: WAIVER

Any waiver at any time by either Party of its rights with respect to a default under this Agreement or with respect to any other matters arising in connection with this Agreement must be in writing, and such waiver shall not be deemed a waiver with respect to any subsequent default or other matter.

#### SECTION 17: GOVERNMENTAL JURISDICTION AND AUTHORIZATIONS

This Agreement is subject to the jurisdiction of those governmental agencies having control over either Party or this Agreement. Seller shall at all times maintain in effect all local, state and federal licenses, permits and other approvals as then may be required by law for the construction, operation and maintenance of the Facility, and shall provide upon request copies of the same to PGE.

#### SECTION 18: SUCCESSORS AND ASSIGNS

This Agreement and all of the terms hereof shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties. No assignment hereof by either Party shall become effective without the written consent of the other Party being first obtained and such consent shall not be unreasonably withheld. Notwithstanding the foregoing, either Party may assign this Agreement without the other Party's consent as part of (a) a sale of all or substantially all of the assigning Party's assets, or (b) a merger, consolidation or other reorganization of the assigning Party.

#### SECTION 19: ENTIRE AGREEMENT

19.1. This Agreement supersedes all prior agreements, proposals, representations, negotiations, discussions or letters, whether oral or in writing, regarding PGE's purchase of Net Output from the Facility. No modification of this Agreement shall be effective unless it is in writing and signed by both Parties.

19.2. By executing this Agreement, Seller releases PGE from any third party claims related to the Facility, known or unknown, which may have arisen prior to the Effective Date.

#### SECTION 20: NOTICES

20.1. All notices except as otherwise provided in this Agreement shall be in writing, shall be directed as follows and shall be considered delivered if delivered in person or when deposited in the U.S. Mail, postage prepaid by certified or registered mail and return receipt requested:

To Seller:                   Dayton Solar I LLC  
                                      c/o Jacob Stephens  
                                      3033 E Hawthorne St  
                                      Tucson, AZ 85716

with a copy to:       Stephane Nguyen  
                              c/o Reed Smith  
                              1901 Avenue of the Stars #700  
                              Los Angeles, CA 90067-6078

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To PGE:                Contracts Manager  
                              QF Contracts, 3WTC0306  
                              PGE - 121 SW Salmon St.  
                              Portland, Oregon 97204

20.2 The Parties may change the person to whom such notices are addressed, or their addresses, by providing written notices thereof in accordance with this Section 20.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in their respective names as of the Effective Date.

PGE

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

DAYTON SOLAR I LLC  
\_(Name Seller)

By: \_\_\_\_\_  
Name: Jacob Stephens  
Title: Authorized Representative  
  
Date: \_\_\_\_\_



EXHIBIT A  
DESCRIPTION OF SELLER'S FACILITY

**[Seller to Complete]**

Dayton Solar I is a photovoltaics-based solar generating facility which upon reaching full commercial operations have nameplate capacity of 10 MW-AC net output at the point of interconnection subject to available solar energy input. The facility will consist of the following primary equipment:

1. PV Modules - Commercially-available photovoltaic modules for utility-scale DC energy production. Nominal per module DC production rating of 350W +/-50W-DC. Qty <= [14.5MM/(module rating)].
2. Inverter AC Generator Units: Commercially-available string inverter (90kW-AC, nominal) convert DC to AC power, collected by AC wiring to switchboard. Each such collected aggregation of inverters shall constitute a single sub-generator for the facility, which once all aggregated shall constitute the entire generator for the facility.
3. Pad-mounted transformers: for each sub-generator shall transform inverter output voltage to plant AC collection voltage (12.47 KV, nominally)
4. Racking systems, commercially-available, will mount the PV Modules and direct them and control their angle to receive light from the sun. Racking systems will be arranged in generally uniform rows on the facility site.
5. Additional interconnection, transformation, switching, storage, metering, communications, tie-line, and meteorological observations facilities as may be required, subject to final interconnection, permitting, and design requirements.

EXHIBIT B  
REQUIRED FACILITY DOCUMENTS

**[Seller list all permits and authorizations required for this project]**

1. Seller's Generation Interconnection Agreement
2. Yamhill County CUP & Building Permits
3. EFSC Site Certificate (if final project footprint > 100 acres)
4. Additional as may be determined by Seller to be required for facility permitting, construction, and interconnection.

## EXHIBIT C START-UP TESTING

### **Seller-identified start-up tests**

As part of the start-up of Facility, Seller will perform the following tests, in addition to any further tests deemed required in coordination with EPC contractor (the Facility's manufacturer) and primary supply vendors (PV modules, inverters, transformers) and interconnecting utility. This will include required factory checks and tests necessary to determine that the equipment systems and subsystems have been properly manufactured and installed, function properly, and are in a condition to permit safe and efficient start-up of the Facility, which may include but are not limited to (as applicable). This will include required start-up tests and checks which necessary to determine that all features and equipment, systems, and subsystems have been properly designed, manufactured, installed and adjusted, function properly, and are capable of operating simultaneously in such condition that the Facility is capable of continuous delivery into PGE's electrical system, which may include but are not limited to (as applicable):

1. Validation of mechanical assembly completion for sign-off on EPC vendor warranty of mechanical completion and workmanship, including racking system, wiring (module connections, DC collection, string terminations, inverter connections to collected strings, AC delivery to switchboard and step-up/collection transformers, and AC collection system deliver to interconnection facilities), inverter mounting, and module installation.
2. Electrical performance validation by facility PV string and sub-generator, per insolation input, including:
  - a) DC wiring inputs to inverters
  - b) AC wiring delivery to transformers
3. Inverter Commissioning, per manufacturer specifications, including commissioning report;
4. Facility daily start-up and shut-down automation confirmed;
5. Energization of transformers;
6. Full system performance test;
7. Interconnection facilities: Commissioning of on-site, tie-line, and off-site interconnection facilities (as applicable), including switchyard, substation, breakers, and metering equipment (as applicable), in coordination with interconnecting utility and performing electrical contractor;
8. Cataloguing of installed equipment on-site, including primary equipment serial numbers and manufacturer information for O&M documentation;
9. Complete pre-parallel checks with PGE;
10. Test energy delivery and metering checks.
11. Excitation and voltage regulation operation tests per insolation inputs.
12. Meteorological station commissioning and report;
13. Facility communications equipment commissioning and report; and
14. Other tests as may be required by equipment manufacturers.

EXHIBIT D  
SCHEDULE

**[Attach currently in-effect Schedule 201]**

**UM 1931 NewSun Parties Exhibit 109**

October 21, 2015, Email from  
Jake Stephens to Bruce True

Message

**From:** Jake Stephens [jake@jakestephens.com]  
**Sent:** 10/21/2015 12:43:35 PM  
**To:** Bruce True [bruce.true@pgn.com]  
**Subject:** Tygh Valley Solar I  
**Attachments:** Exhibit D - PGE Sched\_201 less than 10 MW (Effective 2015.09.23).pdf; Form 556 - Tygh Valley Solar I - 2015.10.21 Filing w FERC.pdf; REDLINE - WASCO SOLAR I vs TYGH VALLEY SOLAR I.docx; Schedule 201 RENEWABLE Off System Variable PPA\_Effective\_09.23.15 - TYGH VALLEY SOLAR I v0.doc; Form 556 - Tygh Valley Solar I FERC filing submission confirmation 2015.10.21.pdf

Dear Bruce,

I hope this e-mail finds you well. I had an excellent meeting with John Morton yesterday at the WSPP event. I greatly appreciate your suggestion to attend -- and it was great to meet most of the merchant team there. John was quite helpful in providing thoughts on these submissions and projects, as well as context for larger, non-standard contract project under consideration.

SUBMISSION: As regards the planned 10 MW QF "Tygh Valley Solar I", owned by Tygh Valley Solar I LLC, and planned for construction in Wasco County, OR by end of calendar year 2020 (pending PPA's Effective Date), please find attached:

1a) Form 556, as filed with FERC; 1b) FERC 556 receipt confirmation)

2) The PGE Schedule 201 Standard Renewable Off-System Variable Power Purchase Agreement for the facility, completed for the Facility and which Agreement Tygh Valley Solar I LLC considers to be complete and acceptable as presented.

3) A redline, for your convenience, of this PPA submission vs the Wasco Solar I LLC submission. They are essentially identical, due to close geographic proximity, except for project name, location, and schedule.

A note on the schedule proposed for this project. I proposed herein a year later COD, per a few considerations: a) Additional timing considerations for the BPA NOS and other related processes; b) Section 2.2.3 language; and c) discussions with Mr. Morton on timing considerations. Happy to discuss this further.

Please let me know if you have any questions. I think it should be pretty straightforward. I put a couple brief comments in there for clarification's sake. The interconnection may change from initially being Wasco Coop to later a direct BPA connection -- and I think the phrasing I chose when specifying the interconnecting utility should cover that.

I appreciate your assistance and look forward to the formal execution of this agreement by PGE. I presume that if the document is signed earlier or later by PGE that the Effective Date will be updated accordingly.

I'll try to follow up on Thursday or Friday.

Best regards,

Jake Stephens  
Principal  
NewSun Energy  
520-981-7303

**UM 1931 NewSun Parties Exhibit 110**

Attachment to Email in Exhibit 109:  
Tygh Valley Solar I LLC PPA

Standard Renewable Off-System Variable Power Purchase Agreement  
Form Effective September 23, 2015**STANDARD RENEWABLE OFF-SYSTEM VARIABLE POWER PURCHASE  
AGREEMENT**

THIS AGREEMENT, entered into this 15th day, November 2015, is between TYGH VALLEY SOLAR I LLC ("Seller") and Portland General Electric Company ("PGE") (hereinafter each a "Party" or collectively, "Parties").

**RECITALS**

Seller intends to construct, own, operate and maintain a photovoltaics-based solar generation facility for the generation of electric power located in \_\_\_\_\_ Wasco County, Oregon with a Nameplate Capacity Rating of 10,000 kilowatt-AC ("kW"), as further described in Exhibit A ("Facility"); and

Seller intends to operate the Facility as a "Qualifying Facility," as such term is defined in Section 3.1.3, below.

Seller shall sell and PGE shall purchase the entire Net Output, as such term is defined in Section 1.21, below, from the Facility in accordance with the terms and conditions of this Agreement.

**AGREEMENT**

NOW, THEREFORE, the Parties mutually agree as follows:

**SECTION 1: DEFINITIONS**

When used in this Agreement, the following terms shall have the following meanings:

1.1. "As-built Supplement" means the supplement to Exhibit A provided by Seller in accordance with Section 4.3 following completion of construction of the Facility, describing the Facility as actually built.

1.2. "Base Hours" is defined as the total number of hours in each Contract Year (8,760 or 8,784 for leap year)

1.3. "Billing Period" means from the start of the first day of each calendar month to the end of the last day of each calendar month.

1.4. "Cash Escrow" means an agreement by two parties to place money into the custody of a third party for delivery to a grantee only after the fulfillment of the conditions specified.



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1.5. "Commercial Operation Date" means the date that the Facility is deemed by PGE to be fully operational and reliable. PGE may, at its discretion require, among other things, that all of the following events have occurred:

1.5.1. (facilities with nameplate under 500 kW exempt from following requirement) PGE has received a certificate addressed to PGE from a Licensed Professional Engineer ("LPE") acceptable to PGE in its reasonable judgment stating that the Facility is able to generate electric power reliably in accordance with the terms and conditions of this Agreement (certifications required under this Section 1.5 can be provided by one or more LPEs);

1.5.2. Start-Up Testing of the Facility has been completed in accordance with Section 1.36;

1.5.3. (facilities with nameplate under 500 kW exempt from following requirement) After PGE has received notice of completion of Start-Up Testing, PGE has received a certificate addressed to PGE from an LPE stating that the Facility has operated for testing purposes under this Agreement and was continuously mechanically available for operation for a minimum of 120 hours. The Facility must provide ten (10) working days written notice to PGE prior to the start of the initial testing period. If the mechanical availability of the Facility is interrupted during this initial testing period or any subsequent testing period, the Facility shall promptly start a new Test Period and provide PGE forty-eight (48) hours written notice prior to the start of such testing period;

1.5.4. (facilities with nameplate under 500 kW exempt from following requirement) PGE has received a certificate addressed to PGE from an LPE stating that all required interconnection facilities have been constructed and all required interconnection tests have been completed;

1.5.5. (facilities with nameplate under 500 kW exempt from following requirement) PGE has received a certificate addressed to PGE from an LPE stating that Seller has obtained all Required Facility Documents and, if requested by PGE in writing, has provided copies of any or all such requested Required Facility Documents;

1.5.6. PGE has received a copy of the executed Generation Interconnection and Transmission Agreements.

1.6. "Contract Price" means the applicable price, including on-peak and off-peak prices, as specified in the Schedule.

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.

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1.9. "Environmental Attributes" shall mean any and all claims, credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, resulting from the avoidance of the emission of any gas, chemical or other substance to the air, soil or water. Environmental Attributes include but are not limited to: (1) any avoided emissions of pollutants to the air, soil or water such as (subject to the foregoing) sulfur oxides (SO<sub>x</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO), and other pollutants; and (2) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), and other greenhouse gasses (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere.

1.10. "Facility" has the meaning set forth in the Recitals.

1.11. "Generation Interconnection Agreement" means an agreement governing the interconnection of the Facility with (as may be applicable during the term) either Bonneville Power Administration's or Wasco Electric Cooperative's electric system.

1.12. "Generation Unit" means each separate electrical generator that contributes toward Nameplate Capacity Rating included in Exhibit A. For solar facilities, a generating unit is a complete solar electrical generation system within the Facility that is able to generate and deliver energy to the Point of Delivery independent of other Generation Units within the same Facility.

1.13. "Letter of Credit" means an engagement by a bank or other person made at the request of a customer that the issuer will honor drafts or other demands for payment upon compliance with the conditions specified in the letter of credit.

1.14. "Licensed Professional Engineer" or "LPE" means a person who is licensed to practice engineering in the state where the Facility is located, who has no economic relationship, association, or nexus with the Seller, and who is not a representative of a consulting engineer, contractor, designer or other individual involved in the development of the Facility, or of a manufacturer or supplier of any equipment installed in the Facility. Such Licensed Professional Engineer shall be licensed in an appropriate engineering discipline for the required certification being made and be acceptable to PGE in its reasonable judgment.

1.15. "Lost Energy" means "Lost Energy" means ((the Guarantee of Mechanical Availability as set forth in 3.1.10 / MAP) X Net Output for a Calendar Year) – Net Output for the Calendar Year. Lost Energy shall be zero unless the result of the calculation in this subsection results in a positive number.

1.16. "Lost Energy Value" means Lost Energy X the excess of the annual time-weighted average Mid-C Index Price for On Peak Hours and Off Peak Hours over the time weighted average Contract Price for On Peak and Off Peak Hours for the corresponding time period (provided that such excess shall not exceed the Contract Price and further provided that Lost Energy is deemed to be zero prior to reaching the Commercial Operation Date) plus any reasonable costs incurred by PGE to purchase

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replacement power and/or transmission to deliver the replacement power to the Point of Delivery (For Start-Up Lost Energy Value See 1.35).

1.17. "Mechanical Availability Percentage" or "MAP" shall mean that percentage for any Contract Year for the Facility calculated in accordance with the following formula:

$$\text{MAP} = 100 \times (\text{Operational Hours}) / (\text{Base Hours} \times \text{Number of Units})$$

1.18. "Mid-C Index Price" means the Day Ahead Intercontinental Exchange ("ICE") index price for the bilateral OTC market for energy at the Mid-C Physical for Average On Peak Power and Average Off Peak Power found on the following website: <https://www.theice.com/products/OTC/Physical-Energy/Electricity>. In the event ICE no longer publishes this index, PGE and the Seller agree to select an alternative successor index representative of the Mid-C trading hub.

1.19. "Nameplate Capacity Rating" means the maximum capacity of the Facility as stated by the manufacturer, expressed in kW, which shall not exceed 10,000 kW.

1.20. "Net Dependable Capacity" means the maximum capacity the Facility can sustain over a specified period modified for seasonal limitations, if any, and reduced by the capacity required for station service or auxiliaries.

1.21. "Net Output" means all energy expressed in kWhs produced by the Facility, less station and other onsite use and less transformation and transmission losses.

1.22. "Number of Units" means the number of Generation Units in the Facility as specified in Exhibit A.

1.23. "Off-Peak Hours" has the meaning provided in the Schedule.

1.24. "On-Peak Hours" has the meaning provided in the Schedule.

1.25. "Operational Hours" for the Facility means the total across all Generation Units of the number of hours each of the Facility's Generation Units are potentially capable of producing power at its Nameplate Capacity Rating regardless of actual weather conditions, season and the time of day or night, without any mechanical operating constraint or restriction, and potentially capable of delivering such power to the Point of Delivery in a Contract Year. During up to, but not more than, two hundred (200) hours of Planned Maintenance during a Contract Year for each Generation Unit and hours during which an event of Force Majeure exists, a Generation Unit shall be considered potentially capable of delivering such power to the Point of Delivery. For example, in the absence of any Planned Maintenance beyond 200 hours on any Generation Unit or Event of Force Majeure, the Operational Hours for a wind farm with five (5) separate two (2) MW turbines would be 43,800 for a Contract Year.

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1.26. "Planned Maintenance" means outages scheduled ninety (90) days in advance, with PGE's prior written consent, which shall not be unreasonably withheld.

1.27. "Point of Delivery" means the PGE system.

1.28. "Pre-Commercial Operation Date Minimum Net Output" shall mean, unless such MWh is specifically set forth by Seller in Exhibit A, an amount in MWh equal to seventy-five percent (75%) of Nameplate Capacity Rating X thirty percent (30%) for a wind or other renewable QF or fifty percent (50%) for a solar QF X (whole months since the date selected in Section 2.2.1 / 12) X (8760 hours – 200 hours (assumed Planned Maintenance)) for each month. If Seller has provided specific expected monthly Net Output amounts for the Facility in Exhibit A, "Pre-Commercial Operation Date Minimum Net Output" shall mean seventy-five percent (75%) X expected net output set forth in Exhibit A for each month.

1.29. "Prime Rate" means the publicly announced prime rate or reference rate for commercial loans to large businesses with the highest credit rating in the United States in effect from time to time quoted by Citibank, N.A. If a Citibank, N.A. prime rate is not available, the applicable Prime Rate shall be the announced prime rate or reference rate for commercial loans in effect from time to time quoted by a bank with \$10 billion or more in assets in New York City, N.Y., selected by the Party to whom interest based on the prime rate is being paid.

1.30. "Prudent Electrical Practices" means those practices, methods, standards and acts engaged in or approved by a significant portion of the electric power industry in the Western Electricity Coordinating Council that at the relevant time period, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with good business practices, reliability, economy, safety and expedition, and which practices, methods, standards and acts reflect due regard for operation and maintenance standards recommended by applicable equipment suppliers and manufacturers, operational limits, and all applicable laws and regulations. Prudent Electrical Practices are not intended to be limited to the optimum practice, method, standard or act to the exclusion of all others, but rather to those practices, methods and acts generally acceptable or approved by a significant portion of the electric power generation industry in the relevant region, during the relevant period, as described in the immediate preceding sentence.

1.31. "Required Facility Documents" means all licenses, permits, authorizations, and agreements necessary for construction, operation, interconnection, and maintenance of the Facility including without limitation those set forth in Exhibit B.

1.32. "RPS Attributes" means all attributes related to the Net Output generated by the Facility that are required in order to provide PGE with "qualifying electricity," as that term is defined in Oregon's Renewable Portfolio Standard Act, Ore. Rev. Stat. 469A.010, in effect at the time of execution of this Agreement. RPS Attributes do not include Environmental Attributes that are greenhouse gas offsets from methane capture

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not associated with the generation of electricity and not needed to ensure that there are zero net emissions associated with the generation of electricity.

1.33. "Schedule" shall mean PGE Schedule 201 filed with the Oregon Public Utilities Commission ("Commission") in effect on the Effective Date of this Agreement and attached hereto as Exhibit D, the terms of which are hereby incorporated by reference.

1.34. "Senior Lien" means a prior lien which has precedence as to the property under the lien over another lien or encumbrance

1.35. "Start-Up Lost Energy Value" means for the period after the date specified in Section 2.2.2 but prior to achievement of the Commercial Operation Date: zero, unless the Net Output is less than the pro-rated Pre-Commercial Operation Date Minimum Net Output for the applicable delay period, and the time-weighted average of the delay period's Mid-C Index Price for On-Peak Hours and Off-Peak Hours is greater than the time-weighted average of the delay period's Contract Price for On-Peak Hours and Off-Peak Hours, in which case Startup Lost Energy Value equals: (pro-rated Pre-Commercial Operation Date Minimum Net Output for the applicable period - Net Output for the applicable period) X (the lower of: the time-weighted average of the Contract Price for On-Peak hours and Off-Peak Hours during the applicable period; or (the time-weighted average of the Mid-C Index Price for On-Peak Hours and Off-Peak Hours during the applicable period - the time-weighted average of the Contract Price for On-Peak Hours and Off-Peak Hours during the applicable period)). The time-weighted average in this section will reflect the relative proportions of On-Peak Hours and Off-Peak Hours in each day.

1.36. "Start-Up Testing" means the completion of applicable required factory and start-up tests as set forth in Exhibit C.

1.37. "Step-in Rights" means the right of one party to assume an intervening position to satisfy all terms of an agreement in the event the other party fails to perform its obligations under the agreement.

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

1.39. "Test Period" shall mean a period of sixty (60) days or a commercially reasonable period determined by the Seller.

1.40. "Transmission Agreement" means an agreement executed by the Seller and the Transmission Provider(s) for Transmission Services.

1.41. "Transmission Curtailment" means a limitation on Seller's ability to deliver any portion of the scheduled energy to PGE due to the unavailability of transmission to the Point of Delivery (for any reason other than Force Majeure).

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1.42. "Transmission Curtailment Replacement Energy Cost" means the greater of zero or the amount calculated as: ((Mid-C Index Price – Contract Price) X curtailed energy) for periods of Transmission Curtailment.

1.43. "Transmission Provider(s)" means the signatory (other than the Seller) to the Transmission Agreement.

1.44. "Transmission Services" means any and all services (including but not limited to ancillary services and control area services) required for the firm transmission and delivery of Energy from the Facility to the Point of Delivery for a term not less than the Term of this Agreement.

References to Recitals, Sections, and Exhibits are to be the recitals, sections and exhibits of this Agreement.

## SECTION 2: TERM; COMMERCIAL OPERATION DATE

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

2.2. Time is of the essence of this Agreement, and Seller's ability to meet certain requirements prior to the Commercial Operation Date and to complete all requirements to establish the Commercial Operation Date is critically important. Therefore,

2.2.1. By forty-seven (47) months after the Effective Date Seller shall begin initial deliveries of Net Output; and

2.2.2. By the fourth calendar-year anniversary of the Effective Date, *subject to Section 2.2.3 below*, Seller shall have completed all requirements under Section 1.5 and shall have established the Commercial Operation Date.

2.2.3. Unless the Parties agree in writing that a later Commercial Operation Date is reasonable and necessary, the Commercial Operation Date shall be no more than three (3) years from the Effective Date. PGE will not unreasonably withhold agreement to a Commercial Operation Date that is more than three (3) years from the Effective date if the Seller has demonstrated that a later Commercial Operation Date is reasonable and necessary.

2.3. This Agreement shall terminate on the completion of the last day of the twentieth contract year, or the date the Agreement is terminated in accordance with Section 8 or 11, whichever is earlier ("Termination Date").

## SECTION 3: REPRESENTATIONS AND WARRANTIES

3.1. Seller and PGE represent, covenant, and warrant as follows:

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3.1.1. Seller warrants it is a Limited Liability Corporation duly organized under the laws of Delaware.

3.1.2. Seller warrants that the execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on Seller or any valid order of any court, or any regulatory agency or other body having authority to which Seller is subject.

3.1.3. Seller warrants that the Facility is and shall for the Term of this Agreement continue to be a "Qualifying Facility" ("QF") as that term is defined in the version of 18 C.F.R. Part 292 in effect on the Effective Date. Seller has provided the appropriate QF certification, which may include a Federal Energy Regulatory Commission ("FERC") self-certification to PGE prior to PGE's execution of this Agreement. At any time during the Term of this Agreement, PGE may require Seller to provide PGE with evidence satisfactory to PGE in its reasonable discretion that the Facility continues to qualify as a QF under all applicable requirements.

3.1.4. Seller warrants that it has not within the past two (2) years been the debtor in any bankruptcy proceeding, and Seller is and will continue to be for the Term of this Agreement current on all of its financial obligations.

3.1.5. Seller warrants that during the Term of this Agreement, all of Seller's right, title and interest in and to the Facility shall be free and clear of all liens and encumbrances other than liens and encumbrances arising from third-party financing of the Facility other than workers', mechanics', suppliers' or similar liens, or tax liens, in each case arising in the ordinary course of business that are either not yet due and payable or that have been released by means of a performance bond acceptable to PGE posted within eight (8) calendar days of the commencement of any proceeding to foreclose the lien.

3.1.6. Seller warrants that it will design and operate the Facility consistent with Prudent Electrical Practices.

3.1.7. Seller warrants that the Facility has a Nameplate Capacity Rating not greater than 10,000 kW.

3.1.8. Seller warrants that Net Dependable Capacity of the Facility is \_(during periods of peak local solar resource availability)\_9,920\_\_\_ kW.

3.1.9. Seller estimates that the average annual Net Output to be delivered by the Facility to PGE is 18,500,000 kilowatt-hours ("kWh"), which amount PGE will include in its resource planning.

3.1.10. Seller represents and warrants that the Facility shall achieve the following Mechanical Availability Percentages ("Guarantee of Mechanical Availability"):

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3.1.10.1. Ninety percent (90%) beginning in the first Contract Year and extending through the Term for the Facility, if the Facility was operational and sold electricity to PGE or another buyer prior to the Effective Date of this Agreement; or

3.1.10.2. Ninety percent (90%) beginning in Contract Year three and extending throughout the remainder of the Term.

3.1.10.3. Annually, within 90 days of the end of each Contract Year, Seller shall send to PGE a detailed written report demonstrating and providing evidence of the actual MAP for the previous Contract Year.

3.1.10.4. Seller's failure to meet the Guarantee of Mechanical Availability in a Calendar Year shall result in damages payable to PGE by Seller equal to the Lost Energy Value. PGE shall bill Seller for such damages in accordance with Section 7.

3.1.11. Seller will deliver from the Facility to PGE at the Point of Delivery Net Output not to exceed a maximum of 27,000,000 kWh of Net Output during each Contract Year ("Maximum Net Output"). The cost of delivering energy from the Facility to PGE is the sole responsibility of the Seller.

3.1.12. By the Commercial Operation Date, Seller has entered into a Generation Interconnection Agreement for a term not less than the term of this Agreement.

3.1.13. PGE warrants that it has not within the past two (2) years been the debtor in any bankruptcy proceeding, and PGE is and will continue to be for the Term of this Agreement current on all of its financial obligations.

3.1.14. Seller warrants that the Facility satisfies the eligibility requirements specified in the Definition of a Small Cogeneration Facility or Small Power Production Facility Eligible to Receive the Standard Renewable Rates and Standard Renewable PPA in PGE's Schedule and Seller will not make any changes in its ownership, control or management during the term of this Agreement that would cause it to not be in compliance with the Definition of a Small Cogeneration Facility or Small Power Production Facility Eligible to Receive the Standard Renewable Rates and Standard Renewable PPA in PGE's Schedule. Seller will provide, upon request by PGE not more frequently than every 36 months, such documentation and information as may be reasonably required to establish Seller's continued compliance with such Definition. PGE agrees to take reasonable steps to maintain the confidentiality of any portion of the above described documentation and information that the Seller identifies as confidential except PGE will provide all such confidential information to the Commission upon the Commission's request.

3.1.15. Seller warrants that it will comply with all requirements necessary for all Transferred RECs (as defined in Section 4.5) associated with Net Output to be issued, monitored, accounted for, and transferred by and through the Western Renewable Energy Generation System consistent with the provisions of OAR 330-160-0005



through OAR 330-160-0050. PGE warrants that it will reasonably cooperate in Seller's efforts to meet such requirements, including, for example serving as the qualified reporting entity for the Facility if the Facility is located in PGE's balancing authority.

#### 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.

4.3. Upon completion of construction of the Facility, Seller shall provide PGE an As-built Supplement to specify the actual Facility as built. Seller shall not increase the Nameplate Capacity Rating above that specified in Exhibit A or increase the ability of the Facility to deliver Net Output in quantities in excess of the Net Dependable Capacity, or the Maximum Net Output as described in Section 3.1.11 above, through any means including, but not limited to, replacement, modification, or addition of existing equipment, except with prior written notice to PGE. In the event Seller increases the Nameplate Capacity Rating of the Facility to no more than 10,000 kW pursuant to this section, PGE shall pay the Contract Price for the additional delivered Net Output. In the event Seller increases the Nameplate Capacity Rating to greater than 10,000 kW, then Seller shall be required to enter into a new power purchase agreement for all delivered Net Output proportionally related to the increase of Nameplate Capacity above 10,000 kW.

4.4. Seller shall provide preschedules for all deliveries of energy hereunder, including identification of receiving and generating control areas, by 9:00:00 PPT on the last business day prior to the scheduled date of delivery. All energy shall be scheduled according to the most current North America Energy Reliability Corporation (NERC) and Western Electricity Coordinating Council (WECC) scheduling rules and practices. The Parties' respective representatives shall maintain hourly real-time schedule coordination; provided, however, that in the absence of such coordination, the hourly schedule established by the exchange of preschedules shall be considered final. Seller and PGE shall maintain records of hourly energy schedules for accounting and operating purposes. The final E-Tag shall be the controlling evidence of the Parties' schedule. All energy shall be prescheduled according to customary WECC scheduling practices. Seller shall make commercially reasonable efforts to schedule in any hour an amount equal to its expected Net Output for such hour. Seller shall maintain a minimum of two years records of Net Output and shall agree to allow PGE to have access to such records and to imbalance information kept by the Transmission Provider.

4.5. During the Renewable Resource Deficiency Period, Seller shall provide and PGE shall acquire the RPS Attributes for the Contract Years as specified in the Schedule and Seller shall retain ownership of all other Environmental Attributes (if any). During the Renewable Resource Sufficiency Period, and any period within the Term of

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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. With respect to Environmental Attributes not transferred to PGE under this Agreement ("Seller-Retained Environmental Attributes") Seller may report under §1605(b) of the Energy Policy Act of 1992 or under any applicable program as belonging to Seller any of the Seller-Retained Environmental Attributes, and PGE shall not report under such program that such Seller-Retained Environmental Attributes belong to it. With respect to RPS Attributes transferred to PGE under this Agreement ("Transferred RECs"), PGE may report under §1605(b) of the Energy Policy Act of 1992 or under any applicable program as belonging to it any of the Transferred RECs, and Seller shall not report under such program that such Transferred RECs belong to it.

#### SECTION 5: OPERATION AND CONTROL

5.1. Seller shall operate and maintain the Facility in a safe manner in accordance with the Generation Interconnection Agreement, and Prudent Electrical Practices. PGE shall have no obligation to purchase Net Output from the Facility to the extent the interconnection of the Facility to PGE's electric system is disconnected, suspended or interrupted, in whole or in part, pursuant to the Generation Interconnection Agreement, or to the extent generation curtailment is required as a result of Seller's noncompliance with the Generation Interconnection Agreement. Seller is solely responsible for the operation and maintenance of the Facility. PGE shall not, by reason of its decision to inspect or not to inspect the Facility, or by any action or inaction taken with respect to any such inspection, assume or be held responsible for any liability or occurrence arising from the operation and maintenance by Seller of the Facility.

5.2. Seller agrees to provide sixty (60) days advance written notice of any scheduled maintenance that would require shut down of the Facility for any period of time.

5.3. If the Facility ceases operation for unscheduled maintenance, Seller immediately shall notify PGE of the necessity of such unscheduled maintenance, the time when such maintenance has occurred or will occur, and the anticipated duration of such maintenance. Seller shall take all reasonable measures and exercise its best efforts to avoid unscheduled maintenance, to limit the duration of such unscheduled maintenance, and to perform unscheduled maintenance during Off-Peak hours.

#### SECTION 6: CREDITWORTHINESS

In the event Seller: a) is unable to represent or warrant as required by Section 3 that it has not been a debtor in any bankruptcy proceeding within the past two (2) years; b) becomes such a debtor during the Term; or c) is not or will not be current on all its financial obligations, Seller shall immediately notify PGE and shall promptly (and in no less than 10 days after notifying PGE) provide default security in an amount reasonably

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acceptable to PGE in one of the following forms: Senior Lien, Step-in Rights, a Cash Escrow or Letter of Credit. The amount of such default security that shall be acceptable to PGE shall be equal to: (annual On Peak Hours) X (On Peak Price – Off Peak Price) X (Net Dependable Capacity). Notwithstanding the foregoing, in the event Seller is not current on construction related financial obligations, Seller shall notify PGE of such delinquency and PGE may, in its discretion, grant an exception to the requirements to provide default security if the QF has negotiated financial arrangements with the construction loan lender that mitigate Seller's financial risk to PGE.

#### SECTION 7: BILLINGS, COMPUTATIONS AND PAYMENTS

7.1. On or before the thirtieth (30<sup>th</sup>) day following the end of each Billing Period, PGE shall send to Seller payment for Seller's deliveries of Net Output to PGE, together with computations supporting such payment. PGE may offset any such payment to reflect amounts owing from Seller to PGE pursuant to this Agreement and any other agreement related to the Facility between the Parties or otherwise. On or before the thirtieth (30<sup>th</sup>) day following the end of each Contract Year, PGE shall bill for any Lost Energy Value accrued pursuant to this Agreement.

7.2. Any amounts owing after the due date thereof shall bear interest at the Prime Rate plus two percent (2%) from the date due until paid; provided, however, that the interest rate shall at no time exceed the maximum rate allowed by applicable law.

#### SECTION 8: DEFAULT, REMEDIES AND TERMINATION

8.1. In addition to any other event that may constitute a default under this Agreement, the following events shall constitute defaults under this Agreement:

8.1.1. Breach by Seller or PGE of a representation or warranty, except for Section 3.1.4, set forth in this Agreement.

8.1.2. Seller's failure to provide default security, if required by Section 6, prior to delivery of any Net Output to PGE or within 10 days of notice.

8.1.3. Seller's failure to meet the Guarantee of Mechanical Availability established in Section 3.1.10 for two consecutive Contract Years or Seller's failure to provide any written report required by that section.

8.1.4. If Seller is no longer a Qualifying Facility.

8.1.5. Failure of PGE to make any required payment pursuant to Section 7.1.

8.1.6. Seller's failure to meet the Commercial Operation Date.

8.2. In the event of a default under Section 8.1.6, PGE may provide Seller with written notice of default. Seller shall have one year in which to cure the default during which time the Seller shall pay PGE damages equal to the Lost Energy Value. If Seller

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is unable to cure the default, PGE may immediately terminate this Agreement as provided in Section 8.3. PGE's resource sufficiency/deficiency position shall have no bearing on PGE's right to terminate the Agreement under this Section 8.2.

8.3. In the event of a default hereunder, except as otherwise provided in this Agreement, the non-defaulting party may immediately terminate this Agreement at its sole discretion by delivering written notice to the other Party. In addition, the non-defaulting Party may pursue any and all legal or equitable remedies provided by law or pursuant to this Agreement including damages related to the need to procure replacement power. A termination hereunder shall be effective upon the date of delivery of notice, as provided in Section 20. The rights provided in this Section 8 are cumulative such that the exercise of one or more rights shall not constitute a waiver of any other rights.

8.4. If this Agreement is terminated as provided in this Section 8, PGE shall make all payments, within thirty (30) days, that, pursuant to the terms of this Agreement, are owed to Seller as of the time of receipt of notice of default. PGE shall not be required to pay Seller for any Net Output delivered by Seller after such notice of default.

8.5. In the event PGE terminates this Agreement pursuant to this Section 8, and Seller wishes to again sell Net Output to PGE following such termination, PGE in its sole discretion may require that Seller shall do so subject to the terms of this Agreement, including but not limited to the Contract Price until the Term of this Agreement (as set forth in Section 2.3) would have run in due course had the Agreement remained in effect. At such time Seller and PGE agree to execute a written document ratifying the terms of this Agreement.

8.6. Sections 8.1, 8.4, 8.5, 10, and 19.2 shall survive termination of this Agreement.

#### SECTION 9: TRANSMISSION CURTAILMENTS

9.1. Seller shall give PGE notice as soon as reasonably practicable of any Transmission Curtailment that is likely to affect Seller's ability to deliver any portion of energy scheduled pursuant to Section 4.4 of this Agreement.

9.2. If as the result of a Transmission Curtailment, Seller does not deliver any portion of energy (including real-time adjustments), scheduled pursuant to Section 4.4 of this Agreement, Seller shall pay PGE the Transmission Curtailment Replacement Energy Cost for the number of MWh of energy reasonably determined by PGE as the difference between (i) the scheduled energy that would have been delivered to PGE under this Agreement during the period of Transmission Curtailment and (ii) the actual energy, if any, that was delivered to PGE for the period.

## SECTION 10: INDEMNIFICATION AND LIABILITY

10.1. Seller agrees to defend, indemnify and hold harmless PGE, its directors, officers, agents, and representatives against and from any and all loss, claims, actions or suits, including costs and attorney's fees, both at trial and on appeal, resulting from, or arising out of or in any way connected with Seller's delivery of electric power to PGE or with the facilities at or prior to the Point of Delivery, or otherwise arising out of this Agreement, including without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property belonging to PGE, Seller or others, excepting to the extent such loss, claim, action or suit may be caused by the negligence of PGE, its directors, officers, employees, agents or representatives.

10.2. PGE agrees to defend, indemnify and hold harmless Seller, its directors, officers, agents, and representatives against and from any and all loss, claims, actions or suits, including costs and attorney's fees, both at trial and on appeal, resulting from, or arising out of or in any way connected with PGE's receipt of electric power from Seller or with the facilities at or after the Point of Delivery, or otherwise arising out of this Agreement, including without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property belonging to PGE, Seller or others, excepting to the extent such loss, claim, action or suit may be caused by the negligence of Seller, its directors, officers, employees, agents or representatives.

10.3. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a Party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or to the public, nor affect the status of PGE as an independent public utility corporation or Seller as an independent individual or entity.

10.4. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR SPECIAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES, WHETHER ARISING FROM CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.

## SECTION 11: INSURANCE

11.1. Prior to the connection of the Facility to PGE's electric system, provided such Facility has a design capacity of 200 kW or more, Seller shall secure and continuously carry for the Term hereof, with an insurance company or companies rated not lower than "B+" by the A. M. Best Company, insurance policies for bodily injury and property damage liability. Such insurance shall include provisions or endorsements naming PGE, its directors, officers and employees as additional insureds; provisions that such insurance is primary insurance with respect to the interest of PGE and that any insurance or self-insurance maintained by PGE is excess and not contributory insurance with the insurance required hereunder; a cross-liability or severability of

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insurance interest clause; and provisions that such policies shall not be canceled or their limits of liability reduced without thirty (30) days' prior written notice to PGE. Initial limits of liability for all requirements under this section shall be \$1,000,000 million single limit, which limits may be required to be increased or decreased by PGE as PGE determines in its reasonable judgment economic conditions or claims experience may warrant.

11.2. Prior to the connection of the Facility to PGE's electric system, provided such facility has a design capacity of 200 kW or more, Seller shall secure and continuously carry for the Term hereof, in an insurance company or companies rated not lower than "B+" by the A. M. Best Company, insurance acceptable to PGE against property damage or destruction in an amount not less than the cost of replacement of the Facility. Seller promptly shall notify PGE of any loss or damage to the Facility. Unless the Parties agree otherwise, Seller shall repair or replace the damaged or destroyed Facility, or if the facility is destroyed or substantially destroyed, it may terminate this Agreement. Such termination shall be effective upon receipt by PGE of written notice from Seller. Seller shall waive its insurers' rights of subrogation against PGE regarding Facility property losses.

11.3. Prior to the connection of the Facility to PGE's electric system and at all other times such insurance policies are renewed or changed, Seller shall provide PGE with a copy of each insurance policy required under this Section, certified as a true copy by an authorized representative of the issuing insurance company or, at the discretion of PGE, in lieu thereof, a certificate in a form satisfactory to PGE certifying the issuance of such insurance. If Seller fails to provide PGE with copies of such currently effective insurance policies or certificates of insurance, PGE at its sole discretion and without limitation of other remedies, may upon ten (10) days advance written notice by certified or registered mail to Seller either withhold payments due Seller until PGE has received such documents, or purchase the satisfactory insurance and offset the cost of obtaining such insurance from subsequent power purchase payments under this Agreement.

## SECTION 12: FORCE MAJEURE

12.1. As used in this Agreement, "Force Majeure" or "an event of Force Majeure" means any cause beyond the reasonable control of the Seller or of PGE which, despite the exercise of due diligence, such Party is unable to prevent or overcome. By way of example, Force Majeure may include but is not limited to acts of God, fire, flood, storms, wars, hostilities, civil strife, strikes, and other labor disturbances, earthquakes, fires, lightning, epidemics, sabotage, restraint by court order or other delay or failure in the performance as a result of any action or inaction on behalf of a public authority which by the exercise of reasonable foresight such Party could not reasonably have been expected to avoid and by the exercise of due diligence, it shall be unable to overcome, subject, in each case, to the requirements of the first sentence of this paragraph. Force Majeure, however, specifically excludes the cost or availability of resources to operate the Facility, changes in market conditions that affect

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the price of energy or transmission, wind or water droughts, and obligations for the payment of money when due.

12.2. If either Party is rendered wholly or in part unable to perform its obligation under this Agreement because of an event of Force Majeure, that Party shall be excused from whatever performance is affected by the event of Force Majeure to the extent and for the duration of the Force Majeure, after which such Party shall recommence performance of such obligation, provided that:

12.2.1. the non-performing Party, shall, promptly, but in any case within one (1) week after the occurrence of the Force Majeure, give the other Party written notice describing the particulars of the occurrence; and

12.2.2. the suspension of performance shall be of no greater scope and of no longer duration than is required by the Force Majeure; and

12.2.3. the non-performing Party uses its best efforts to remedy its inability to perform its obligations under this Agreement.

12.3. No obligations of either Party which arose before the Force Majeure causing the suspension of performance shall be excused as a result of the Force Majeure.

12.4. Neither Party shall be required to settle any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to the Party's best interests.

### SECTION 13: SEVERAL OBLIGATIONS

Nothing contained in this Agreement shall ever be construed to create an association, trust, partnership or joint venture or to impose a trust or partnership duty, obligation or liability between the Parties. If Seller includes two or more parties, each such party shall be jointly and severally liable for Seller's obligations under this Agreement.

### SECTION 14: CHOICE OF LAW

This Agreement shall be interpreted and enforced in accordance with the laws of the state of Oregon, excluding any choice of law rules which may direct the application of the laws of another jurisdiction.

### SECTION 15: PARTIAL INVALIDITY AND PURPA REPEAL

It is not the intention of the Parties to violate any laws governing the subject matter of this Agreement. If any of the terms of the Agreement are finally held or determined to be invalid, illegal or void as being contrary to any applicable law or public policy, all other terms of the Agreement shall remain in effect. If any terms are finally held or determined to be invalid, illegal or void, the Parties shall enter into negotiations

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concerning the terms affected by such decision for the purpose of achieving conformity with requirements of any applicable law and the intent of the Parties to this Agreement.

In the event the Public Utility Regulatory Policies Act (PURPA) is repealed, this Agreement shall not terminate prior to the Termination Date, unless such termination is mandated by state or federal law.

#### SECTION 16: WAIVER

Any waiver at any time by either Party of its rights with respect to a default under this Agreement or with respect to any other matters arising in connection with this Agreement must be in writing, and such waiver shall not be deemed a waiver with respect to any subsequent default or other matter.

#### SECTION 17: GOVERNMENTAL JURISDICTION AND AUTHORIZATIONS

This Agreement is subject to the jurisdiction of those governmental agencies having control over either Party or this Agreement. Seller shall at all times maintain in effect all local, state and federal licenses, permits and other approvals as then may be required by law for the construction, operation and maintenance of the Facility, and shall provide upon request copies of the same to PGE.

#### SECTION 18: SUCCESSORS AND ASSIGNS

This Agreement and all of the terms hereof shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties. No assignment hereof by either Party shall become effective without the written consent of the other Party being first obtained and such consent shall not be unreasonably withheld. Notwithstanding the foregoing, either Party may assign this Agreement without the other Party's consent as part of (a) a sale of all or substantially all of the assigning Party's assets, or (b) a merger, consolidation or other reorganization of the assigning Party.

#### SECTION 19: ENTIRE AGREEMENT

19.1. This Agreement supersedes all prior agreements, proposals, representations, negotiations, discussions or letters, whether oral or in writing, regarding PGE's purchase of Net Output from the Facility. No modification of this Agreement shall be effective unless it is in writing and signed by both Parties.

19.2. By executing this Agreement, Seller releases PGE from any third party claims related to the Facility, known or unknown, which may have arisen prior to the Effective Date.

#### SECTION 20: NOTICES

20.1. All notices except as otherwise provided in this Agreement shall be in writing, shall be directed as follows and shall be considered delivered if delivered in



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person or when deposited in the U.S. Mail, postage prepaid by certified or registered mail and return receipt requested:

To Seller: Tygh Valley Solar I LLC  
c/o Jacob Stephens  
3033 E Hawthorne St  
Tucson, AZ 85716

with a copy to: Stephane Nguyen  
c/o Reed Smith  
1901 Avenue of the Stars #700  
Los Angeles, CA 90067-6078

To PGE: Contracts Manager  
QF Contracts, 3WTC0306  
PGE - 121 SW Salmon St.  
Portland, Oregon 97204

20.2 The Parties may change the person to whom such notices are addressed, or their addresses, by providing written notices thereof in accordance with this Section 20.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in their respective names as of the Effective Date.

PGE

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

TYGH VALLEY SOLAR I LLC  
(Name Seller)

By: \_\_\_\_\_  
Name: Jacob Stephens  
Title: Authorized Representative  
Date: \_\_\_\_\_

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EXHIBIT A  
DESCRIPTION OF SELLER'S FACILITY

TYGH VALLEY Solar I is a photovoltaics-based solar generating facility which upon reaching full commercial operations have nameplate capacity of 10 MW-AC net output at the point of interconnection subject to available solar energy input. The facility will consist of the following primary equipment:

1. PV Modules - Commercially-available photovoltaic modules for utility-scale DC energy production. Nominal per module DC production rating of 350W +/-50W-DC. Qty  $\leq$  [14MM/(module rating)].
2. Inverter AC Generator Units: Commercially-available string inverter (90kW-AC, nominal) convert DC to AC power, collected by AC wiring to switchboard. Each such collected aggregation of inverters shall constitute a single sub-generator for the facility, which once all aggregated shall constitute the entire generator for the facility.
3. Pad-mounted transformers: for each sub-generator shall transform inverter output voltage to plant AC collection voltage (12.47 KV, nominally)
4. Racking systems, commercially-available, will mount the PV Modules and direct them and control their angle to receive light from the sun. Racking systems will be arranged in generally uniform rows on the facility site.
5. Additional interconnection, transformation, switching, storage, metering, communications, tie-line, and meteorological observations facilities as may be required, subject to final interconnection, permitting, and design requirements.

Standard Renewable Off-System Variable Power Purchase Agreement  
Form Effective September 23, 2015

**EXHIBIT B**  
**REQUIRED FACILITY DOCUMENTS**

1. Seller's Generation Interconnection Agreement
2. Wasco County CUP & Building Permits
3. BPA: Transmission Service Agreement
4. EFSC Site Certificate (if final project footprint > 100 acres)
5. Additional as may be determined by Seller to be required for facility permitting, construction, and interconnection.

## EXHIBIT C START-UP TESTING

### **Seller-identified start-up tests**

As part of the start-up of Facility, Seller will perform the following tests, in addition to any further tests deemed required in coordination with EPC contractor (the Facility's manufacturer) and primary supply vendors (PV modules, inverters, transformers) and interconnecting utility. This will include required factory checks and tests necessary to determine that the equipment systems and subsystems have been properly manufactured and installed, function properly, and are in a condition to permit safe and efficient start-up of the Facility, which may include but are not limited to (as applicable). This will include required start-up tests and checks which necessary to determine that all features and equipment, systems, and subsystems have been properly designed, manufactured, installed and adjusted, function properly, and are capable of operating simultaneously in such condition that the Facility is capable of continuous delivery into PGE's electrical system, which may include but are not limited to (as applicable):

1. Validation of mechanical assembly completion for sign-off on EPC vendor warranty of mechanical completion and workmanship, including racking system, wiring (module connections, DC collection, string terminations, inverter connections to collected strings, AC delivery to switchboard and step-up/collection transformers, and AC collection system deliver to interconnection facilities), inverter mounting, and module installation.
2. Electrical performance validation by facility PV string and sub-generator, per insolation input, including:
  - a) DC wiring inputs to inverters
  - b) AC wiring delivery to transformers
3. Inverter Commissioning, per manufacturer specifications, including commissioning report;
4. Facility daily start-up and shut-down automation confirmed;
5. Energization of transformers;
6. Full system performance test;
7. Interconnection facilities: Commissioning of on-site, tie-line, and off-site interconnection facilities (as applicable), including switchyard, substation, breakers, and metering equipment (as applicable), in coordination with interconnecting utility and performing electrical contractor;
8. Cataloguing of installed equipment on-site, including primary equipment serial numbers and manufacturer information for O&M documentation;
9. Complete pre-parallel checks with PGE;
10. Test energy delivery and metering checks.
11. Excitation and voltage regulation operation tests per insolation inputs.
12. Meteorological station commissioning and report;
13. Facility communications equipment commissioning and report; and
14. Other tests as may be required by equipment manufacturers.

Standard Renewable Off-System Variable Power Purchase Agreement  
Form Effective September 23, 2015

EXHIBIT D  
SCHEDULE

**[Attach currently in-effect Schedule 201]**

**UM 1931 NewSun Parties Exhibit 111**

October 21, 2015, Email from  
Bruce True to Jake Stephens

Message

**From:** Bruce True [Bruce.True@pgn.com]  
**Sent:** 10/21/2015 12:56:52 PM  
**To:** Jake Stephens [jake@jakestephens.com]  
**CC:** Shawn Davis [Shawn.Davis@pgn.com]; Denise Saunders [Denise.Saunders@pgn.com]  
**Subject:** RE: Tygh Valley Solar I

We may have some concerns here.

I'll have more, but in particular, PGE doesn't believe the Standard QF agreement accommodates such a loose statement as BPA or Wasco PUD for the BA. We think you have to go one way or the other. In addition, the contract must run no more than 20 years from EXECUTION, not commercial operation. I'll have a more detailed set of concerns for you shortly.

With this second project, I think I may have asked already, but are Wasco 1 and Tygh Valley 5 miles apart? This is required. We also want the entity being interconnected with to be clear as well. I may have the same set of concerns as above.

**From:** Jake Stephens [mailto:jake@jakestephens.com]  
**Sent:** Wednesday, October 21, 2015 12:44 PM  
**To:** Bruce True  
**Subject:** Tygh Valley Solar I

Dear Bruce,

I hope this e-mail finds you well. I had an excellent meeting with John Morton yesterday at the WSPP event. I greatly appreciate your suggestion to attend -- and it was great to meet most of the merchant team there. John was quite helpful in providing thoughts on these submissions and projects, as well as context for larger, non-standard contract project under consideration.

SUBMISSION: As regards the planned 10 MW QF "Tygh Valley Solar I", owned by Tygh Valley Solar I LLC, and planned for construction in Wasco County, OR by end of calendar year 2020 (pending PPA's Effective Date), please find attached:

- 1a) Form 556, as filed with FERC; 1b) FERC 556 receipt confirmation)
- 2) The PGE Schedule 201 Standard Renewable Off-System Variable Power Purchase Agreement for the facility, completed for the Facility and which Agreement Tygh Valley Solar I LLC considers to be complete and acceptable as presented.
- 3) A redline, for your convenience, of this PPA submission vs the Wasco Solar I LLC submission. They are essentially identical, due to close geographic proximity, except for project name, location, and schedule.

A note on the schedule proposed for this project. I proposed herein a year later COD, per a few considerations: a) Additional timing considerations for the BPA NOS and other related processes; b) Section 2.2.3 language; and c) discussions with Mr. Morton on timing considerations. Happy to discuss this further.

Please let me know if you have any questions. I think it should be pretty straightforward. I put a couple brief comments in there for clarification's sake. The interconnection may change from initially being Wasco Coop to later a direct BPA connection -- and I think the phrasing I chose when specifying the interconnecting utility should cover that.

I appreciate your assistance and look forward to the formal execution of this agreement by PGE. I presume that if the document is signed earlier or later by PGE that the Effective Date will be updated accordingly.

I'll try to follow up on Thursday or Friday.

Best regards,

Jake Stephens  
Principal  
NewSun Energy  
520-981-7303



**UM 1931 NewSun Parties Exhibit 112**

October 28, 2015, Email from  
Bruce True to Jake Stephens

Message

**From:** Bruce True [Bruce.True@pgn.com]  
**Sent:** 10/28/2015 4:38:35 PM  
**To:** Jake Stephens [jake@jakestephens.com]  
**Subject:** RE: Tygh Valley Solar I

PGE can't accommodate this.

Section 1.11 should state Bonneville Power Administration ideally. We can accept Wasco as well it turns out (more discussion after you and I hung up), but not an either or kind of statement in a form contract of this type.

If COD is 47 months out then, the contract should be submitted in about 11 months, not today, so section 2.2.1 isn't acceptable.

Further the end date should be the 20th anniversary of the effective date, not the 20th contract year in Section 2.3. The contract years begin at the commercial operation, so the language as submitted would mean a contract more than 20 years in length.

Also, since this is a standard agreement, we can't accept, "during periods of peak local solar resource availability" in 3.1.8.

**From:** Jake Stephens [mailto:jake@jakestephens.com]  
**Sent:** Wednesday, October 21, 2015 12:44 PM  
**To:** Bruce True  
**Subject:** Tygh Valley Solar I

Dear Bruce,

I hope this e-mail finds you well. I had an excellent meeting with John Morton yesterday at the WSPP event. I greatly appreciate your suggestion to attend -- and it was great to meet most of the merchant team there. John was quite helpful in providing thoughts on these submissions and projects, as well as context for larger, non-standard contract project under consideration.

SUBMISSION: As regards the planned 10 MW QF "Tygh Valley Solar I", owned by Tygh Valley Solar I LLC, and planned for construction in Wasco County, OR by end of calendar year 2020 (pending PPA's Effective Date), please find attached:

1a) Form 556, as filed with FERC; 1b) FERC 556 receipt confirmation)

2) The PGE Schedule 201 Standard Renewable Off-System Variable Power Purchase Agreement for the facility, completed for the Facility and which Agreement Tygh Valley Solar I LLC considers to be complete and acceptable as presented.

3) A redline, for your convenience, of this PPA submission vs the Wasco Solar I LLC submission. They are essentially identical, due to close geographic proximity, except for project name, location, and schedule.

A note on the schedule proposed for this project. I proposed herein a year later COD, per a few considerations: a) Additional timing considerations for the BPA NOS and other related processes; b) Section 2.2.3 language; and c) discussions with Mr. Morton on timing considerations. Happy to discuss this further.

Please let me know if you have any questions. I think it should be pretty straightforward. I put a couple brief comments in there for clarification's sake. The interconnection may change from initially being Wasco Coop to later a direct BPA connection -- and I think the phrasing I chose when specifying the interconnecting utility should cover that.

I appreciate your assistance and look forward to the formal execution of this agreement by PGE. I presume that if the document is signed earlier or later by PGE that the Effective Date will be updated accordingly.

I'll try to follow up on Thursday or Friday.

Best regards,

Jake Stephens  
Principal

NewSun Energy  
520-981-7303

**UM 1931 NewSun Parties Exhibit 113**

October 28, 2015, Email from  
Bruce True to Jake Stephens

Message

**From:** Bruce True [Bruce.True@pgn.com]  
**Sent:** 10/28/2015 4:34:01 PM  
**To:** Jake Stephens [jake@jakestephens.com]  
**Subject:** RE: Dayton Solar I

PGE can't accommodate this.

If COD is 58 months out then, the contract should be submitted in about 22 months, not today, so section 2.2.1 isn't acceptable.

Further the end date should be the 20<sup>th</sup> anniversary of the effective date, not the 20<sup>th</sup> contract year in Section 2.3. The contract years begin at the commercial operation, so the language as submitted would mean a contract more than 20 years in length.

Also, since this is a standard agreement, we can't accept, "during periods of peak local solar resource availability" in 3.1.8.

**From:** Jake Stephens [mailto:jake@jakestephens.com]  
**Sent:** Wednesday, October 21, 2015 3:13 PM  
**To:** Bruce True  
**Subject:** Dayton Solar I

Dear Bruce,

Just one other submission for you, thanks (and sorry). This one is "In System". (Your comments on Wasco noted; I assume we'll discuss as we discuss all three submissions I've made.)

QF Schedule 201 Submission to PGE for: 10 MW QF "Dayton Solar I", owned by Dayton Solar I LLC, and planned for construction in Yamhill County, OR by end of calendar year 2020 (pending PPA's Effective Date), please find attached:

1a) Form 556, as filed with FERC; 1b) FERC 556 receipt confirmation;

2) The PGE Schedule 201 Standard Renewable \*In System\* Variable Power Purchase Agreement for the facility, completed for the Facility and which Agreement Dayton Solar I LLC considers to be complete and acceptable as presented.

Schedule proposed for this project: I also proposed herein a year later COD, per a few timing considerations including Section 2.2.3 language and discussions with Mr. Morton on timing considerations. Happy to discuss this further and other questions further (including your Wasco notes).

Interconnecting utility is PGE for this one. So this Form 556 notice and avoided cost request submission shall serve as notice to all affected utilities, per Form 556's notification requirements.

I appreciate your assistance and look forward to the formal execution of this agreement by PGE. As with Wasco and Tygh Valley, I presume that if the document is signed earlier or later by PGE that the Effective Date will be updated accordingly.

Best regards,

Jake Stephens

Authorized Representative, Dayton Solar I LLC  
520-981-7303

**UM 1931 NewSun Parties Exhibit 114**

October 28, 2015, Email from  
Bruce True to Jake Stephens

Message

**From:** Bruce True [Bruce.True@pgn.com]  
**Sent:** 10/28/2015 4:41:43 PM  
**To:** Jake Stephens [jake@jakestephens.com]  
**Subject:** RE: Wasco Solar I

PGE can't accommodate this as it stands.

Section 1.11 should state Bonneville Power Administration ideally. We can accept Wasco as well it turns out (more discussion after you and I hung up), but not an either or kind of statement in a form contract of this type.

Further the end date should be the 20th anniversary of the effective date, not the 20th contract year in Section 2.3. The contract years begin at the commercial operation, so the language as submitted would mean a contract more than 20 years in length.

Also, since this is a standard agreement, we can't accept, "during periods of peak local solar resource availability" in 3.1.8.

**From:** Jake Stephens [mailto:jake@jakestephens.com]  
**Sent:** Monday, October 19, 2015 2:33 PM  
**To:** Bruce True  
**Subject:** Wasco Solar I

Dear Bruce,

As regards the planned 10 MW QF "Wasco Solar I", owned by Wasco Solar I LLC, and planned for construction in Wasco County, OR by end of calendar year 2019 (pending PPA's Effective Date), please find attached:

- 1) Form 556, as filed with FERC.
- 2) The PGE Schedule 201 Standard Renewable Off-System Variable Power Purchase Agreement for the facility, completed for the Facility and which Agreement Wasco Solar I LLC considers to be complete and acceptable as presented.

Please let me know if you have any questions. I think it should be pretty straightforward. I put a couple brief comments in there for clarification's sake. The interconnection may change from initially being Wasco Coop to later a direct BPA connection -- and I think the phrasing I chose when specifying the interconnecting utility should cover that.

I appreciate your assistance and look forward to the formal execution of this agreement by PGE. I presume that if the document is signed earlier or later by PGE that the Effective Date will be updated accordingly.

Best regards,

Jake Stephens  
520-981-7303

**UM 1931 NewSun Parties Exhibit 115**

November 3, 2015, Email from  
Jake Stephens to Bruce True



Message

**From:** Jake Stephens [jake@jakestephens.com]  
**Sent:** 11/3/2015 9:39:42 AM  
**To:** Bruce True [Bruce.True@pgn.com]  
**Subject:** Re: Wasco Solar I

Bruce, thanks for the feedback. I'll get back to you shortly. Sorry about posing that question to Dee & John; no disrespect intended... I just wanted to double check that aspect, given John's comments, so I wasn't leaving something mutually beneficial on the table there if PGE really prefers later. I understand you have a separate process and such due to tariff, organization, etc. I'll check further on BPA timelines and interconnection aspects and get back to you. Obviously those items aren't an issue for the Dayton project (PGE interconnected).

So, per your comment below on term length... It would then be a 15 year fixed price schedule after COD, but subject to a 20 year term length limit based on PPA Effective Date? Just confirming I understand your position on that.

On 3.1.8, should I just put "0" then, given intermittent resource, night time, etc?

Hope you had a good weekend. Weather finally broke here; probably the opposite there. Look forward to meeting you when I'm up in a few weeks.

Best regards,  
Jake  
520-981-7303

On Wed, Oct 28, 2015 at 4:41 PM, Bruce True <Bruce.True@pgn.com> wrote:

PGE can't accommodate this as it stands.

Section 1.11 should state Bonneville Power Administration ideally. We can accept Wasco as well it turns out (more discussion after you and I hung up), but not an either or kind of statement in a form contract of this type.

Further the end date should be the 20th anniversary of the effective date, not the 20th contract year in Section 2.3. The contract years begin at the commercial operation, so the language as submitted would mean a contract more than 20 years in length.

Also, since this is a standard agreement, we can't accept, "during periods of peak local solar resource availability" in 3.1.8.

**From:** Jake Stephens [mailto:jake@jakestephens.com]  
**Sent:** Monday, October 19, 2015 2:33 PM

**To:** Bruce True  
**Subject:** Wasco Solar I

Dear Bruce,

As regards the planned 10 MW QF "Wasco Solar I", owned by Wasco Solar I LLC, and planned for construction in Wasco County, OR by end of calendar year 2019 (pending PPA's Effective Date), please find attached:

1) Form 556, as filed with FERC.

2) The PGE Schedule 201 Standard Renewable Off-System Variable Power Purchase Agreement for the facility, completed for the Facility and which Agreement Wasco Solar I LLC considers to be complete and acceptable as presented.

Please let me know if you have any questions. I think it should be pretty straightforward. I put a couple brief comments in there for clarification's sake. The interconnection may change from initially being Wasco Coop to later a direct BPA connection -- and I think the phrasing I chose when specifying the interconnecting utility should cover that.

I appreciate your assistance and look forward to the formal execution of this agreement by PGE. I presume that if the document is signed earlier or later by PGE that the Effective Date will be updated accordingly.

Best regards,

Jake Stephens

520-981-7303

**UM 1931 NewSun Parties Exhibit 116**

November 12, 2015, Email from  
Jake Stephens to Bruce True

Message

**From:** Jake Stephens [jake@jakestephens.com]  
**Sent:** 11/12/2015 7:48:33 PM  
**To:** Bruce True [Bruce.True@pgn.com]  
**Subject:** Re: Tygh Valley Solar I  
**Attachments:** OneEnergy Oregon Solar One - Contract Length language.png; Schedule 201 RENEWABLE Off System Variable PPA\_Effective\_09.23.15 - TYGH VALLEY SOLAR I v1.doc

Hi Bruce,

Good talking earlier. Attached please find my revision (redline vs last copy sent) of the Tygh Valley Solar I PPA.

1) I updated the GIA to Wasco, 1.11.

2) I deleted the "during peak solar resource" language you didn't like from 3.1.8.

3) 2.2.2: As for the COD, I put 5.5 years out. Per the 2.2.3 language that "PGE will not unreasonably withhold agreement to a Commercial Operation Date that is more than three (3) years from the Effective date if the Seller has demonstrated that a later Commercial Operation Date is reasonable and necessary." ... I spoke with BPA's Craig Hardin who indicated that I'd expect to have to go through BPA's "Network Open Season" to get firm transmission rights (18 months, starting in ~Feb) (so 21 months from Dec 1) and then if upgrades required, an EIS/NEPA process will be triggered (24-36 months), plus upgrade construction (6-12 months, if smooth). That implies 51 to 69 months timeline.

Thus, I submit that my requesting a COD of up to 5.5 years out is "reasonable and necessary". This also corresponds with PGE's self identified renewables deficiency period (2020) and resource deficiency period (2021), so this seems to line up well with the needs of the ratepayer and PGE. (Craig's/BPA's comments on timeline are pasted below, documenting same.)

4) Regarding the contract length and fixed price period: I did a little more digging, per the history of PGE providing QF's 15 year fixed pricing and 20 year contract terms from COD. A couple examples follow and/or attached. I can dig some more, but figured these were representative. These were executed under the same PUC orders for 15-year fixed-price rates and 20-year contract terms. So, based on non-discriminatory practices, PGE should provide the same 15 year fixed and 20 year from COD term, consistent with OPUC Order 05-584 stating need for 15 years for financing. It would be burdensome to the QF to have only 12 years of energy sales to finance the project against (variable pricing is not useful, per our conversation, for project debt and investors, since Mid-C could be zero by then.)

a) Example 1: PGE agreed to a 15-year fixed prices that ran from the COD (pasted below from the 2.5 MW OneEnergy Oregon Solar, LLC PPA in the link). As you can see, it clearly states that the fixed rates are only for "Fixed Price (for the first 15 years following the Commercial Operation Date) "

b) Example 2: the 9 MW PaTu Wind Farm PPA, states in section 2.3 that the term runs until "5/31/2031" which is over 20 years after the Effective date, which according to the first line of the agreement was April 29, 2010.

<http://apps.puc.state.or.us/edockets/edocs.asp?FileType=RPA&FileName=re143rpa10953.pdf&DocketID=19098&numSequence=12>

Revisions per above attached (or left the same, as applicable).

Thanks for your help,  
Best,

Jake

**EXCERPTS (OneEnergy Oregon Solar)**

THIS AGREEMENT, entered into this 19th day, of February 2014, is between OneEnergy Oregon Solar, LLC ("Seller") and Portland General Electric Company ("PGE")

...  
...

**SECTION 5: CONTRACT PRICE**

PGE shall pay Seller for the price options 5.1, 5.2, 5.3 or 5.4, as selected below, pursuant to Schedule 201. Seller shall indicate which price option it chooses by marking its choice below with an X. If Seller chooses the option in Section 5.1, it must mark below a single second option from Section 5.2, 5.3, or 5.4 for all Contract Years in excess of 15 until the remainder of the Term. Except as provided herein, Sellers selection is for the Term and shall not be changed during the Term.

5.1  Fixed Price (for the first 15 years following the Commercial Operation Date)

5.2  Deadband Index Gas Price (for the 16th year following the Commercial Operation Date and continuing until the end of Term)

5.3  Index Gas Price

5.4  Mid-C Index Rate Price

**EXCERPTS (BPA, re: NOS and TSR and upgrade timelines)**

On Tue, Nov 3, 2015 at 4:36 PM, Hardin,Craig A (BPA) - TSE-TPP-2 <[cahardin@bpa.gov](mailto:cahardin@bpa.gov)> wrote:

Jake,

Yes. Anytime you move even one shovel full of dirt NEPA can take up to three years. If there are more than one build that requires NEPA things get twisted and take more time.

Thanks Craig

On Tue, Nov 3, 2015 at 4:05 PM, Hardin,Craig A (BPA) - TSE-TPP-2 <[cahardin@bpa.gov](mailto:cahardin@bpa.gov)> wrote:

18 months to complete the NOS process is a fair "ball park" time frame to use.

On Wed, Oct 28, 2015 at 4:38 PM, Bruce True <[Bruce.True@pgn.com](mailto:Bruce.True@pgn.com)> wrote:

PGE can't accommodate this.

Section 1.11 should state Bonneville Power Administration ideally. We can accept Wasco as well it turns out (more discussion after you and I hung up), but not an either or kind of statement in a form contract of this type.

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Further the end date should be the 20th anniversary of the effective date, not the 20th contract year in Section 2.3. The contract years begin at the commercial operation, so the language as submitted would mean a contract more than 20 years in length.

Also, since this is a standard agreement, we can't accept, "during periods of peak local solar resource availability" in 3.1.8.

**From:** Jake Stephens [<mailto:jake@jakestephens.com>]  
**Sent:** Wednesday, October 21, 2015 12:44 PM  
**To:** Bruce True  
**Subject:** Tygh Valley Solar I

Dear Bruce,

I hope this e-mail finds you well. I had an excellent meeting with John Morton yesterday at the WSPP event. I greatly appreciate your suggestion to attend -- and it was great to meet most of the merchant team there. John was quite helpful in providing thoughts on these submissions and projects, as well as context for larger, non-standard contract project under consideration.

SUBMISSION: As regards the planned 10 MW QF "Tygh Valley Solar I", owned by Tygh Valley Solar I LLC, and planned for construction in Wasco County, OR by end of calendar year 2020 (pending PPA's Effective Date), please find attached:

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3) A redline, for your convenience, of this PPA submission vs the Wasco Solar ILLC submission. They are essentially identical, due to close geographic proximity, except for project name, location, and schedule.

A note on the schedule proposed for this project. I proposed herein a year later COD, per a few considerations: a) Additional timing considerations for the BPA NOS and other related processes; b) Section 2.2.3 language; and c) discussions with Mr. Morton on timing considerations. Happy to discuss this further.

Please let me know if you have any questions. I think it should be pretty straightforward. I put a couple brief comments in there for clarification's sake. The interconnection may change from initially being Wasco Coop to later a direct BPA connection -- and I think the phrasing I chose when specifying the interconnecting utility should cover that.

I appreciate your assistance and look forward to the formal execution of this agreement by PGE. I presume that if the document is signed earlier or later by PGE that the Effective Date will be updated accordingly.

I'll try to follow up on Thursday or Friday.

Best regards,

Jake Stephens

Principal

NewSun Energy

520-981-7303

**UM 1931 NewSun Parties Exhibit 117**

November 19, 2015, Email from  
Jake Stephens to Bruce True



Message

**From:** Jake Stephens [jake@jakestephens.com]  
**Sent:** 11/19/2015 12:39:01 PM  
**To:** Bruce True [Bruce.True@pgn.com]  
**Subject:** Re: Tygh Valley Solar I

Hi Bruce, just following up, checking to see if you got my voicemail and/or had a chance to consider the below. Can we chat for a minute this week? Sorry about the contract length issue, but after reading the original OPUC decision on contract length, it was pretty clear that the whole logic was to provide 15 year term of fixed pricing operations for financing purposes; too big of an impact for me to just ignore, especially with prior PGE 15 and 20-year precedent. But I appreciate your consideration and time on the matter. Thanks, Jake

On Thu, Nov 12, 2015 at 8:48 PM, Jake Stephens <jake@jakestephens.com> wrote:  
Hi Bruce,

Good talking earlier. Attached please find my revision (redline vs last copy sent) of the Tygh Valley Solar I PPA.

1) I updated the GIA to Wasco, 1.11.

2) I deleted the "during peak solar resource" language you didn't like from 3.1.8.

3) 2.2.2: As for the COD, I put 5.5 years out. Per the 2.2.3 language that "PGE will not unreasonably withhold agreement to a Commercial Operation Date that is more than three (3) years from the Effective date if the Seller has demonstrated that a later Commercial Operation Date is reasonable and necessary." ... I spoke with BPA's Craig Hardin who indicated that I'd expect to have to go through BPA's "Network Open Season" to get firm transmission rights (18 months, starting in ~Feb) (so 21 months from Dec 1) and then if upgrades required, an EIS/NEPA process will be triggered (24-36 months), plus upgrade construction (6-12 months, if smooth). That implies 51 to 69 months timeline.

Thus, I submit that my requesting a COD of up to 5.5 years out is "reasonable and necessary". This also corresponds with PGE's self identified renewables deficiency period (2020) and resource deficiency period (2021), so this seems to line up well with the needs of the ratepayer and PGE. (Craig's/BPA's comments on timeline are pasted below, documenting same.)

4) Regarding the contract length and fixed price period: I did a little more digging, per the history of PGE providing QF's 15 year fixed pricing and 20 year contract terms from COD. A couple examples follow and/or attached. I can dig some more, but figured these were representative. These were executed under the same PUC orders for 15-year fixed-price rates and 20-year contract terms. So, based on non-discriminatory practices, PGE should provide the same 15 year fixed and 20 year from COD term, consistent with OPUC Order 05-584 stating need for 15 years for financing. It would be burdensome to the QF to have only 12 years of energy sales to finance the project against (variable pricing is not useful, per our conversation, for project debt and investors, since Mid-C could be zero by then.)

a) Example 1: PGE agreed to a 15-year fixed prices that ran from the COD (pasted below from the 2.5 MW OneEnergy Oregon Solar, LLC PPA in the link). As you can see, it clearly states that the fixed rates are only for "Fixed Price (for the first 15 years following the Commercial Operation Date) "

b) Example 2: the 9 MW PaTu Wind Farm PPA, states in section 2.3 that the term runs until "5/31/2031" which is over 20 years after the Effective date, which according to the first line of the agreement was April 29, 2010.

<http://apps.puc.state.or.us/edockets/edocs.asp?FileType=RPA&FileName=rel43rpa10953.pdf&DocketID=19098&numSequence=12>

Revisions per above attached (or left the same, as applicable).

Thanks for your help,  
Best,  
Jake

### **EXCERPTS (OneEnergy Oregon Solar)**

THIS AGREEMENT, entered into this 19th day, of February 2014, is between OneEnergy Oregon Solar, LLC ("Seller") and Portland General Electric Company ("PGE")

...  
...

#### **SECTION 5: CONTRACT PRICE**

PGE shall pay Seller for the price options 5.1, 5.2, 5.3 or 5.4, as selected below, pursuant to Schedule 201. Seller shall indicate which price option it chooses by marking its choice below with an X. If Seller chooses the option in Section 5.1, it must mark below a single second option from Section 5.2, 5.3, or 5.4 for all Contract Years in excess of 15 until the remainder of the Term. Except as provided herein, Sellers selection is for the Term and shall not be changed during the Term.

- 5.1  Fixed Price (for the first 15 years following the Commercial Operation Date)
- 5.2  Deadband Index Gas Price (for the 16th year following the Commercial Operation Date and continuing until the end of Term)
- 5.3  Index Gas Price
- 5.4  Mid-C Index Rate Price

### **EXCERPTS (BPA, re: NOS and TSR and upgrade timelines)**

On Tue, Nov 3, 2015 at 4:36 PM, Hardin,Craig A (BPA) - TSE-TPP-2 <[cahardin@bpa.gov](mailto:cahardin@bpa.gov)> wrote:

Jake,

Yes. Anytime you move even one shovel full of dirt NEPA can take up to three years. If there are more than one build that requires NEPA things get twisted and take more time.

Thanks Craig

On Tue, Nov 3, 2015 at 4:05 PM, Hardin,Craig A (BPA) - TSE-TPP-2 <[cahardin@bpa.gov](mailto:cahardin@bpa.gov)> wrote:

18 months to complete the NOS process is a fair "ball park" time frame to use.

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If COD is 47 months out then, the contract should be submitted in about 11 months, not today, so section 2.2.1 isn't acceptable.

Further the end date should be the 20th anniversary of the effective date, not the 20th contract year in Section 2.3. The contract years begin at the commercial operation, so the language as submitted would mean a contract more than 20 years in length.

Also, since this is a standard agreement, we can't accept, "during periods of peak local solar resource availability" in 3.1.8.

**From:** Jake Stephens [<mailto:jake@jakestephens.com>]  
**Sent:** Wednesday, October 21, 2015 12:44 PM  
**To:** Bruce True  
**Subject:** Tygh Valley Solar I

Dear Bruce,

I hope this e-mail finds you well. I had an excellent meeting with John Morton yesterday at the WSPP event. I greatly appreciate your suggestion to attend -- and it was great to meet most of the merchant team there. John was quite helpful in providing thoughts on these submissions and projects, as well as context for larger, non-standard contract project under consideration.

SUBMISSION: As regards the planned 10 MW QF "Tygh Valley Solar I", owned by Tygh Valley Solar I LLC, and planned for construction in Wasco County, OR by end of calendar year 2020 (pending PPA's Effective Date), please find attached:

1a) Form 556, as filed with FERC; 1b) FERC 556 receipt confirmation)

2) The PGE Schedule 201 Standard Renewable Off-System Variable Power Purchase Agreement for the facility, completed for the Facility and which Agreement Tygh Valley Solar I LLC considers to be complete and acceptable as presented.

3) A redline, for your convenience, of this PPA submission vs the Wasco Solar I LLC submission. They are essentially identical, due to close geographic proximity, except for project name, location, and schedule.

A note on the schedule proposed for this project. I proposed herein a year later COD, per a few considerations: a) Additional timing considerations for the BPA NOS and other related processes; b) Section 2.2.3 language; and c) discussions with Mr. Morton on timing considerations. Happy to discuss this further.

Please let me know if you have any questions. I think it should be pretty straightforward. I put a couple brief comments in there for clarification's sake. The interconnection may change from initially being Wasco Coop to later a direct BPA connection -- and I think the phrasing I chose when specifying the interconnecting utility should cover that.

I appreciate your assistance and look forward to the formal execution of this agreement by PGE. I presume that if the document is signed earlier or later by PGE that the Effective Date will be updated accordingly.

I'll try to follow up on Thursday or Friday.

Best regards,

Jake Stephens

Principal

NewSun Energy

520-981-7303

**UM 1931 NewSun Parties Exhibit 118**

November 20, 2015, Email from  
Bruce True to Jake Stephens

Message

**From:** Bruce True [Bruce.True@pgn.com]  
**Sent:** 11/20/2015 8:57:18 AM  
**To:** Jake Stephens [jake@jakestephens.com]  
**Subject:** RE: Tygh Valley Solar I

Jake: the first and second changes look fine. As far as the change to 2.2.2, at this point we do not believe you have demonstrated that a later COD is reasonable and necessary. In our experience, PGE and IPPs and developers in the region regularly acquire transmission in a much shorter timeframe than 5.5 years. From your email, it sounds like you have not yet submitted a request to BPA and therefore any concerns about timing are speculative. At this point we will not agree to a later COD.

On the issue of the contract length and fixed price period, under the current form contract, PGE provides a 15 year fixed price term starting on the Effective Date. The adjustment to the term in the OneEnergy Oregon Solar contract was in error. Our position is consistent with Schedule 201 which states that the fixed price option "is available for a maximum term of 15 years" and that "prices will be established at the time the Standard PPA is executed." It is also consistent with Commission Order 05-584 in which the Commission ruled that "standard contract prices should be fixed for only the first 15 years of the 20-year term." As the seller you may maximize the ability to take advantage of the fixed price term by bringing your project on line as quickly as possible.

I hope you can appreciate that we need to ensure that our contracting process is consistent with Commission orders and fair to our retail customers.

**From:** Jake Stephens [mailto:jake@jakestephens.com]  
**Sent:** Thursday, November 19, 2015 12:39 PM  
**To:** Bruce True  
**Subject:** Re: Tygh Valley Solar I

Hi Bruce, just following up, checking to see if you got my voicemail and/or had a chance to consider the below. Can we chat for a minute this week? Sorry about the contract length issue, but after reading the original OPUC decision on contract length, it was pretty clear that the whole logic was to provide 15 year term of fixed pricing operations for financing purposes; too big of an impact for me to just ignore, especially with prior PGE 15 and 20-year precedent. But I appreciate your consideration and time on the matter. Thanks, Jake

On Thu, Nov 12, 2015 at 8:48 PM, Jake Stephens <jake@jakestephens.com> wrote:  
Hi Bruce,

Good talking earlier. Attached please find my revision (redline vs last copy sent) of the Tygh Valley Solar I PPA.

- 1) I updated the GIA to Wasco, 1.11.
- 2) I deleted the "during peak solar resource" language you didn't like from 3.1.8.
- 3) 2.2.2: As for the COD, I put 5.5 years out. Per the 2.2.3 language that "PGE will not unreasonably withhold agreement to a Commercial Operation Date that is more than three (3) years from the Effective date if the Seller has demonstrated that a later Commercial Operation Date is reasonable and necessary." ... I spoke with BPA's Craig Hardin who indicated that I'd expect to have to go through BPA's "Network Open Season" to get firm transmission rights (18 months, starting in ~Feb) (so 21 months from Dec 1) and then if upgrades required, an EIS/NEPA process will be triggered (24-36 months), plus upgrade construction (6-12 months, if smooth). That implies 51 to 69 months timeline.

Thus, I submit that my requesting a COD of up to 5.5 years out is "reasonable and necessary". This also corresponds with PGE's self identified renewables deficiency period (2020) and resource deficiency period (2021), so this seems to line up well with the needs of the ratepayer and PGE. (Craig's/BPA's comments on timeline are pasted below, documenting same.)

4) Regarding the contract length and fixed price period: I did a little more digging, per the history of PGE providing QF's 15 year fixed pricing and 20 year contract terms from COD. A couple examples follow and/or attached. I can dig some more, but figured these were representative. These were executed under the same PUC orders for 15-year fixed-price rates and 20-year contract terms. So, based on non-discriminatory practices, PGE should provide the same 15 year fixed and 20 year from COD term, consistent with OPUC Order 05-584 stating need for 15 years for financing. It would be burdensome to the QF to have only 12 years of energy sales to finance the project against (variable pricing is not useful, per our conversation, for project debt and investors, since Mid-C could be zero by then.)

a) Example 1: PGE agreed to a 15-year fixed prices that ran from the COD (pasted below from the 2.5 MW OneEnergy Oregon Solar, LLC PPA in the link). As you can see, it clearly states that the fixed rates are only for "Fixed Price (for the first 15 years following the Commercial Operation Date)"

b) Example 2: the 9 MW PaTu Wind Farm PPA, states in section 2.3 that the term runs until "5/31/2031" which is over 20 years after the Effective date, which according to the first line of the agreement was April 29, 2010.

<http://apps.puc.state.or.us/edockets/edocs.asp?FileType=RPA&FileName=re143rpa10953.pdf&DocketID=19098&numSequence=12>

Revisions per above attached (or left the same, as applicable).

Thanks for your help,  
Best,  
Jake

### **EXCERPTS (OneEnergy Oregon Solar)**

THIS AGREEMENT, entered into this 19th day, of February 2014, is between OneEnergy Oregon Solar, LLC ("Seller") and Portland General Electric Company ("PGE")

...  
...

#### **SECTION 5: CONTRACT PRICE**

PGE shall pay Seller for the price options 5.1, 5.2, 5.3 or 5.4, as selected below, pursuant to Schedule 201. Seller shall indicate which price option it chooses by marking its choice below with an X. If Seller chooses the option in Section 5.1, it must mark below a single second option from Section 5.2, 5.3, or 5.4 for all Contract Years in excess of 15 until the remainder of the Term. Except as provided herein, Sellers selection is for the Term and shall not be changed during the Term.

5.1  Fixed Price (for the first 15 years following the Commercial Operation Date)

5.2  Deadband Index Gas Price (for the 16th year following the Commercial Operation Date and continuing until the end of Term)

5.3  Index Gas Price

5.4  Mid-C Index Rate Price

**EXCERPTS (BPA, re: NOS and TSR and upgrade timelines)**

On Tue, Nov 3, 2015 at 4:36 PM, Hardin, Craig A (BPA) - TSE-TPP-2 <[cahardin@bpa.gov](mailto:cahardin@bpa.gov)> wrote:

Jake,

Yes. Anytime you move even one shovel full of dirt NEPA can take up to three years. If there are more than one build that requires NEPA things get twisted and take more time.

Thanks Craig

On Tue, Nov 3, 2015 at 4:05 PM, Hardin, Craig A (BPA) - TSE-TPP-2 <[cahardin@bpa.gov](mailto:cahardin@bpa.gov)> wrote:

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Best regards,

Jake Stephens

Principal

NewSun Energy

520-981-7303

**UM 1931 NewSun Parties Exhibit 119**

PGE's December 3, 2015 filing in  
Docket No. UM 1728 of Revised Schedule 201  
Qualifying Facility Information



**Portland General Electric Company**

121 SW Salmon Street • Portland, Oregon 97204

PortlandGeneral.com

December 3, 2015

Public Utility Commission of Oregon  
Attn: Filing Center  
201 High Street, S.E.  
P.O. Box 1088  
Salem, OR 97308-1088

**RE: UM \_\_\_\_\_ Revised Schedule 201 Qualifying Facility Information**

Portland General Electric (PGE) submits this filing pursuant to Oregon Revised Statutes 758.525; Oregon Administrative Rules 860-029-0001 through 860-029-0100; Order No. 11-505; and Order No. 14-058, with a requested effective date of **January 13, 2016**:

Sheet Nos. 201-1 through Sheet Nos. 201-24.

This filing revises Schedule 201, Qualifying Facility Power Purchase Information for Qualifying Facilities 10 MW or Less, consistent with PGE's 2013 Integrated Resource Plan (IRP) Update.

PGE requests this pricing update to incorporate significant changes to several key drivers of avoided cost prices in light of PGE's 2013 IRP Update.

The major drivers for the price changes to Schedule 201 in this filing are as follows:

- Production tax credits for the renewable avoided costs are assumed to be available to new wind generating projects because of current market conditions and legislative history (See Section 2.4 for the Tax Credits discussion starting on page 27 of the 2013 IRP Update).
- Assumed overnight capital and operational costs for the respective proxy plant for the standard (simple cycle combustion turbine and combined cycle combustion turbine) and renewable (wind) avoided costs have been updated in studies conducted on behalf of PGE by Black & Veatch and DNV GL, respectively (Section 2.4 for the Resource Capital Costs discussion starting on page 26 of the 2013 IRP Update).

UM \_\_\_\_ Revised Schedule 201 Qualifying Facility Information  
Page 2

- Consistent with the results of an analysis of PGE's use of banked Renewable Energy Credits, performed at the request of the Commission, for the 2013 IRP Update, the renewable sufficiency period was extended from the end of 2019 to the end of 2023 (See Section 3.3 for the Renewable Portfolio Standard Scenario Analysis discussion on page 49 of the 2013 IRP Update).
- Financial and tax parameters were updated consistent with the 2013 IRP Update (See Table 2-8 Financial Assumptions on page 28 of the 2013 IRP Update).
- Contingency reserve costs were removed because these costs cannot be avoided with the acquisition of new generation.
- Shaping of the renewable avoided costs, based on the fully allocated cost of a wind plant, into on- and off-peak prices has been removed to reduce complexity and align the avoided cost prices closer to true avoided costs.
- Forward electricity price curves and gas price forecasts were updated to the most recent versions.

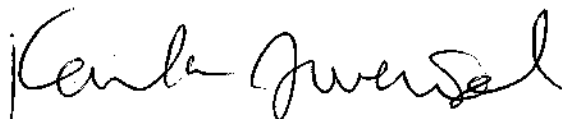
Work papers detailing the avoided cost calculations and discussing the input updates in further detail are attached.

PGE is requesting an effective date of January 13, 2016. We believe it is important for the Commission to use the best available information in setting avoided cost prices – particularly when the continued reliance on the use of outdated information could cause harm to either QF developers or the Company's customers. In this case, consistent with Commission policies, PGE is updating its avoided-cost prices based on the changes to drivers presented in its most recent IRP Update. The effect of these changes on PGE's avoided cost prices is significant, and any delay in adopting them will result in harm to PGE's customers if the Company is required to enter into long-term, fixed price contracts at the current inflated avoided cost prices. For this reason PGE requests that, pursuant to OAR 860-029-0005(4), the Commission waive any of the Division 029 rules for which such waiver may be necessary, to approve PGE's filing.

Should you have any questions or comments regarding this filing, please contact Mihir Desu at (503) 464-2709 or Rob Macfarlane at (503) 464-8954.

Please direct all formal correspondence and requests to the following email address [pge.opuc.filings@pgn.com](mailto:pge.opuc.filings@pgn.com)

Sincerely,



Karla Wenzel  
Manager, Pricing and Tariffs

Enclosures  
cc: Service List – UM 1610

**SCHEDULE 201  
QUALIFYING FACILITY 10 MW or LESS  
AVOIDED COST POWER PURCHASE INFORMATION**

**PURPOSE**

To provide information about Standard Avoided Costs and Renewable Avoided Costs, Standard Power Purchase Agreements (PPA) and Negotiated PPAs, power purchase prices and price options for power delivered by a Qualifying Facility (QF) to the Company with nameplate capacity of 10,000 kW (10MW) or less.

**AVAILABLE**

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

**APPLICABLE**

For power purchased from small power production or cogeneration facilities that are QFs as defined in 18 Code of Federal Regulations (CFR) Section 292, that meet the eligibility requirements described herein and where the energy is delivered to the Company's system and made available for Company purchase pursuant to a Standard PPA.

**ESTABLISHING CREDITWORTHINESS**

The Seller must establish creditworthiness prior to service under this schedule. For a Standard PPA, a Seller may establish creditworthiness with a written acknowledgment that it is current on all existing debt obligations and that it was not a debtor in a bankruptcy proceeding within the preceding 24 months. If the Seller is not able to establish creditworthiness, the Seller must provide security deemed sufficient by the Company as set forth in the Standard PPA.

**POWER PURCHASE INFORMATION**

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

**PPA**

In accordance with terms set forth in this schedule and the Commission's Rules as applicable, the Company will purchase any Energy in excess of station service (power necessary to produce generation) and amounts attributable to conversion losses, which are made available from the Seller.

A Seller must execute a PPA with the Company prior to delivery of power to the Company. The agreement will have a term of up to 20 years as selected by the QF.

A QF with a nameplate capacity rating of 10 MW or less as defined herein may elect the option of a Standard PPA.

## **SCHEDULE 201 (Continued)**

### PPA (Continued)

Any Seller may elect to negotiate a PPA with the Company. Such negotiation will comply with the requirements of the Federal Energy Regulatory Commission (FERC), and the Commission including the guidelines in Order No. 07-360, and Schedule 202. Negotiations for power purchase pricing will be based on either the filed Standard Avoided Costs or Renewable Avoided Costs in effect at that time.

### **STANDARD PPA (Nameplate capacity of 10 MW or less)**

A Seller choosing a Standard PPA will complete all informational and price option selection requirements in the applicable Standard PPA and submit the executed Agreement to the Company prior to service under this schedule. The Standard PPA is available at [www.portlandgeneral.com](http://www.portlandgeneral.com). The available Standard PPAs are:

- Standard In-System Non-Variable Power Purchase Agreement
- Standard Off-System Non-Variable Power Purchase Agreement
- Standard In-System Variable Power Purchase Agreement
- Standard Off-System Variable Power Purchase Agreement
- Standard Renewable In-System Non-Variable Power Purchase Agreement
- Standard Renewable Off-System Non-Variable Power Purchase Agreement
- Standard Renewable In-System Variable Power Purchase Agreement
- Standard Renewable Off-System Variable Power Purchase Agreement

The Standard PPAs applicable to variable resources are available only to QFs utilizing wind, solar or run of river hydro as the primary motive force.

### **GUIDELINES FOR 10 MW OR LESS FACILITIES ELECTING STANDARD PPA**

To execute the Standard PPA the Seller must complete all of the general project information requested in the applicable Standard PPA.

When all information required in the Standard PPA has been received in writing from the Seller, the Company will respond within 15 business days with a draft Standard PPA.

The Seller may request in writing that the Company prepare a final draft Standard PPA. The Company will respond to this request within 15 business days. In connection with such request, the QF must provide the Company with any additional or clarified project information that the Company reasonably determines to be necessary for the preparation of a final draft Standard PPA.

When both parties are in full agreement as to all terms and conditions of the draft Standard PPA, the Company will prepare and forward to the Seller a final executable version of the agreement within 15 business days. Following the Company's execution, an executed copy will be returned to the Seller.

Prices and other terms and conditions in the PPA will not be final and binding until the Standard PPA has been executed by both parties.

## **SCHEDULE 201 (Continued)**

### **OFF-SYSTEM PPA**

A Seller with a facility that interconnects with an electric system other than the Company's electric system may enter into a PPA with the Company after following the applicable Standard or Negotiated PPA guidelines and making the arrangements necessary for transmission of power to the Company's system.

### **BASIS FOR POWER PURCHASE PRICE**

#### **AVOIDED COST SUMMARY**

The power purchase prices are based on either the Company's Standard Avoided Costs or Renewable Avoided Costs in effect at the time the agreement is executed. Avoided Costs are defined in 18 CFR 292.101(6) as "the incremental costs to an electric utility of electric energy or capacity or both which, but for the purchase from the qualifying facility or qualifying facilities, such utility would generate itself or purchase from another source."

Monthly On-Peak prices are included in both the Standard Avoided Costs as listed in Tables 1a, 2a, and 3a and Renewable Avoided Costs as listed in Tables 4a, 5a, and 6a. Monthly Off-Peak prices are included in both the Standard Avoided Costs as listed in Tables 1b, 2b, and 3b and Renewable Avoided Costs as listed in Tables 4b, 5b, and 6b.

#### **ON-PEAK PERIOD**

The On-Peak period is 6:00 a.m. until 10:00 p.m., Monday through Saturday.

#### **OFF-PEAK PERIOD**

The Off-Peak period is 10:00 p.m. until 6:00 a.m., Monday through Saturday, and all day on Sunday.

Standard Avoided Costs are based on forward market price estimates through the Resource Sufficiency Period, the period of time during which the Company's Standard Avoided Costs are associated with incremental purchases of Energy and capacity from the market. For the Resource Deficiency Period, the Standard Avoided Costs reflect the fully allocated costs of a natural gas fueled combined cycle combustion turbine (CCCT) including fuel and capital costs. The CCCT Avoided Costs are based on the variable cost of Energy plus capitalized Energy costs at a 93% capacity factor based on a natural gas price forecast, with prices modified for shrinkage and transportation costs.

Renewable Avoided Costs are based on forward market price estimates through the Renewable Resource Sufficiency Period, the period of time during which the Company's Renewable Avoided Costs are associated with incremental purchases of energy and capacity from the market. For the Renewable Resource Deficiency Period, the Renewable Avoided Costs reflect the fully allocated costs of a wind plant including capital costs.



**SCHEDULE 201 (Continued)**

**PRICING FOR STANDARD PPA**

Pricing represents the purchase price per MWh the Company will pay for electricity delivered to a Point of Delivery (POD) within the Company's service territory pursuant to a Standard PPA up to the nameplate rating of the QF in any hour. Any Energy delivered in excess of the nameplate rating will be purchased at the applicable Off-Peak Prices for the selected pricing option.

The Standard PPA pricing will be based on either the Standard or Renewable Avoided Costs in effect at the time the agreement is executed.

The Company will pay the Seller either the Off-Peak Standard Avoided Cost pursuant to Tables 1b, 2b, or 3b or the Off-Peak Renewable Avoided Costs pursuant to Tables 4b, 5b, or 6b for: (a) all Net Output delivered prior to the Commercial Operation Date; (b) all Net Output deliveries greater than Maximum Net Output in any PPA year; (c) any generation subject to and as adjusted by the provisions of Section 4.3 of the Standard PPA; (d) Net Output delivered in the Off-Peak Period; and (e) deliveries above the nameplate capacity in any hour. The Company will pay the Seller either the On-Peak Standard Avoided Cost pursuant to Tables 1a, 2a, or 3a or the On-Peak Renewable Avoided Costs pursuant to Tables 4a, 5a, or 6a for all other Net Output. (See the PPA for defined terms.)

**1) Standard Fixed Price Option**

The Standard Fixed Price Option is based on Standard Avoided Costs including forecasted natural gas prices. It is available to all QFs.

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 Standard Avoided Costs in Tables 1a and 1b, 2a and 2b, or 3a and 3c, depending on the type of QF, effective at execution. QFs using any resource type other than wind and solar are assumed to be Base Load QFs.

Prices paid to the Seller under the Standard Fixed Price Option include adjustments for the capacity contribution of the QF resource type relative to that of the avoided proxy resource. Both the Base Load QF resources (Tables 1a and 1b) and the avoided proxy resource, the basis used to determine Standard Avoided Costs for the Standard Fixed Price Option, are assumed to have a capacity contribution to peak of 100%. The capacity contribution for Wind QF resources (Tables 2a and 2b) is assumed to be 5%. The capacity contribution for Solar QF resources (Tables 3a and 3b) is assumed to be 5%.

Prices paid to the Seller under the Standard Fixed Price Option for Wind QFs (Tables 2a and 2b) include a reduction for the wind integration costs in Table 7. However, if the Wind QF is outside of PGE's Balancing Authority Area as contemplated in the Commission's Order No. 14-058, the Seller is paid the wind integration charges in Table 7, in addition to the prices listed in Tables 2a and 2b, for a net-zero effect.

**SCHEDULE 201 (Continued)**

PRICING OPTIONS FOR STANDARD PPA (Continued)  
Standard Fixed Price Option (Continued)

Sellers with PPAs exceeding 15 years will receive pricing equal to the Mid-C Index Price for all years up to five in excess of the initial 15.

**SCHEDULE 201 (Continued)**

PRICING OPTIONS FOR STANDARD PPA (Continued)  
 Standard Fixed Price Option (Continued)

TABLE 1a												
Avoided Costs												
Standard Fixed Price Option for Base Load QF												
On-Peak Forecast (\$/MWH)												
Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2016	28.70	27.45	24.70	23.95	23.20	22.70	30.20	32.20	31.20	28.45	29.45	33.95
2017	32.23	30.77	27.60	25.76	25.05	23.29	31.42	35.71	31.73	30.96	31.96	34.42
2018	32.41	30.98	27.85	27.00	26.15	25.58	34.11	36.39	35.25	32.12	33.26	38.38
2019	33.92	32.42	29.14	28.25	27.35	26.76	35.70	38.09	36.90	33.62	34.81	40.18
2020	35.79	34.22	30.75	29.80	28.85	28.22	37.68	40.21	38.95	35.48	36.74	42.41
2021	65.20	65.04	61.83	60.45	60.04	60.16	60.28	60.42	60.57	61.53	64.47	64.81
2022	66.08	66.13	64.75	63.45	63.22	63.36	63.49	63.65	63.81	64.31	67.31	67.66
2023	68.58	68.73	67.36	65.87	65.29	65.44	65.58	65.74	65.91	66.53	69.13	69.30
2024	70.91	71.07	68.54	66.83	66.49	66.64	66.78	66.95	67.12	67.75	70.61	70.98
2025	72.59	72.76	71.33	70.16	69.94	70.11	70.27	70.45	70.64	71.17	74.22	74.47
2026	76.34	76.52	75.77	75.37	73.91	74.09	74.27	74.47	74.68	75.33	79.04	79.48
2027	80.70	80.90	79.60	78.19	76.05	76.24	76.43	76.63	76.85	77.51	81.89	82.35
2028	83.82	83.20	82.32	80.82	80.27	80.48	80.68	80.90	81.14	81.80	86.11	86.60
2029	89.63	89.88	88.56	87.04	86.53	86.63	86.85	87.10	87.36	87.90	91.98	92.24
2030	94.31	94.58	88.69	87.15	86.57	86.32	86.56	86.80	87.06	87.61	93.82	94.09
2031	96.28	96.55	92.78	91.13	90.61	90.83	91.07	91.34	91.62	92.17	98.33	98.62
2032	98.27	98.55	94.71	93.02	92.49	92.72	92.97	93.24	93.53	94.08	100.36	100.66
2033	100.20	100.48	96.56	94.84	94.30	94.53	94.78	95.06	95.35	95.92	102.33	102.63
2034	102.25	102.54	98.54	96.79	96.23	96.47	96.73	97.01	97.31	97.89	104.42	104.72
2035	103.87	104.17	100.09	98.31	97.74	97.99	98.25	98.54	98.84	99.43	106.09	106.40
2036	106.28	106.58	102.42	100.60	100.02	100.27	100.54	100.84	101.14	101.74	108.54	108.85
2037	108.53	108.84	104.60	102.75	102.16	102.41	102.68	102.99	103.30	103.91	110.84	111.16
2038	110.58	110.89	106.57	104.68	104.07	104.33	104.61	104.92	105.24	105.86	112.92	113.26
2039	112.86	113.18	108.78	106.85	106.23	106.50	106.78	107.09	107.42	108.06	115.26	115.60
2040	115.08	115.41	110.91	108.94	108.32	108.59	108.88	109.20	109.53	110.18	117.52	117.87
2041	117.47	117.80	113.22	111.21	110.57	110.85	111.14	111.47	111.81	112.47	119.96	120.31
2042	119.71	120.05	115.38	113.33	112.68	112.96	113.26	113.59	113.94	114.61	122.25	122.61
2043	122.14	122.49	117.72	115.64	114.97	115.26	115.56	115.90	116.26	116.95	124.73	125.10

**SCHEDULE 201 (Continued)**PRICING OPTIONS FOR STANDARD PPA (Continued)  
Standard Fixed Price Option (Continued)

<b>TABLE 1b</b>												
<b>Avoided Costs</b>												
<b>Standard Fixed Price Option for Base Load QF</b>												
<b>Off-Peak Forecast (\$/MWH)</b>												
<b>Year</b>	<b>Jan</b>	<b>Feb</b>	<b>Mar</b>	<b>Apr</b>	<b>May</b>	<b>Jun</b>	<b>Jul</b>	<b>Aug</b>	<b>Sep</b>	<b>Oct</b>	<b>Nov</b>	<b>Dec</b>
2016	24.95	24.20	21.45	19.45	17.45	15.45	21.20	24.70	25.95	24.20	24.95	27.95
2017	27.32	26.24	23.54	19.64	17.62	14.18	22.58	27.07	24.90	26.34	26.98	29.03
2018	27.49	26.66	23.61	21.39	19.17	16.95	23.33	27.22	28.60	26.66	27.49	30.82
2019	29.30	28.41	25.15	22.77	20.40	18.03	24.85	29.00	30.49	28.41	29.30	32.86
2020	31.61	30.64	27.11	24.54	21.96	19.39	26.79	31.28	32.89	30.64	31.61	35.46
2021	36.93	36.77	33.56	32.19	31.77	31.90	32.02	32.16	32.30	33.27	36.21	36.54
2022	37.26	37.31	35.93	34.63	34.40	34.53	34.67	34.82	34.98	35.49	38.48	38.84
2023	39.28	39.44	38.06	36.57	35.99	36.14	36.28	36.44	36.61	37.23	39.84	40.00
2024	40.94	41.10	38.57	36.86	36.52	36.67	36.81	36.98	37.15	37.78	40.64	41.01
2025	42.03	42.20	40.77	39.59	39.38	39.54	39.70	39.89	40.07	40.61	43.66	43.91
2026	45.07	45.26	44.51	44.11	42.65	42.83	43.01	43.21	43.41	44.06	47.78	48.22
2027	49.02	49.23	47.92	46.52	44.38	44.56	44.75	44.96	45.17	45.83	50.22	50.67
2028	51.42	50.79	49.92	48.41	47.87	48.07	48.27	48.50	48.73	49.40	53.71	54.19
2029	56.59	56.83	55.52	54.00	53.49	53.59	53.81	54.06	54.32	54.86	58.94	59.20
2030	60.61	60.88	55.00	53.45	52.87	52.63	52.86	53.11	53.37	53.92	60.13	60.40
2031	61.92	62.20	58.43	56.77	56.25	56.48	56.72	56.99	57.27	57.81	63.97	64.26
2032	63.24	63.52	59.67	57.99	57.46	57.69	57.93	58.21	58.49	59.05	65.33	65.62
2033	64.47	64.76	60.84	59.12	58.57	58.81	59.06	59.34	59.63	60.20	66.60	66.90
2034	65.82	66.11	62.11	60.36	59.80	60.04	60.30	60.58	60.88	61.46	67.99	68.30
2035	66.96	67.26	63.18	61.40	60.83	61.08	61.34	61.63	61.93	62.52	69.18	69.49
2036	68.40	68.70	64.55	62.72	62.15	62.40	62.66	62.96	63.27	63.87	70.66	70.98
2037	69.79	70.10	65.86	64.00	63.41	63.67	63.94	64.24	64.55	65.17	72.09	72.42
2038	71.19	71.51	67.19	65.29	64.69	64.95	65.23	65.53	65.86	66.48	73.54	73.87
2039	72.83	73.15	68.74	66.81	66.20	66.46	66.75	67.06	67.39	68.03	75.23	75.56
2040	74.13	74.46	69.96	67.99	67.37	67.64	67.93	68.25	68.58	69.23	76.57	76.92
2041	75.71	76.04	71.46	69.45	68.82	69.09	69.38	69.71	70.05	70.71	78.20	78.55
2042	77.13	77.47	72.80	70.75	70.10	70.38	70.68	71.01	71.36	72.03	79.67	80.03
2043	78.72	79.07	74.30	72.22	71.55	71.84	72.15	72.48	72.84	73.53	81.31	81.68

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**Effective for service  
on and after January 13, 2016**

**SCHEDULE 201 (Continued)**

PRICING OPTIONS FOR STANDARD PPA (Continued)  
Standard Fixed Price Option (Continued)

<b>TABLE 2a</b>												
<b>Avoided Costs</b>												
<b>Standard Fixed Price Option for Wind QF</b>												
<b>On-Peak Forecast (\$/MWH)</b>												
<b>Year</b>	<b>Jan</b>	<b>Feb</b>	<b>Mar</b>	<b>Apr</b>	<b>May</b>	<b>Jun</b>	<b>Jul</b>	<b>Aug</b>	<b>Sep</b>	<b>Oct</b>	<b>Nov</b>	<b>Dec</b>
2016	24.86	23.61	20.86	20.11	19.36	18.86	26.36	28.36	27.36	24.61	25.61	30.11
2017	28.32	26.86	23.69	21.85	21.14	19.38	27.51	31.80	27.82	27.05	28.05	30.51
2018	28.42	26.99	23.86	23.01	22.16	21.59	30.12	32.40	31.26	28.13	29.27	34.39
2019	29.85	28.35	25.07	24.18	23.28	22.69	31.63	34.02	32.83	29.55	30.74	36.11
2020	31.64	30.07	26.60	25.65	24.70	24.07	33.53	36.06	34.80	31.33	32.59	38.26
2021	34.12	33.96	30.74	29.37	28.96	29.08	29.20	29.34	29.49	30.45	33.39	33.73
2022	34.39	34.44	33.06	31.76	31.53	31.66	31.80	31.95	32.12	32.62	35.61	35.97
2023	36.34	36.50	35.13	33.63	33.06	33.20	33.35	33.51	33.68	34.30	36.90	37.07
2024	37.95	38.11	35.58	33.87	33.53	33.68	33.82	33.99	34.16	34.79	37.65	38.02
2025	38.99	39.16	37.73	36.55	36.34	36.50	36.66	36.84	37.03	37.57	40.62	40.86
2026	41.98	42.16	41.41	41.01	39.55	39.73	39.91	40.11	40.32	40.97	44.68	45.12
2027	45.84	46.05	44.75	43.34	41.20	41.39	41.57	41.78	42.00	42.65	47.04	47.50
2028	48.19	47.56	46.69	45.18	44.64	44.84	45.04	45.27	45.50	46.17	50.48	50.97
2029	53.29	53.54	52.22	50.70	50.19	50.29	50.51	50.76	51.02	51.56	55.64	55.90
2030	57.26	57.53	51.65	50.10	49.52	49.28	49.51	49.75	50.01	50.56	56.77	57.04
2031	58.50	58.77	55.00	53.35	52.83	53.05	53.30	53.56	53.84	54.39	60.55	60.84
2032	59.75	60.03	56.19	54.50	53.97	54.20	54.44	54.72	55.00	55.56	61.84	62.14
2033	60.91	61.19	57.27	55.56	55.01	55.25	55.50	55.78	56.07	56.63	63.04	63.34
2034	62.19	62.48	58.48	56.73	56.18	56.42	56.67	56.96	57.25	57.83	64.36	64.67
2035	63.25	63.55	59.47	57.68	57.12	57.36	57.62	57.91	58.22	58.81	65.46	65.78
2036	64.62	64.93	60.77	58.95	58.37	58.62	58.89	59.18	59.49	60.09	66.88	67.20
2037	65.95	66.25	62.02	60.16	59.57	59.82	60.10	60.40	60.71	61.32	68.25	68.57
2038	67.27	67.59	63.26	61.37	60.77	61.03	61.31	61.61	61.93	62.56	69.62	69.95
2039	68.82	69.14	64.74	62.80	62.19	62.46	62.74	63.05	63.38	64.02	71.22	71.56
2040	70.05	70.37	65.88	63.91	63.29	63.55	63.84	64.16	64.50	65.15	72.49	72.83
2041	71.55	71.88	67.30	65.29	64.65	64.93	65.22	65.55	65.89	66.55	74.04	74.39
2042	72.89	73.23	68.56	66.51	65.86	66.14	66.44	66.77	67.12	67.79	75.43	75.79
2043	74.39	74.74	69.97	67.89	67.22	67.51	67.82	68.15	68.51	69.20	76.98	77.35

**SCHEDULE 201 (Continued)**

PRICING OPTIONS FOR STANDARD PPA (Continued)  
 Standard Fixed Price Option (Continued)

<b>TABLE 2b</b>												
<b>Avoided Costs</b>												
<b>Standard Fixed Price Option for Wind QF</b>												
<b>Off-Peak Forecast (\$/MWH)</b>												
<b>Year</b>	<b>Jan</b>	<b>Feb</b>	<b>Mar</b>	<b>Apr</b>	<b>May</b>	<b>Jun</b>	<b>Jul</b>	<b>Aug</b>	<b>Sep</b>	<b>Oct</b>	<b>Nov</b>	<b>Dec</b>
2016	21.11	20.36	17.61	15.61	13.61	11.61	17.36	20.86	22.11	20.36	21.11	24.11
2017	23.41	22.33	19.63	15.73	13.71	10.27	18.67	23.16	20.99	22.43	23.07	25.12
2018	23.50	22.67	19.62	17.40	15.18	12.96	19.34	23.23	24.61	22.67	23.50	26.83
2019	25.23	24.34	21.08	18.70	16.33	13.96	20.78	24.93	26.42	24.34	25.23	28.79
2020	27.46	26.49	22.96	20.39	17.81	15.24	22.64	27.13	28.74	26.49	27.46	31.31
2021	32.70	32.54	29.33	27.96	27.54	27.67	27.79	27.93	28.07	29.04	31.98	32.31
2022	32.95	33.00	31.62	30.32	30.09	30.22	30.36	30.51	30.67	31.18	34.17	34.53
2023	34.88	35.04	33.66	32.17	31.59	31.74	31.88	32.04	32.21	32.83	35.44	35.60
2024	36.45	36.61	34.08	32.37	32.03	32.18	32.32	32.49	32.66	33.29	36.15	36.52
2025	37.46	37.63	36.20	35.02	34.81	34.97	35.13	35.32	35.50	36.04	39.09	39.34
2026	40.41	40.60	39.85	39.45	37.99	38.17	38.35	38.55	38.75	39.40	43.12	43.56
2027	44.26	44.47	43.16	41.76	39.62	39.80	39.99	40.20	40.41	41.07	45.46	45.91
2028	46.57	45.94	45.07	43.56	43.02	43.22	43.42	43.65	43.88	44.55	48.86	49.34
2029	51.64	51.88	50.57	49.05	48.54	48.64	48.86	49.11	49.37	49.91	53.99	54.25
2030	55.57	55.84	49.96	48.41	47.83	47.59	47.82	48.07	48.33	48.88	55.09	55.36
2031	56.78	57.06	53.29	51.63	51.11	51.34	51.58	51.85	52.13	52.67	58.83	59.12
2032	58.00	58.28	54.43	52.75	52.22	52.45	52.69	52.97	53.25	53.81	60.09	60.38
2033	59.12	59.41	55.49	53.77	53.22	53.46	53.71	53.99	54.28	54.85	61.25	61.55
2034	60.37	60.66	56.66	54.91	54.35	54.59	54.85	55.13	55.43	56.01	62.54	62.85
2035	61.40	61.70	57.62	55.84	55.27	55.52	55.78	56.07	56.37	56.96	63.62	63.93
2036	62.73	63.03	58.88	57.05	56.48	56.73	56.99	57.29	57.60	58.20	64.99	65.31
2037	64.01	64.32	60.08	58.22	57.63	57.89	58.16	58.46	58.77	59.39	66.31	66.64
2038	65.30	65.62	61.30	59.40	58.80	59.06	59.34	59.64	59.97	60.59	67.65	67.98
2039	66.82	67.14	62.73	60.80	60.19	60.45	60.74	61.05	61.38	62.02	69.22	69.55
2040	68.00	68.33	63.83	61.86	61.24	61.51	61.80	62.12	62.45	63.10	70.44	70.79
2041	69.46	69.79	65.21	63.20	62.57	62.84	63.13	63.46	63.80	64.46	71.95	72.30
2042	70.76	71.10	66.43	64.38	63.73	64.01	64.31	64.64	64.99	65.66	73.30	73.66
2043	72.22	72.57	67.80	65.72	65.05	65.34	65.65	65.98	66.34	67.03	74.81	75.18

**SCHEDULE 201 (Continued)**

PRICING OPTIONS FOR STANDARD PPA (Continued)  
 Standard Fixed Price Option (Continued)

TABLE 3a												
Avoided Costs												
Standard Fixed Price Option for Solar QF												
On-Peak Forecast (\$/MWH)												
Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2016	28.70	27.45	24.70	23.95	23.20	22.70	30.20	32.20	31.20	28.45	29.45	33.95
2017	32.23	30.77	27.60	25.76	25.05	23.29	31.42	35.71	31.73	30.96	31.96	34.42
2018	32.41	30.98	27.85	27.00	26.15	25.58	34.11	36.39	35.25	32.12	33.26	38.38
2019	33.92	32.42	29.14	28.25	27.35	26.76	35.70	38.09	36.90	33.62	34.81	40.18
2020	35.79	34.22	30.75	29.80	28.85	28.22	37.68	40.21	38.95	35.48	36.74	42.41
2021	38.35	38.19	34.97	33.60	33.19	33.31	33.43	33.57	33.72	34.68	37.62	37.96
2022	38.70	38.75	37.37	36.07	35.84	35.97	36.11	36.26	36.43	36.93	39.92	40.28
2023	40.74	40.90	39.53	38.03	37.46	37.60	37.75	37.91	38.08	38.70	41.30	41.47
2024	42.44	42.60	40.07	38.36	38.02	38.17	38.31	38.48	38.65	39.28	42.14	42.51
2025	43.56	43.73	42.30	41.12	40.91	41.07	41.23	41.41	41.60	42.14	45.19	45.43
2026	46.64	46.82	46.07	45.67	44.21	44.39	44.57	44.77	44.98	45.63	49.34	49.78
2027	50.60	50.81	49.51	48.10	45.96	46.15	46.33	46.54	46.76	47.41	51.80	52.26
2028	53.04	52.41	51.54	50.03	49.49	49.69	49.89	50.12	50.35	51.02	55.33	55.82
2029	58.24	58.49	57.17	55.65	55.14	55.24	55.46	55.71	55.97	56.51	60.59	60.85
2030	62.30	62.57	56.69	55.14	54.56	54.32	54.55	54.79	55.05	55.60	61.81	62.08
2031	63.64	63.91	60.14	58.49	57.97	58.19	58.44	58.70	58.98	59.53	65.69	65.98
2032	64.99	65.27	61.43	59.74	59.21	59.44	59.68	59.96	60.24	60.80	67.08	67.38
2033	66.26	66.54	62.62	60.91	60.36	60.60	60.85	61.13	61.42	61.98	68.39	68.69
2034	67.64	67.93	63.93	62.18	61.63	61.87	62.12	62.41	62.70	63.28	69.81	70.12
2035	68.81	69.11	65.03	63.24	62.68	62.92	63.18	63.47	63.78	64.37	71.02	71.34
2036	70.29	70.60	66.44	64.62	64.04	64.29	64.56	64.85	65.16	65.76	72.55	72.87
2037	71.73	72.03	67.80	65.94	65.35	65.60	65.88	66.18	66.49	67.10	74.03	74.35
2038	73.16	73.48	69.15	67.26	66.66	66.92	67.20	67.50	67.82	68.45	75.51	75.84
2039	74.83	75.15	70.75	68.81	68.20	68.47	68.75	69.06	69.39	70.03	77.23	77.57
2040	76.18	76.50	72.01	70.04	69.42	69.68	69.97	70.29	70.63	71.28	78.62	78.96
2041	77.80	78.13	73.55	71.54	70.90	71.18	71.47	71.80	72.14	72.80	80.29	80.64
2042	79.26	79.60	74.93	72.88	72.23	72.51	72.81	73.14	73.49	74.16	81.80	82.16
2043	80.89	81.24	76.47	74.39	73.72	74.01	74.32	74.65	75.01	75.70	83.48	83.85

**SCHEDULE 201 (Continued)**

PRICING OPTIONS FOR STANDARD PPA (Continued)  
 Standard Fixed Price Option (Continued)

<b>TABLE 3b</b>												
<b>Avoided Costs</b>												
<b>Standard Fixed Price Option for Solar QF</b>												
<b>Off-Peak Forecast (\$/MWH)</b>												
<b>Year</b>	<b>Jan</b>	<b>Feb</b>	<b>Mar</b>	<b>Apr</b>	<b>May</b>	<b>Jun</b>	<b>Jul</b>	<b>Aug</b>	<b>Sep</b>	<b>Oct</b>	<b>Nov</b>	<b>Dec</b>
2016	24.95	24.20	21.45	19.45	17.45	15.45	21.20	24.70	25.95	24.20	24.95	27.95
2017	27.32	26.24	23.54	19.64	17.62	14.18	22.58	27.07	24.90	26.34	26.98	29.03
2018	27.49	26.66	23.61	21.39	19.17	16.95	23.33	27.22	28.60	26.66	27.49	30.82
2019	29.30	28.41	25.15	22.77	20.40	18.03	24.85	29.00	30.49	28.41	29.30	32.86
2020	31.61	30.64	27.11	24.54	21.96	19.39	26.79	31.28	32.89	30.64	31.61	35.46
2021	36.93	36.77	33.56	32.19	31.77	31.90	32.02	32.16	32.30	33.27	36.21	36.54
2022	37.26	37.31	35.93	34.63	34.40	34.53	34.67	34.82	34.98	35.49	38.48	38.84
2023	39.28	39.44	38.06	36.57	35.99	36.14	36.28	36.44	36.61	37.23	39.84	40.00
2024	40.94	41.10	38.57	36.86	36.52	36.67	36.81	36.98	37.15	37.78	40.64	41.01
2025	42.03	42.20	40.77	39.59	39.38	39.54	39.70	39.89	40.07	40.61	43.66	43.91
2026	45.07	45.26	44.51	44.11	42.65	42.83	43.01	43.21	43.41	44.06	47.78	48.22
2027	49.02	49.23	47.92	46.52	44.38	44.56	44.75	44.96	45.17	45.83	50.22	50.67
2028	51.42	50.79	49.92	48.41	47.87	48.07	48.27	48.50	48.73	49.40	53.71	54.19
2029	56.59	56.83	55.52	54.00	53.49	53.59	53.81	54.06	54.32	54.86	58.94	59.20
2030	60.61	60.88	55.00	53.45	52.87	52.63	52.86	53.11	53.37	53.92	60.13	60.40
2031	61.92	62.20	58.43	56.77	56.25	56.48	56.72	56.99	57.27	57.81	63.97	64.26
2032	63.24	63.52	59.67	57.99	57.46	57.69	57.93	58.21	58.49	59.05	65.33	65.62
2033	64.47	64.76	60.84	59.12	58.57	58.81	59.06	59.34	59.63	60.20	66.60	66.90
2034	65.82	66.11	62.11	60.36	59.80	60.04	60.30	60.58	60.88	61.46	67.99	68.30
2035	66.96	67.26	63.18	61.40	60.83	61.08	61.34	61.63	61.93	62.52	69.18	69.49
2036	68.40	68.70	64.55	62.72	62.15	62.40	62.66	62.96	63.27	63.87	70.66	70.98
2037	69.79	70.10	65.86	64.00	63.41	63.67	63.94	64.24	64.55	65.17	72.09	72.42
2038	71.19	71.51	67.19	65.29	64.69	64.95	65.23	65.53	65.86	66.48	73.54	73.87
2039	72.83	73.15	68.74	66.81	66.20	66.46	66.75	67.06	67.39	68.03	75.23	75.56
2040	74.13	74.46	69.96	67.99	67.37	67.64	67.93	68.25	68.58	69.23	76.57	76.92
2041	75.71	76.04	71.46	69.45	68.82	69.09	69.38	69.71	70.05	70.71	78.20	78.55
2042	77.13	77.47	72.80	70.75	70.10	70.38	70.68	71.01	71.36	72.03	79.67	80.03
2043	78.72	79.07	74.30	72.22	71.55	71.84	72.15	72.48	72.84	73.53	81.31	81.68

**Effective for service  
 on and after January 13, 2016**



**SCHEDULE 201 (Continued)**

PRICING OPTIONS FOR STANDARD PPA (Continued)

**2) Renewable Fixed Price Option**

The Renewable Fixed Price Option is based on Renewable Avoided Costs. It is available only to Renewable QFs that generate electricity from a renewable energy source that may be used by the Company to comply with the Oregon Renewable Portfolio Standard as set forth in ORS 469A.005 to 469A.210.

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 Renewable Avoided Costs in Tables 4a and 4b, 5a and 5b, or 6a and 6b, depending on the type of QF, effective at execution. QFs using any resource type other than wind and solar are assumed to be Base Load QFs.

Sellers will retain all Environmental Attributes generated by the facility during the Renewable Resource Sufficiency Period. 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.

Prices paid to the Seller under the Renewable Fixed Price Option include adjustments for the capacity contribution of the QF resource type relative to that of the avoided proxy resource. Both Wind QF resources (Tables 5a and 5b) and the avoided proxy resource, the basis used to determine Renewable Avoided Costs for the Renewable Fixed Price Option, are assumed to have a capacity contribution to peak of 5%. The capacity contribution for Solar QF resources (Tables 6a and 6b) is assumed to be 5%. The capacity contribution for Base Load QF resources (Tables 4a and 4b) is assumed to be 100%.

The Renewable Avoided Costs during the Renewable Resource Deficiency Period reflect an increase for avoided wind integration costs, shown in Table 7.

Prices paid to the Seller under the Renewable Fixed Price Option for Wind QFs (Tables 5a and 5b) include a reduction for the wind integration costs in Table 7, which cancels out wind integration costs included in the Renewable Avoided Costs during the Renewable Resource Deficiency Period. However, if the Wind QF is outside of PGE's Balancing Authority Area as contemplated in the Commission's Order No. 14-058, the Seller is paid the wind integration charges in Table 7, in addition to the prices listed in Tables 5a and 5b.

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 (Continued)**

PRICING OPTIONS FOR STANDARD PPA (Continued)  
 Renewable Fixed Price Option (Continued)

<b>TABLE 4a</b>												
<b>Renewable Avoided Costs</b>												
<b>Renewable Fixed Price Option for Base Load QF</b>												
<b>On-Peak Forecast (\$/MWH)</b>												
<b>Year</b>	<b>Jan</b>	<b>Feb</b>	<b>Mar</b>	<b>Apr</b>	<b>May</b>	<b>Jun</b>	<b>Jul</b>	<b>Aug</b>	<b>Sep</b>	<b>Oct</b>	<b>Nov</b>	<b>Dec</b>
2016	28.70	27.45	24.70	23.95	23.20	22.70	30.20	32.20	31.20	28.45	29.45	33.95
2017	32.23	30.77	27.60	25.76	25.05	23.29	31.42	35.71	31.73	30.96	31.96	34.42
2018	32.41	30.98	27.85	27.00	26.15	25.58	34.11	36.39	35.25	32.12	33.26	38.38
2019	33.92	32.42	29.14	28.25	27.35	26.76	35.70	38.09	36.90	33.62	34.81	40.18
2020	35.79	34.22	30.75	29.80	28.85	28.22	37.68	40.21	38.95	35.48	36.74	42.41
2021	37.41	35.76	32.13	31.24	30.23	29.70	39.63	42.07	41.04	37.18	38.51	44.71
2022	39.01	37.30	33.52	32.68	31.62	31.17	41.57	43.94	43.13	38.87	40.27	47.00
2023	40.54	38.76	34.82	34.04	32.91	32.56	43.44	45.71	45.14	40.48	41.95	49.20
2024	87.22	87.22	87.22	87.22	87.22	87.22	87.22	87.22	87.22	87.22	87.22	87.22
2025	89.20	89.20	89.20	89.20	89.20	89.20	89.20	89.20	89.20	89.20	89.20	89.20
2026	90.96	90.96	90.96	90.96	90.96	90.96	90.96	90.96	90.96	90.96	90.96	90.96
2027	92.75	92.75	92.75	92.75	92.75	92.75	92.75	92.75	92.75	92.75	92.75	92.75
2028	94.41	94.41	94.41	94.41	94.41	94.41	94.41	94.41	94.41	94.41	94.41	94.41
2029	96.45	96.45	96.45	96.45	96.45	96.45	96.45	96.45	96.45	96.45	96.45	96.45
2030	98.35	98.35	98.35	98.35	98.35	98.35	98.35	98.35	98.35	98.35	98.35	98.35
2031	100.29	100.29	100.29	100.29	100.29	100.29	100.29	100.29	100.29	100.29	100.29	100.29
2032	101.87	101.87	101.87	101.87	101.87	101.87	101.87	101.87	101.87	101.87	101.87	101.87
2033	104.28	104.28	104.28	104.28	104.28	104.28	104.28	104.28	104.28	104.28	104.28	104.28
2034	106.45	106.45	106.45	106.45	106.45	106.45	106.45	106.45	106.45	106.45	106.45	106.45
2035	108.44	108.44	108.44	108.44	108.44	108.44	108.44	108.44	108.44	108.44	108.44	108.44
2036	110.26	110.26	110.26	110.26	110.26	110.26	110.26	110.26	110.26	110.26	110.26	110.26
2037	112.76	112.76	112.76	112.76	112.76	112.76	112.76	112.76	112.76	112.76	112.76	112.76
2038	114.98	114.98	114.98	114.98	114.98	114.98	114.98	114.98	114.98	114.98	114.98	114.98
2039	117.25	117.25	117.25	117.25	117.25	117.25	117.25	117.25	117.25	117.25	117.25	117.25
2040	119.35	119.35	119.35	119.35	119.35	119.35	119.35	119.35	119.35	119.35	119.35	119.35
2041	121.93	121.93	121.93	121.93	121.93	121.93	121.93	121.93	121.93	121.93	121.93	121.93
2042	124.33	124.33	124.33	124.33	124.33	124.33	124.33	124.33	124.33	124.33	124.33	124.33
2043	126.79	126.79	126.79	126.79	126.79	126.79	126.79	126.79	126.79	126.79	126.79	126.79

**SCHEDULE 201 (Continued)**

PRICING OPTIONS FOR STANDARD PPA (Continued)  
 Renewable Fixed Price Option (Continued)

<b>TABLE 4b</b>												
<b>Renewable Avoided Costs</b>												
<b>Renewable Fixed Price Option for Base Load QF</b>												
<b>Off-Peak Forecast (\$/MWH)</b>												
<b>Year</b>	<b>Jan</b>	<b>Feb</b>	<b>Mar</b>	<b>Apr</b>	<b>May</b>	<b>Jun</b>	<b>Jul</b>	<b>Aug</b>	<b>Sep</b>	<b>Oct</b>	<b>Nov</b>	<b>Dec</b>
2016	24.95	24.20	21.45	19.45	17.45	15.45	21.20	24.70	25.95	24.20	24.95	27.95
2017	27.32	26.24	23.54	19.64	17.62	14.18	22.58	27.07	24.90	26.34	26.98	29.03
2018	27.49	26.66	23.61	21.39	19.17	16.95	23.33	27.22	28.60	26.66	27.49	30.82
2019	29.30	28.41	25.15	22.77	20.40	18.03	24.85	29.00	30.49	28.41	29.30	32.86
2020	31.61	30.64	27.11	24.54	21.96	19.39	26.79	31.28	32.89	30.64	31.61	35.46
2021	32.93	31.82	28.30	25.85	23.43	21.19	29.56	33.41	34.80	32.30	33.33	38.06
2022	34.54	33.36	29.68	27.29	24.82	22.66	31.50	35.27	36.89	33.99	35.09	40.35
2023	36.06	34.82	30.99	28.65	26.11	24.05	33.36	37.05	38.90	35.60	36.78	42.56
2024	58.82	58.82	58.82	58.82	58.82	58.82	58.82	58.82	58.82	58.82	58.82	58.82
2025	60.14	60.14	60.14	60.14	60.14	60.14	60.14	60.14	60.14	60.14	60.14	60.14
2026	61.33	61.33	61.33	61.33	61.33	61.33	61.33	61.33	61.33	61.33	61.33	61.33
2027	62.54	62.54	62.54	62.54	62.54	62.54	62.54	62.54	62.54	62.54	62.54	62.54
2028	63.60	63.60	63.60	63.60	63.60	63.60	63.60	63.60	63.60	63.60	63.60	63.60
2029	65.04	65.04	65.04	65.04	65.04	65.04	65.04	65.04	65.04	65.04	65.04	65.04
2030	66.32	66.32	66.32	66.32	66.32	66.32	66.32	66.32	66.32	66.32	66.32	66.32
2031	67.63	67.63	67.63	67.63	67.63	67.63	67.63	67.63	67.63	67.63	67.63	67.63
2032	68.77	68.77	68.77	68.77	68.77	68.77	68.77	68.77	68.77	68.77	68.77	68.77
2033	70.32	70.32	70.32	70.32	70.32	70.32	70.32	70.32	70.32	70.32	70.32	70.32
2034	71.71	71.71	71.71	71.71	71.71	71.71	71.71	71.71	71.71	71.71	71.71	71.71
2035	73.13	73.13	73.13	73.13	73.13	73.13	73.13	73.13	73.13	73.13	73.13	73.13
2036	74.37	74.37	74.37	74.37	74.37	74.37	74.37	74.37	74.37	74.37	74.37	74.37
2037	76.04	76.04	76.04	76.04	76.04	76.04	76.04	76.04	76.04	76.04	76.04	76.04
2038	77.55	77.55	77.55	77.55	77.55	77.55	77.55	77.55	77.55	77.55	77.55	77.55
2039	79.08	79.08	79.08	79.08	79.08	79.08	79.08	79.08	79.08	79.08	79.08	79.08
2040	80.42	80.42	80.42	80.42	80.42	80.42	80.42	80.42	80.42	80.42	80.42	80.42
2041	82.23	82.23	82.23	82.23	82.23	82.23	82.23	82.23	82.23	82.23	82.23	82.23
2042	83.85	83.85	83.85	83.85	83.85	83.85	83.85	83.85	83.85	83.85	83.85	83.85
2043	85.51	85.51	85.51	85.51	85.51	85.51	85.51	85.51	85.51	85.51	85.51	85.51

**Effective for service  
on and after January 13, 2016**

**SCHEDULE 201 (Continued)**

PRICING OPTIONS FOR STANDARD PPA (Continued)  
 Renewable Fixed Price Option (Continued)

<b>TABLE 5a</b>												
<b>Renewable Avoided Costs</b>												
<b>Renewable Fixed Price Option for Wind QF</b>												
<b>On-Peak Forecast (\$/MWH)</b>												
<b>Year</b>	<b>Jan</b>	<b>Feb</b>	<b>Mar</b>	<b>Apr</b>	<b>May</b>	<b>Jun</b>	<b>Jul</b>	<b>Aug</b>	<b>Sep</b>	<b>Oct</b>	<b>Nov</b>	<b>Dec</b>
2016	24.86	23.61	20.86	20.11	19.36	18.86	26.36	28.36	27.36	24.61	25.61	30.11
2017	28.32	26.86	23.69	21.85	21.14	19.38	27.51	31.80	27.82	27.05	28.05	30.51
2018	28.42	26.99	23.86	23.01	22.16	21.59	30.12	32.40	31.26	28.13	29.27	34.39
2019	29.85	28.35	25.07	24.18	23.28	22.69	31.63	34.02	32.83	29.55	30.74	36.11
2020	31.64	30.07	26.60	25.65	24.70	24.07	33.53	36.06	34.80	31.33	32.59	38.26
2021	33.18	31.53	27.90	27.01	26.00	25.47	35.40	37.84	36.81	32.95	34.28	40.48
2022	34.70	32.99	29.21	28.37	27.31	26.86	37.26	39.63	38.82	34.56	35.96	42.69
2023	36.14	34.36	30.42	29.64	28.51	28.16	39.04	41.31	40.74	36.08	37.55	44.80
2024	54.33	54.33	54.33	54.33	54.33	54.33	54.33	54.33	54.33	54.33	54.33	54.33
2025	55.56	55.56	55.56	55.56	55.56	55.56	55.56	55.56	55.56	55.56	55.56	55.56
2026	56.66	56.66	56.66	56.66	56.66	56.66	56.66	56.66	56.66	56.66	56.66	56.66
2027	57.78	57.78	57.78	57.78	57.78	57.78	57.78	57.78	57.78	57.78	57.78	57.78
2028	58.75	58.75	58.75	58.75	58.75	58.75	58.75	58.75	58.75	58.75	58.75	58.75
2029	60.09	60.09	60.09	60.09	60.09	60.09	60.09	60.09	60.09	60.09	60.09	60.09
2030	61.28	61.28	61.28	61.28	61.28	61.28	61.28	61.28	61.28	61.28	61.28	61.28
2031	62.49	62.49	62.49	62.49	62.49	62.49	62.49	62.49	62.49	62.49	62.49	62.49
2032	63.52	63.52	63.52	63.52	63.52	63.52	63.52	63.52	63.52	63.52	63.52	63.52
2033	64.97	64.97	64.97	64.97	64.97	64.97	64.97	64.97	64.97	64.97	64.97	64.97
2034	66.25	66.25	66.25	66.25	66.25	66.25	66.25	66.25	66.25	66.25	66.25	66.25
2035	67.57	67.57	67.57	67.57	67.57	67.57	67.57	67.57	67.57	67.57	67.57	67.57
2036	68.70	68.70	68.70	68.70	68.70	68.70	68.70	68.70	68.70	68.70	68.70	68.70
2037	70.26	70.26	70.26	70.26	70.26	70.26	70.26	70.26	70.26	70.26	70.26	70.26
2038	71.65	71.65	71.65	71.65	71.65	71.65	71.65	71.65	71.65	71.65	71.65	71.65
2039	73.06	73.06	73.06	73.06	73.06	73.06	73.06	73.06	73.06	73.06	73.06	73.06
2040	74.29	74.29	74.29	74.29	74.29	74.29	74.29	74.29	74.29	74.29	74.29	74.29
2041	75.97	75.97	75.97	75.97	75.97	75.97	75.97	75.97	75.97	75.97	75.97	75.97
2042	77.47	77.47	77.47	77.47	77.47	77.47	77.47	77.47	77.47	77.47	77.47	77.47
2043	79.01	79.01	79.01	79.01	79.01	79.01	79.01	79.01	79.01	79.01	79.01	79.01

**SCHEDULE 201 (Continued)**

PRICING OPTIONS FOR STANDARD PPA (Continued)  
 Renewable Fixed Price Option (Continued)

<b>TABLE 5b</b>												
<b>Renewable Avoided Costs</b>												
<b>Renewable Fixed Price Option for Wind QF</b>												
<b>Off-Peak Forecast (\$/MWH)</b>												
<b>Year</b>	<b>Jan</b>	<b>Feb</b>	<b>Mar</b>	<b>Apr</b>	<b>May</b>	<b>Jun</b>	<b>Jul</b>	<b>Aug</b>	<b>Sep</b>	<b>Oct</b>	<b>Nov</b>	<b>Dec</b>
2016	21.11	20.36	17.61	15.61	13.61	11.61	17.36	20.86	22.11	20.36	21.11	24.11
2017	23.41	22.33	19.63	15.73	13.71	10.27	18.67	23.16	20.99	22.43	23.07	25.12
2018	23.50	22.67	19.62	17.40	15.18	12.96	19.34	23.23	24.61	22.67	23.50	26.83
2019	25.23	24.34	21.08	18.70	16.33	13.96	20.78	24.93	26.42	24.34	25.23	28.79
2020	27.46	26.49	22.96	20.39	17.81	15.24	22.64	27.13	28.74	26.49	27.46	31.31
2021	28.70	27.59	24.07	21.62	19.20	16.96	25.33	29.18	30.57	28.07	29.10	33.83
2022	30.23	29.05	25.37	22.98	20.51	18.35	27.19	30.96	32.58	29.68	30.78	36.04
2023	31.66	30.42	26.59	24.25	21.71	19.65	28.96	32.65	34.50	31.20	32.38	38.16
2024	54.33	54.33	54.33	54.33	54.33	54.33	54.33	54.33	54.33	54.33	54.33	54.33
2025	55.56	55.56	55.56	55.56	55.56	55.56	55.56	55.56	55.56	55.56	55.56	55.56
2026	56.66	56.66	56.66	56.66	56.66	56.66	56.66	56.66	56.66	56.66	56.66	56.66
2027	57.78	57.78	57.78	57.78	57.78	57.78	57.78	57.78	57.78	57.78	57.78	57.78
2028	58.75	58.75	58.75	58.75	58.75	58.75	58.75	58.75	58.75	58.75	58.75	58.75
2029	60.09	60.09	60.09	60.09	60.09	60.09	60.09	60.09	60.09	60.09	60.09	60.09
2030	61.28	61.28	61.28	61.28	61.28	61.28	61.28	61.28	61.28	61.28	61.28	61.28
2031	62.49	62.49	62.49	62.49	62.49	62.49	62.49	62.49	62.49	62.49	62.49	62.49
2032	63.52	63.52	63.52	63.52	63.52	63.52	63.52	63.52	63.52	63.52	63.52	63.52
2033	64.97	64.97	64.97	64.97	64.97	64.97	64.97	64.97	64.97	64.97	64.97	64.97
2034	66.25	66.25	66.25	66.25	66.25	66.25	66.25	66.25	66.25	66.25	66.25	66.25
2035	67.57	67.57	67.57	67.57	67.57	67.57	67.57	67.57	67.57	67.57	67.57	67.57
2036	68.70	68.70	68.70	68.70	68.70	68.70	68.70	68.70	68.70	68.70	68.70	68.70
2037	70.26	70.26	70.26	70.26	70.26	70.26	70.26	70.26	70.26	70.26	70.26	70.26
2038	71.65	71.65	71.65	71.65	71.65	71.65	71.65	71.65	71.65	71.65	71.65	71.65
2039	73.06	73.06	73.06	73.06	73.06	73.06	73.06	73.06	73.06	73.06	73.06	73.06
2040	74.29	74.29	74.29	74.29	74.29	74.29	74.29	74.29	74.29	74.29	74.29	74.29
2041	75.97	75.97	75.97	75.97	75.97	75.97	75.97	75.97	75.97	75.97	75.97	75.97
2042	77.47	77.47	77.47	77.47	77.47	77.47	77.47	77.47	77.47	77.47	77.47	77.47
2043	79.01	79.01	79.01	79.01	79.01	79.01	79.01	79.01	79.01	79.01	79.01	79.01

**SCHEDULE 201 (Continued)**

PRICING OPTIONS FOR STANDARD PPA (Continued)  
 Renewable Fixed Price Option (Continued)

<b>TABLE 6a</b>												
<b>Renewable Avoided Costs</b>												
<b>Renewable Fixed Price Option for Solar QF</b>												
<b>On-Peak Forecast (\$/MWH)</b>												
<b>Year</b>	<b>Jan</b>	<b>Feb</b>	<b>Mar</b>	<b>Apr</b>	<b>May</b>	<b>Jun</b>	<b>Jul</b>	<b>Aug</b>	<b>Sep</b>	<b>Oct</b>	<b>Nov</b>	<b>Dec</b>
2016	28.70	27.45	24.70	23.95	23.20	22.70	30.20	32.20	31.20	28.45	29.45	33.95
2017	32.23	30.77	27.60	25.76	25.05	23.29	31.42	35.71	31.73	30.96	31.96	34.42
2018	32.41	30.98	27.85	27.00	26.15	25.58	34.11	36.39	35.25	32.12	33.26	38.38
2019	33.92	32.42	29.14	28.25	27.35	26.76	35.70	38.09	36.90	33.62	34.81	40.18
2020	35.79	34.22	30.75	29.80	28.85	28.22	37.68	40.21	38.95	35.48	36.74	42.41
2021	37.41	35.76	32.13	31.24	30.23	29.70	39.63	42.07	41.04	37.18	38.51	44.71
2022	39.01	37.30	33.52	32.68	31.62	31.17	41.57	43.94	43.13	38.87	40.27	47.00
2023	40.54	38.76	34.82	34.04	32.91	32.56	43.44	45.71	45.14	40.48	41.95	49.20
2024	58.82	58.82	58.82	58.82	58.82	58.82	58.82	58.82	58.82	58.82	58.82	58.82
2025	60.14	60.14	60.14	60.14	60.14	60.14	60.14	60.14	60.14	60.14	60.14	60.14
2026	61.33	61.33	61.33	61.33	61.33	61.33	61.33	61.33	61.33	61.33	61.33	61.33
2027	62.54	62.54	62.54	62.54	62.54	62.54	62.54	62.54	62.54	62.54	62.54	62.54
2028	63.60	63.60	63.60	63.60	63.60	63.60	63.60	63.60	63.60	63.60	63.60	63.60
2029	65.04	65.04	65.04	65.04	65.04	65.04	65.04	65.04	65.04	65.04	65.04	65.04
2030	66.32	66.32	66.32	66.32	66.32	66.32	66.32	66.32	66.32	66.32	66.32	66.32
2031	67.63	67.63	67.63	67.63	67.63	67.63	67.63	67.63	67.63	67.63	67.63	67.63
2032	68.77	68.77	68.77	68.77	68.77	68.77	68.77	68.77	68.77	68.77	68.77	68.77
2033	70.32	70.32	70.32	70.32	70.32	70.32	70.32	70.32	70.32	70.32	70.32	70.32
2034	71.71	71.71	71.71	71.71	71.71	71.71	71.71	71.71	71.71	71.71	71.71	71.71
2035	73.13	73.13	73.13	73.13	73.13	73.13	73.13	73.13	73.13	73.13	73.13	73.13
2036	74.37	74.37	74.37	74.37	74.37	74.37	74.37	74.37	74.37	74.37	74.37	74.37
2037	76.04	76.04	76.04	76.04	76.04	76.04	76.04	76.04	76.04	76.04	76.04	76.04
2038	77.55	77.55	77.55	77.55	77.55	77.55	77.55	77.55	77.55	77.55	77.55	77.55
2039	79.08	79.08	79.08	79.08	79.08	79.08	79.08	79.08	79.08	79.08	79.08	79.08
2040	80.42	80.42	80.42	80.42	80.42	80.42	80.42	80.42	80.42	80.42	80.42	80.42
2041	82.23	82.23	82.23	82.23	82.23	82.23	82.23	82.23	82.23	82.23	82.23	82.23
2042	83.85	83.85	83.85	83.85	83.85	83.85	83.85	83.85	83.85	83.85	83.85	83.85
2043	85.51	85.51	85.51	85.51	85.51	85.51	85.51	85.51	85.51	85.51	85.51	85.51

**SCHEDULE 201 (Continued)**

PRICING OPTIONS FOR STANDARD PPA (Continued)  
 Renewable Fixed Price Option (Continued)

TABLE 6b												
Renewable Avoided Costs												
Renewable Fixed Price Option for Solar QF												
Off-Peak Forecast (\$/MWH)												
Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2016	24.95	24.20	21.45	19.45	17.45	15.45	21.20	24.70	25.95	24.20	24.95	27.95
2017	27.32	26.24	23.54	19.64	17.62	14.18	22.58	27.07	24.90	26.34	26.98	29.03
2018	27.49	26.66	23.61	21.39	19.17	16.95	23.33	27.22	28.60	26.66	27.49	30.82
2019	29.30	28.41	25.15	22.77	20.40	18.03	24.85	29.00	30.49	28.41	29.30	32.86
2020	31.61	30.64	27.11	24.54	21.96	19.39	26.79	31.28	32.89	30.64	31.61	35.46
2021	32.93	31.82	28.30	25.85	23.43	21.19	29.56	33.41	34.80	32.30	33.33	38.06
2022	34.54	33.36	29.68	27.29	24.82	22.66	31.50	35.27	36.89	33.99	35.09	40.35
2023	36.06	34.82	30.99	28.65	26.11	24.05	33.36	37.05	38.90	35.60	36.78	42.56
2024	58.82	58.82	58.82	58.82	58.82	58.82	58.82	58.82	58.82	58.82	58.82	58.82
2025	60.14	60.14	60.14	60.14	60.14	60.14	60.14	60.14	60.14	60.14	60.14	60.14
2026	61.33	61.33	61.33	61.33	61.33	61.33	61.33	61.33	61.33	61.33	61.33	61.33
2027	62.54	62.54	62.54	62.54	62.54	62.54	62.54	62.54	62.54	62.54	62.54	62.54
2028	63.60	63.60	63.60	63.60	63.60	63.60	63.60	63.60	63.60	63.60	63.60	63.60
2029	65.04	65.04	65.04	65.04	65.04	65.04	65.04	65.04	65.04	65.04	65.04	65.04
2030	66.32	66.32	66.32	66.32	66.32	66.32	66.32	66.32	66.32	66.32	66.32	66.32
2031	67.63	67.63	67.63	67.63	67.63	67.63	67.63	67.63	67.63	67.63	67.63	67.63
2032	68.77	68.77	68.77	68.77	68.77	68.77	68.77	68.77	68.77	68.77	68.77	68.77
2033	70.32	70.32	70.32	70.32	70.32	70.32	70.32	70.32	70.32	70.32	70.32	70.32
2034	71.71	71.71	71.71	71.71	71.71	71.71	71.71	71.71	71.71	71.71	71.71	71.71
2035	73.13	73.13	73.13	73.13	73.13	73.13	73.13	73.13	73.13	73.13	73.13	73.13
2036	74.37	74.37	74.37	74.37	74.37	74.37	74.37	74.37	74.37	74.37	74.37	74.37
2037	76.04	76.04	76.04	76.04	76.04	76.04	76.04	76.04	76.04	76.04	76.04	76.04
2038	77.55	77.55	77.55	77.55	77.55	77.55	77.55	77.55	77.55	77.55	77.55	77.55
2039	79.08	79.08	79.08	79.08	79.08	79.08	79.08	79.08	79.08	79.08	79.08	79.08
2040	80.42	80.42	80.42	80.42	80.42	80.42	80.42	80.42	80.42	80.42	80.42	80.42
2041	82.23	82.23	82.23	82.23	82.23	82.23	82.23	82.23	82.23	82.23	82.23	82.23
2042	83.85	83.85	83.85	83.85	83.85	83.85	83.85	83.85	83.85	83.85	83.85	83.85
2043	85.51	85.51	85.51	85.51	85.51	85.51	85.51	85.51	85.51	85.51	85.51	85.51

**Effective for service  
on and after January 13, 2016**

SCHEDULE 201 (Continued)

WIND INTEGRATION

<b>TABLE 7</b>	
<b>Wind Integration</b>	
<b>Year</b>	<b>Cost</b>
2016	3.84
2017	3.91
2018	3.99
2019	4.07
2020	4.15
2021	4.23
2022	4.31
2023	4.40
2024	4.49
2025	4.58
2026	4.67
2027	4.76
2028	4.85
2029	4.95
2030	5.04
2031	5.14
2032	5.25
2033	5.35
2034	5.46
2035	5.56
2036	5.67
2037	5.78
2038	5.90
2039	6.02
2040	6.13
2041	6.26
2042	6.38
2043	6.50



## **SCHEDULE 201 (Continued)**

### **MONTHLY SERVICE CHARGE**

Each separately metered QF not associated with a retail Customer account will be charged \$10.00 per month.

### **INSURANCE REQUIREMENTS**

The following insurance requirements are applicable to Sellers with a Standard PPA:

- 1) QFs with nameplate capacity ratings greater than 200 kW are required to secure and maintain a prudent amount of general liability insurance. The Seller must certify to the Company that it is maintaining general liability insurance coverage for each QF at prudent amounts. A prudent amount will be deemed to mean liability insurance coverage for both bodily injury and property damage liability in the amount of not less than \$1,000,000 each occurrence combined single limit, which limits may be required to be increased or decreased by the Company as the Company determines in its reasonable judgment, that economic conditions or claims experience may warrant.
- 2) Such insurance will include an endorsement naming the Company as an additional insured insofar as liability arising out of operations under this schedule and a provision that such liability policies will not be canceled or their limits reduced without 30 days' written notice to the Company. The Seller will furnish the Company with certificates of insurance together with the endorsements required herein. The Company will have the right to inspect the original policies of such insurance.
- 3) QFs with a design capacity of 200 kW or less are encouraged to pursue liability insurance on their own. The Oregon Public Utility Commission in Order No. 05-584 determined that it is inappropriate to require QFs that have a design capacity of 200 kW or less to obtain general liability insurance.

### **TRANSMISSION AGREEMENTS**

If the QF is located outside the Company's service territory, the Seller is responsible for the transmission of power at its cost to the Company's service territory.

### **INTERCONNECTION REQUIREMENTS**

Except as otherwise provided in a generation Interconnection Agreement between the Company and Seller, if the QF is located within the Company's service territory, switching equipment capable of isolating the QF from the Company's system will be accessible to the Company at all times. At the Company's option, the Company may operate the switching equipment described above if, in the sole opinion of the Company, continued operation of the QF in connection with the utility's system may create or contribute to a system emergency.

## **SCHEDULE 201 (Continued)**

### **INTERCONNECTION REQUIREMENTS (Continued)**

The QF owner interconnecting with the Company's distribution system must comply with all requirements for interconnection as established pursuant to Commission rule, in the Company's Rules and Regulations (Rule C) or the Company's Interconnection Procedures contained in its FERC Open Access Transmission Tariff (OATT), as applicable. The Seller will bear full responsibility for the installation and safe operation of the interconnection facilities.

### **DEFINITION OF A SMALL COGENERATION FACILITY OR SMALL POWER PRODUCTION FACILITY ELIGIBLE TO RECEIVE PRICING UNDER THE STANDARD PPA**

A QF will be eligible to receive pricing under the Standard PPA if the nameplate capacity of the QF, together with any other electric generating facility using the same motive force, owned or controlled by the Same Person(s) or Affiliated Person(s), and located at the Same Site, does not exceed 10 MW. A Community-Based or Family-Owned QF is exempt from these restrictions.

#### **Definition of Community-Based**

- a. A community project (or a community sponsored project) must have a recognized and established organization located within the county of the project or within 50 miles of the project that has a genuine role in helping the project be developed and must have some not insignificant continuing role with or interest in the project after it is completed and placed in service.
- b. After excluding the passive investor whose ownership interests are primarily related to green tag values and tax benefits as the primary ownership benefit, the equity (ownership) interests in a community sponsored project must be owned in substantial percentage (80 percent or more) by the following persons (individuals and entities): (i) the sponsoring organization, or its controlled affiliates; (ii) members of the sponsoring organization (if it is a membership organization) or owners of the sponsorship organization (if it is privately owned); (iii) persons who live in the county in which the project is located or who live a county adjoining the county in which the project is located; or (iv) units of local government, charities, or other established nonprofit organizations active either in the county in which the project is located or active in a county adjoining the county in which the project is located.

#### **Definition of Family-Owned**

After excluding the ownership interest of the passive investor whose ownership interests are primarily related to green tag values and tax benefits as the primary ownership benefit, five or fewer individuals own 50 percent or more of the equity of the project entity, or fifteen or fewer individuals own 90 percent or more of the project entity. A "look through" rule applies to closely held entities that hold the project entity, so that equity held by LLCs, trusts, estates, corporations, partnerships or other similar entities is considered held by the equity owners of the look through entity. An individual is a natural person. In counting to five or fifteen, spouses or children of an equity owner of the project owner who also have an equity interest are aggregated and counted as a single individual.

## **SCHEDULE 201 (Concluded)**

### **DEFINITION OF A SMALL COGENERATION FACILITY OR SMALL POWER PRODUCTION FACILITY ELIGIBLE TO RECEIVE PRICING UNDER THE STANDARD PPA (Continued)**

#### **Definition of Person(s) or Affiliated Person(s)**

As used above, the term “Same Person(s)” or “Affiliated Person(s)” means a natural person or persons or any legal entity or entities sharing common ownership, management or acting jointly or in concert with or exercising influence over the policies or actions of another person or entity. However, two facilities will not be held to be owned or controlled by the Same Person(s) or Affiliated Person(s) solely because they are developed by a single entity.

Furthermore, two facilities will not be held to be owned or controlled by the Same Person(s) or Affiliated Person(s) if such common person or persons is a “passive investor” whose ownership interest in the QF is primarily related to utilizing production tax credits, green tag values and MACRS depreciation as the primary ownership benefit and the facilities at issue are independent family-owned or community-based projects. A unit of Oregon local government may also be a “passive investor” in a community-based project if the local governmental unit demonstrates that it will not have an equity ownership interest in or exercise any control over the management of the QF and that its only interest is a share of the cash flow from the QF, which share will not exceed 20%. The 20% cash flow share limit may only be exceeded for good cause shown and only with the prior approval of the Commission.

#### **Definition of Same Site**

For purposes of the foregoing, generating facilities are considered to be located at the same site as the QF for which qualification for pricing under the Standard PPA is sought if they are located within a five-mile radius of any generating facilities or equipment providing fuel or motive force associated with the QF for which qualification for pricing under the Standard PPA is sought.

#### **Definition of Shared Interconnection and Infrastructure**

QFs otherwise meeting the above-described separate ownership test and thereby qualified for entitlement to pricing under the Standard PPA will not be disqualified by utilizing an interconnection or other infrastructure not providing motive force or fuel that is shared with other QFs qualifying for pricing under the Standard PPA so long as the use of the shared interconnection complies with the interconnecting utility’s safety and reliability standards, interconnection agreement requirements and Prudent Electrical Practices as that term is defined in the interconnecting utility’s approved Standard PPA.

### **OTHER DEFINITIONS**

#### **Mid-C Index Price**

As used in this schedule, the daily Mid-C Index Price shall be the Day Ahead Intercontinental Exchange (“ICE”) for the bilateral OTC market for energy at the Mid-C Physical for Average

**SCHEDULE 201 (Continued)**

OTHER DEFINITIONS (Continued)

On-Peak Power and Average Off-Peak Power found on the following website: <https://www.theice.com/products/OTC/Physical-Energy/Electricity>. In the event ICE no longer publishes this index, PGE and the Seller agree to select an alternative successor index representative of the Mid-C trading hub.

**Definition of RPS Attributes**

As used in this schedule, RPS Attributes means all attributes related to the Net Output generated by the Facility that are required in order to provide PGE with “qualifying electricity,” as that term is defined in Oregon’s Renewable Portfolio Standard Act, Ore. Rev. Stat. 469A.010, in effect at the time of execution of this Agreement. RPS Attributes do not include Environmental Attributes that are greenhouse gas offsets from methane capture not associated with the generation of electricity and not needed to ensure that there are zero net emissions associated with the generation of electricity.

**Definition of Environmental Attributes**

As used in this schedule, Environmental Attributes shall mean any and all claims, credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, resulting from the avoidance of the emission of any gas, chemical, or other substance to the air, soil or water. Environmental Attributes include but are not limited to: (1) any avoided emissions of pollutants to the air, soil, or water such as (subject to the foregoing) sulfur oxides (SO<sub>x</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO), and other pollutants; and (2) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere.

**Definition of Resource Sufficiency Period**

This is the period from the current year through 2020.

**Definition of Resource Deficiency Period**

This is the period from 2021 through 2043.

**Definition of Renewable Resource Sufficiency Period**

This is the period from the current year through 2023.

**Definition of Renewable Resource Deficiency Period**

This is the period from 2024 through 2043.

**SCHEDULE 201 (Continued)**

**DISPUTE RESOLUTION**

Upon request, the QF will provide the purchasing utility with documentation verifying the ownership, management and financial structure of the QF in reasonably sufficient detail to allow the utility to make an initial determination of whether or not the QF meets the above-described criteria for entitlement to pricing under the Standard PPA.

The QF may present disputes to the Commission for resolution using the following process:

The QF may file a complaint asking the Commission to adjudicate disputes regarding the formation of the standard contract. The QF may not file such a complaint during any 15-day period in which the utility has the obligation to respond, but must wait until the 15-day period has passed.

The utility may respond to the complaint within ten days of service.

The Commission will limit its review to the issues identified in the complaint and response, and utilize a process similar to the arbitration process adopted to facilitate the execution of interconnection agreements among telecommunications carriers. See OAR 860, Division 016. The administrative law judge will not act as an arbitrator.

**SPECIAL CONDITIONS**

1. Delivery of energy by Seller will be at a voltage, phase, frequency, and power factor as specified by the Company.
2. If the Seller also receives retail Electricity Service from the Company at the same location, any payments under this schedule will be credited to the Seller's retail Electricity Service bill. At the option of the Customer, any net credit over \$10.00 will be paid by check to the Customer.
3. Unless required by state or federal law, if the 1978 Public Utility Regulatory Policies Act (PURPA) is repealed, PPAs entered into pursuant to this schedule will not terminate prior to the Standard or Negotiated PPA's termination date.

**TERM OF AGREEMENT**

Not less than one year and not to exceed 20 years.

**UM 1931 NewSun Parties Exhibit 120**

December 4, 2015, Email from  
Jake Stephens to Bruce True

Message

**From:** Jake Stephens [jake@jakestephens.com]  
**Sent:** 12/4/2015 5:00:10 PM  
**To:** Bruce True [bruce.true@pgn.com]  
**Subject:** QF - Starvation Solar I - SIGNED SUBMISSION  
**Attachments:** Form 556 - Starvation Solar I FERC filing submission confirmation 2015.12.04.pdf; Form 556 - Starvation Solar I.pdf; Schedule 201 RENEWABLE Off System Variable PPA\_Effective\_09.23.15 - STARVATION SOLAR I - REDLINE.docx; Schedule 201 RENEWABLE Off System Variable PPA\_Effective\_09.23.15 - STARVATION SOLAR I v1 - SIGNED.pdf; Schedule 201 RENEWABLE Off System Variable PPA\_Effective\_09.23.15 - STARVATION SOLAR I v1.doc.docx

Dear Bruce,

SUBMISSION: As regards the planned 10 MW Qualified Facility "Starvation Solar I", owned by Starvation Solar I LLC. and planned for construction in Harney County, OR, please find attached:

1a) Form 556, as filed with FERC; 1b) FERC 556 receipt confirmation)

2) SIGNED COPY of the PGE Schedule 201 Standard Renewable Off-System Variable Power Purchase Agreement for the Starvation Solar I and which agreement Starvation Solar I LLC considers to be complete and acceptable as presented.

Based on my prior correspondence with you on other projects, I expect no issues from PGE as to the content of this PPA, as it is identical in form to the submission of the Tygh Valley Solar I PPA for which you confirmed that the only remaining issues for PGE were as relates any COD beyond three years from Effective Date and for the PPA term potentially extending beyond 20 years from the Effective Date. While we disagree on the OPUC requirements as relates term length and fixed pricing period, this submission provides for a term ending 16 years after the Effective Date and a COD 3 years after the Effective Date.

The only other changes were for ownership, project name, project location, interconnection with BPA, and scaling the energy production for the Starvation Solar I site. Thus it is executed and final for Seller.

3) Redline from PGE 9/23/2015 form, the effective 201 at the time of submission and Effective Date, as here signed.

I appreciate your assistance and look forward to the formal execution of this agreement by PGE. I presume that if the document is signed earlier or later by PGE that the Effective Date will be updated accordingly.

I'll try to follow up on Thursday or Friday.

Best regards,

Jake Stephens  
Principal  
NewSun Energy Holdings Oregon LLC  
520-981-7303

**UM 1931 NewSun Parties Exhibit 121**

Attachment to Email in Exhibit 120:  
Starvation Solar I LLC PPA



**STANDARD RENEWABLE OFF-SYSTEM VARIABLE POWER PURCHASE  
AGREEMENT**

THIS AGREEMENT, entered into this 30th day, December 4 2015, is between STARVATION SOLAR I LLC ("Seller") and Portland General Electric Company ("PGE") (hereinafter each a "Party" or collectively, "Parties").

**RECITALS**

Seller intends to construct, own, operate and maintain a photovoltaics-based solar generation facility for the generation of electric power located in \_\_\_\_\_  
Harney County, Oregon with a Nameplate Capacity Rating of  
10,000 kilowatt-AC ("kW"), as further described in Exhibit A ("Facility");  
and

Seller intends to operate the Facility as a "Qualifying Facility," as such term is defined in Section 3.1.3, below.

Seller shall sell and PGE shall purchase the entire Net Output, as such term is defined in Section 1.21, below, from the Facility in accordance with the terms and conditions of this Agreement.

**AGREEMENT**

NOW, THEREFORE, the Parties mutually agree as follows:

**SECTION 1: DEFINITIONS**

When used in this Agreement, the following terms shall have the following meanings:

1.1. "As-built Supplement" means the supplement to Exhibit A provided by Seller in accordance with Section 4.3 following completion of construction of the Facility, describing the Facility as actually built.

1.2. "Base Hours" is defined as the total number of hours in each Contract Year (8,760 or 8,784 for leap year)

1.3. "Billing Period" means from the start of the first day of each calendar month to the end of the last day of each calendar month.

1.4. "Cash Escrow" means an agreement by two parties to place money into the custody of a third party for delivery to a grantee only after the fulfillment of the conditions specified.

1.5. "Commercial Operation Date" means the date that the Facility is deemed by PGE to be fully operational and reliable. PGE may, at its discretion require, among other things, that all of the following events have occurred:

1.5.1. (facilities with nameplate under 500 kW exempt from following requirement) PGE has received a certificate addressed to PGE from a Licensed Professional Engineer ("LPE") acceptable to PGE in its reasonable judgment stating

that the Facility is able to generate electric power reliably in accordance with the terms and conditions of this Agreement (certifications required under this Section 1.5 can be provided by one or more LPEs);

1.5.2. Start-Up Testing of the Facility has been completed in accordance with Section 1.36;

1.5.3. (facilities with nameplate under 500 kW exempt from following requirement) After PGE has received notice of completion of Start-Up Testing, PGE has received a certificate addressed to PGE from an LPE stating that the Facility has operated for testing purposes under this Agreement and was continuously mechanically available for operation for a minimum of 120 hours. The Facility must provide ten (10) working days written notice to PGE prior to the start of the initial testing period. If the mechanical availability of the Facility is interrupted during this initial testing period or any subsequent testing period, the Facility shall promptly start a new Test Period and provide PGE forty-eight (48) hours written notice prior to the start of such testing period;

1.5.4. (facilities with nameplate under 500 kW exempt from following requirement) PGE has received a certificate addressed to PGE from an LPE stating that all required interconnection facilities have been constructed and all required interconnection tests have been completed;

1.5.5. (facilities with nameplate under 500 kW exempt from following requirement) PGE has received a certificate addressed to PGE from an LPE stating that Seller has obtained all Required Facility Documents and, if requested by PGE in writing, has provided copies of any or all such requested Required Facility Documents;

1.5.6. PGE has received a copy of the executed Generation Interconnection and Transmission Agreements.

1.6. "Contract Price" means the applicable price, including on-peak and off-peak prices, as specified in the Schedule.

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.

1.9. "Environmental Attributes" shall mean any and all claims, credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, resulting from the avoidance of the emission of any gas, chemical or other substance to the air, soil or water. Environmental Attributes include but are not limited to: (1) any avoided emissions of pollutants to the air, soil or water such as (subject to the foregoing) sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO), and other pollutants; and (2) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), and other greenhouse gasses (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere.

1.10. "Facility" has the meaning set forth in the Recitals.

1.11. "Generation Interconnection Agreement" means an agreement governing the interconnection of the Facility with Bonneville Power Administration's electric system.

1.12. "Generation Unit" means each separate electrical generator that contributes toward Nameplate Capacity Rating included in Exhibit A. For solar facilities, a generating unit is a complete solar electrical generation system within the Facility that is able to generate and deliver energy to the Point of Delivery independent of other Generation Units within the same Facility.

1.13. "Letter of Credit" means an engagement by a bank or other person made at the request of a customer that the issuer will honor drafts or other demands for payment upon compliance with the conditions specified in the letter of credit.

1.14. "Licensed Professional Engineer" or "LPE" means a person who is licensed to practice engineering in the state where the Facility is located, who has no economic relationship, association, or nexus with the Seller, and who is not a representative of a consulting engineer, contractor, designer or other individual involved in the development of the Facility, or of a manufacturer or supplier of any equipment installed in the Facility. Such Licensed Professional Engineer shall be licensed in an appropriate engineering discipline for the required certification being made and be acceptable to PGE in its reasonable judgment.

1.15. "Lost Energy" means "Lost Energy" means ((the Guarantee of Mechanical Availability as set forth in 3.1.10 / MAP) X Net Output for a Calendar Year) – Net Output for the Calendar Year. Lost Energy shall be zero unless the result of the calculation in this subsection results in a positive number.

1.16. "Lost Energy Value" means Lost Energy X the excess of the annual time-weighted average Mid-C Index Price for On Peak Hours and Off Peak Hours over the time weighted average Contract Price for On Peak and Off Peak Hours for the corresponding time period (provided that such excess shall not exceed the Contract Price and further provided that Lost Energy is deemed to be zero prior to reaching the Commercial Operation Date) plus any reasonable costs incurred by PGE to purchase replacement power and/or transmission to deliver the replacement power to the Point of Delivery (For Start-Up Lost Energy Value See 1.35).

1.17. "Mechanical Availability Percentage" or "MAP" shall mean that percentage for any Contract Year for the Facility calculated in accordance with the following formula:

$$\text{MAP} = 100 \times (\text{Operational Hours}) / (\text{Base Hours} \times \text{Number of Units})$$

1.18. "Mid-C Index Price" means the Day Ahead Intercontinental Exchange ("ICE") index price for the bilateral OTC market for energy at the Mid-C Physical for Average On Peak Power and Average Off Peak Power found on the following website: <https://www.theice.com/products/OTC/Physical-Energy/Electricity>. In the event ICE no longer publishes this index, PGE and the Seller agree to select an alternative successor index representative of the Mid-C trading hub.

1.19. "Nameplate Capacity Rating" means the maximum capacity of the Facility as stated by the manufacturer, expressed in kW, which shall not exceed 10,000 kW.

1.20. "Net Dependable Capacity" means the maximum capacity the Facility can sustain over a specified period modified for seasonal limitations, if any, and reduced by the capacity required for station service or auxiliaries.

1.21. "Net Output" means all energy expressed in kWhs produced by the Facility, less station and other onsite use and less transformation and transmission losses.

1.22. "Number of Units" means the number of Generation Units in the Facility as specified in Exhibit A.

1.23. "Off-Peak Hours" has the meaning provided in the Schedule.

1.24. "On-Peak Hours" has the meaning provided in the Schedule.

1.25. "Operational Hours" for the Facility means the total across all Generation Units of the number of hours each of the Facility's Generation Units are potentially capable of producing power at its Nameplate Capacity Rating regardless of actual weather conditions, season and the time of day or night, without any mechanical operating constraint or restriction, and potentially capable of delivering such power to the Point of Delivery in a Contract Year. During up to, but not more than, two hundred (200) hours of Planned Maintenance during a Contract Year for each Generation Unit and hours during which an event of Force Majeure exists, a Generation Unit shall be considered potentially capable of delivering such power to the Point of Delivery. For example, in the absence of any Planned Maintenance beyond 200 hours on any Generation Unit or Event of Force Majeure, the Operational Hours for a wind farm with five (5) separate two (2) MW turbines would be 43,800 for a Contract Year.

1.26. "Planned Maintenance" means outages scheduled ninety (90) days in advance, with PGE's prior written consent, which shall not be unreasonably withheld.

1.27. "Point of Delivery" means the PGE system.

1.28. "Pre-Commercial Operation Date Minimum Net Output" shall mean, unless such MWh is specifically set forth by Seller in Exhibit A, an amount in MWh equal to seventy-five percent (75%) of Nameplate Capacity Rating X thirty percent (30%) for a wind or other renewable QF or fifty percent (50%) for a solar QF X (whole months since the date selected in Section 2.2.1 / 12) X (8760 hours – 200 hours (assumed Planned Maintenance)) for each month. If Seller has provided specific expected monthly Net Output amounts for the Facility in Exhibit A, "Pre-Commercial Operation Date Minimum Net Output" shall mean seventy-five percent (75%) X expected net output set forth in Exhibit A for each month.

1.29. "Prime Rate" means the publicly announced prime rate or reference rate for commercial loans to large businesses with the highest credit rating in the United States in effect from time to time quoted by Citibank, N.A. If a Citibank, N.A. prime rate is not available, the applicable Prime Rate shall be the announced prime rate or reference rate for commercial loans in effect from time to time quoted by a bank with \$10 billion or more in assets in New York City, N.Y., selected by the Party to whom interest based on the prime rate is being paid.

1.30. "Prudent Electrical Practices" means those practices, methods, standards and acts engaged in or approved by a significant portion of the electric power industry in the Western Electricity Coordinating Council that at the relevant time period, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with good business practices, reliability, economy, safety and expedition, and which practices, methods, standards and acts reflect due regard for operation and maintenance standards recommended by applicable equipment suppliers and manufacturers, operational limits, and all applicable laws and regulations. Prudent Electrical Practices are not intended to be limited to the optimum practice, method, standard or act to the exclusion of all others, but rather to those practices, methods and acts generally acceptable or approved by a significant portion of the electric power generation industry in the relevant region, during the relevant period, as described in the immediate preceding sentence.

1.31. "Required Facility Documents" means all licenses, permits, authorizations, and agreements necessary for construction, operation, interconnection, and maintenance of the Facility including without limitation those set forth in Exhibit B.

1.32. "RPS Attributes" means all attributes related to the Net Output generated by the Facility that are required in order to provide PGE with "qualifying electricity," as that term is defined in Oregon's Renewable Portfolio Standard Act, Ore. Rev. Stat. 469A.010, in effect at the time of execution of this Agreement. RPS Attributes do not include Environmental Attributes that are greenhouse gas offsets from methane capture not associated with the generation of electricity and not needed to ensure that there are zero net emissions associated with the generation of electricity.

1.33. "Schedule" shall mean PGE Schedule 201 filed with the Oregon Public Utilities Commission ("Commission") in effect on the Effective Date of this Agreement and attached hereto as Exhibit D, the terms of which are hereby incorporated by reference.

1.34. "Senior Lien" means a prior lien which has precedence as to the property under the lien over another lien or encumbrance

1.35. "Start-Up Lost Energy Value" means for the period after the date specified in Section 2.2.2 but prior to achievement of the Commercial Operation Date: zero, unless the Net Output is less than the pro-rated Pre-Commercial Operation Date Minimum Net Output for the applicable delay period, and the time-weighted average of the delay period's Mid-C Index Price for On-Peak Hours and Off-Peak Hours is greater than the time-weighted average of the delay period's Contract Price for On-Peak Hours and Off-Peak Hours, in which case Startup Lost Energy Value equals: (pro-rated Pre-Commercial Operation Date Minimum Net Output for the applicable period - Net Output for the applicable period) X (the lower of: the time-weighted average of the Contract Price for On-Peak hours and Off-Peak Hours during the applicable period; or (the time-weighted average of the Mid-C Index Price for On-Peak Hours and Off-Peak Hours during the applicable period - the time-weighted average of the Contract Price for On-Peak Hours and Off-Peak Hours during the applicable period)). The time-weighted

average in this section will reflect the relative proportions of On-Peak Hours and Off-Peak Hours in each day.

1.36. "Start-Up Testing" means the completion of applicable required factory and start-up tests as set forth in Exhibit C.

1.37. "Step-in Rights" means the right of one party to assume an intervening position to satisfy all terms of an agreement in the event the other party fails to perform its obligations under the agreement.

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

1.39. "Test Period" shall mean a period of sixty (60) days or a commercially reasonable period determined by the Seller.

1.40. "Transmission Agreement" means an agreement executed by the Seller and the Transmission Provider(s) for Transmission Services.

1.41. "Transmission Curtailment" means a limitation on Seller's ability to deliver any portion of the scheduled energy to PGE due to the unavailability of transmission to the Point of Delivery (for any reason other than Force Majeure).

1.42. "Transmission Curtailment Replacement Energy Cost" means the greater of zero or the amount calculated as: ((Mid-C Index Price – Contract Price) X curtailed energy) for periods of Transmission Curtailment.

1.43. "Transmission Provider(s)" means the signatory (other than the Seller) to the Transmission Agreement.

1.44. "Transmission Services" means any and all services (including but not limited to ancillary services and control area services) required for the firm transmission and delivery of Energy from the Facility to the Point of Delivery for a term not less than the Term of this Agreement.

References to Recitals, Sections, and Exhibits are to be the recitals, sections and exhibits of this Agreement.

## SECTION 2: TERM; COMMERCIAL OPERATION DATE

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

2.2. Time is of the essence of this Agreement, and Seller's ability to meet certain requirements prior to the Commercial Operation Date and to complete all requirements to establish the Commercial Operation Date is critically important. Therefore,

2.2.1. By thirty-five (35) months after the Effective Date Seller shall begin initial deliveries of Net Output; and

2.2.2. By the thirty-six (36) month anniversary of the Effective Date, *subject to Section 2.2.3 below*, Seller shall have completed all requirements under Section 1.5 and shall have established the Commercial Operation Date.

2.2.3. Unless the Parties agree in writing that a later Commercial Operation Date is reasonable and necessary, the Commercial Operation Date shall be no more than three (3) years from the Effective Date. PGE will not unreasonably withhold agreement to a Commercial Operation Date that is more than three (3) years from the Effective date if the Seller has demonstrated that a later Commercial Operation Date is reasonable and necessary.

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

### SECTION 3: REPRESENTATIONS AND WARRANTIES

3.1. Seller and PGE represent, covenant, and warrant as follows:

3.1.1. Seller warrants it is a Limited Liability Corporation duly organized under the laws of Delaware.

3.1.2. Seller warrants that the execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on Seller or any valid order of any court, or any regulatory agency or other body having authority to which Seller is subject.

3.1.3. Seller warrants that the Facility is and shall for the Term of this Agreement continue to be a "Qualifying Facility" ("QF") as that term is defined in the version of 18 C.F.R. Part 292 in effect on the Effective Date. Seller has provided the appropriate QF certification, which may include a Federal Energy Regulatory Commission ("FERC") self-certification to PGE prior to PGE's execution of this Agreement. At any time during the Term of this Agreement, PGE may require Seller to provide PGE with evidence satisfactory to PGE in its reasonable discretion that the Facility continues to qualify as a QF under all applicable requirements.

3.1.4. Seller warrants that it has not within the past two (2) years been the debtor in any bankruptcy proceeding, and Seller is and will continue to be for the Term of this Agreement current on all of its financial obligations.

3.1.5. Seller warrants that during the Term of this Agreement, all of Seller's right, title and interest in and to the Facility shall be free and clear of all liens and encumbrances other than liens and encumbrances arising from third-party financing of the Facility other than workers', mechanics', suppliers' or similar liens, or tax liens, in each case arising in the ordinary course of business that are either not yet due and payable or that have been released by means of a performance bond acceptable to PGE posted within eight (8) calendar days of the commencement of any proceeding to foreclose the lien.

3.1.6. Seller warrants that it will design and operate the Facility consistent with Prudent Electrical Practices.

3.1.7. Seller warrants that the Facility has a Nameplate Capacity Rating not greater than 10,000 kW.

3.1.8. Seller warrants that Net Dependable Capacity of the Facility is 9,920 kW.

3.1.9. Seller estimates that the average annual Net Output to be delivered by the Facility to PGE is 19,200,000 kilowatt-hours ("kWh"), which amount PGE will include in its resource planning.

3.1.10. Seller represents and warrants that the Facility shall achieve the following Mechanical Availability Percentages ("Guarantee of Mechanical Availability"):

3.1.10.1. Ninety percent (90%) beginning in the first Contract Year and extending through the Term for the Facility, if the Facility was operational and sold electricity to PGE or another buyer prior to the Effective Date of this Agreement; or

3.1.10.2. Ninety percent (90%) beginning in Contract Year three and extending throughout the remainder of the Term.

3.1.10.3. Annually, within 90 days of the end of each Contract Year, Seller shall send to PGE a detailed written report demonstrating and providing evidence of the actual MAP for the previous Contract Year.

3.1.10.4. Seller's failure to meet the Guarantee of Mechanical Availability in a Calendar Year shall result in damages payable to PGE by Seller equal to the Lost Energy Value. PGE shall bill Seller for such damages in accordance with Section 7.

3.1.11. Seller will deliver from the Facility to PGE at the Point of Delivery Net Output not to exceed a maximum of 28,000,000 kWh of Net Output during each Contract Year ("Maximum Net Output"). The cost of delivering energy from the Facility to PGE is the sole responsibility of the Seller.

3.1.12. By the Commercial Operation Date, Seller has entered into a Generation Interconnection Agreement for a term not less than the term of this Agreement.

3.1.13. PGE warrants that it has not within the past two (2) years been the debtor in any bankruptcy proceeding, and PGE is and will continue to be for the Term of this Agreement current on all of its financial obligations.

3.1.14. Seller warrants that the Facility satisfies the eligibility requirements specified in the Definition of a Small Cogeneration Facility or Small Power Production Facility Eligible to Receive the Standard Renewable Rates and Standard Renewable PPA in PGE's Schedule and Seller will not make any changes in its ownership, control or management during the term of this Agreement that would cause it to not be in compliance with the Definition of a Small Cogeneration Facility or Small Power Production Facility Eligible to Receive the Standard Renewable Rates and Standard Renewable PPA in PGE's Schedule. Seller will provide, upon request by PGE not more frequently than every 36 months, such documentation and information as may be reasonably required to establish Seller's continued compliance with such Definition. PGE agrees to take reasonable steps to maintain the confidentiality of any portion of the above described documentation and information that the Seller identifies as confidential except PGE will provide all such confidential information to the Commission upon the Commission's request.

3.1.15. Seller warrants that it will comply with all requirements necessary for all Transferred RECs (as defined in Section 4.5) associated with Net Output to be issued, monitored, accounted for, and transferred by and through the Western Renewable



Energy Generation System consistent with the provisions of OAR 330-160-0005 through OAR 330-160-0050. PGE warrants that it will reasonably cooperate in Seller's efforts to meet such requirements, including, for example serving as the qualified reporting entity for the Facility if the Facility is located in PGE's balancing authority.

#### 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.

4.3. Upon completion of construction of the Facility, Seller shall provide PGE an As-built Supplement to specify the actual Facility as built. Seller shall not increase the Nameplate Capacity Rating above that specified in Exhibit A or increase the ability of the Facility to deliver Net Output in quantities in excess of the Net Dependable Capacity, or the Maximum Net Output as described in Section 3.1.11 above, through any means including, but not limited to, replacement, modification, or addition of existing equipment, except with prior written notice to PGE. In the event Seller increases the Nameplate Capacity Rating of the Facility to no more than 10,000 kW pursuant to this section, PGE shall pay the Contract Price for the additional delivered Net Output. In the event Seller increases the Nameplate Capacity Rating to greater than 10,000 kW, then Seller shall be required to enter into a new power purchase agreement for all delivered Net Output proportionally related to the increase of Nameplate Capacity above 10,000 kW.

4.4. Seller shall provide preschedules for all deliveries of energy hereunder, including identification of receiving and generating control areas, by 9:00:00 PPT on the last business day prior to the scheduled date of delivery. All energy shall be scheduled according to the most current North America Energy Reliability Corporation (NERC) and Western Electricity Coordinating Council (WECC) scheduling rules and practices. The Parties' respective representatives shall maintain hourly real-time schedule coordination; provided, however, that in the absence of such coordination, the hourly schedule established by the exchange of preschedules shall be considered final. Seller and PGE shall maintain records of hourly energy schedules for accounting and operating purposes. The final E-Tag shall be the controlling evidence of the Parties' schedule. All energy shall be prescheduled according to customary WECC scheduling practices. Seller shall make commercially reasonable efforts to schedule in any hour an amount equal to its expected Net Output for such hour. Seller shall maintain a minimum of two years records of Net Output and shall agree to allow PGE to have access to such records and to imbalance information kept by the Transmission Provider.

4.5. During the Renewable Resource Deficiency Period, Seller shall provide and PGE shall acquire the RPS Attributes for the Contract Years as specified in the Schedule and Seller shall retain ownership of all other Environmental Attributes (if any). During the Renewable Resource Sufficiency Period, 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. With respect to Environmental Attributes not transferred to PGE under this Agreement ("Seller-Retained Environmental Attributes") Seller may report under §1605(b) of the Energy Policy Act of 1992 or under any applicable program as belonging to Seller any of the Seller-Retained Environmental Attributes, and PGE shall not report under such program that such Seller-Retained Environmental Attributes belong to it. With respect to RPS Attributes transferred to PGE under this Agreement ("Transferred RECs"), PGE may report under §1605(b) of the Energy Policy Act of 1992 or under any applicable program as belonging to it any of the Transferred RECs, and Seller shall not report under such program that such Transferred RECs belong to it.

#### SECTION 5: OPERATION AND CONTROL

5.1. Seller shall operate and maintain the Facility in a safe manner in accordance with the Generation Interconnection Agreement, and Prudent Electrical Practices. PGE shall have no obligation to purchase Net Output from the Facility to the extent the interconnection of the Facility to PGE's electric system is disconnected, suspended or interrupted, in whole or in part, pursuant to the Generation Interconnection Agreement, or to the extent generation curtailment is required as a result of Seller's noncompliance with the Generation Interconnection Agreement. Seller is solely responsible for the operation and maintenance of the Facility. PGE shall not, by reason of its decision to inspect or not to inspect the Facility, or by any action or inaction taken with respect to any such inspection, assume or be held responsible for any liability or occurrence arising from the operation and maintenance by Seller of the Facility.

5.2. Seller agrees to provide sixty (60) days advance written notice of any scheduled maintenance that would require shut down of the Facility for any period of time.

5.3. If the Facility ceases operation for unscheduled maintenance, Seller immediately shall notify PGE of the necessity of such unscheduled maintenance, the time when such maintenance has occurred or will occur, and the anticipated duration of such maintenance. Seller shall take all reasonable measures and exercise its best efforts to avoid unscheduled maintenance, to limit the duration of such unscheduled maintenance, and to perform unscheduled maintenance during Off-Peak hours.

#### SECTION 6: CREDITWORTHINESS

In the event Seller: a) is unable to represent or warrant as required by Section 3 that it has not been a debtor in any bankruptcy proceeding within the past two (2) years; b) becomes such a debtor during the Term; or c) is not or will not be current on all its financial obligations, Seller shall immediately notify PGE and shall promptly (and in no less than 10 days after notifying PGE) provide default security in an amount reasonably acceptable to PGE in one of the following forms: Senior Lien, Step-in Rights, a Cash Escrow or Letter of Credit. The amount of such default security that shall be acceptable to PGE shall be equal to: (annual On Peak Hours) X (On Peak Price – Off Peak Price) X (Net Dependable Capacity). Notwithstanding the foregoing, in the event Seller is not current on construction related financial obligations, Seller shall notify PGE of such delinquency and PGE may, in its discretion, grant an exception to the

requirements to provide default security if the QF has negotiated financial arrangements with the construction loan lender that mitigate Seller's financial risk to PGE.

#### SECTION 7: BILLINGS, COMPUTATIONS AND PAYMENTS

7.1. On or before the thirtieth (30<sup>th</sup>) day following the end of each Billing Period, PGE shall send to Seller payment for Seller's deliveries of Net Output to PGE, together with computations supporting such payment. PGE may offset any such payment to reflect amounts owing from Seller to PGE pursuant to this Agreement and any other agreement related to the Facility between the Parties or otherwise. On or before the thirtieth (30<sup>th</sup>) day following the end of each Contract Year, PGE shall bill for any Lost Energy Value accrued pursuant to this Agreement.

7.2. Any amounts owing after the due date thereof shall bear interest at the Prime Rate plus two percent (2%) from the date due until paid; provided, however, that the interest rate shall at no time exceed the maximum rate allowed by applicable law.

#### SECTION 8: DEFAULT, REMEDIES AND TERMINATION

8.1. In addition to any other event that may constitute a default under this Agreement, the following events shall constitute defaults under this Agreement:

8.1.1. Breach by Seller or PGE of a representation or warranty, except for Section 3.1.4, set forth in this Agreement.

8.1.2. Seller's failure to provide default security, if required by Section 6, prior to delivery of any Net Output to PGE or within 10 days of notice.

8.1.3. Seller's failure to meet the Guarantee of Mechanical Availability established in Section 3.1.10 for two consecutive Contract Years or Seller's failure to provide any written report required by that section.

8.1.4. If Seller is no longer a Qualifying Facility.

8.1.5. Failure of PGE to make any required payment pursuant to Section 7.1.

8.1.6. Seller's failure to meet the Commercial Operation Date.

8.2. In the event of a default under Section 8.1.6, PGE may provide Seller with written notice of default. Seller shall have one year in which to cure the default during which time the Seller shall pay PGE damages equal to the Lost Energy Value. If Seller is unable to cure the default, PGE may immediately terminate this Agreement as provided in Section 8.3. PGE's resource sufficiency/deficiency position shall have no bearing on PGE's right to terminate the Agreement under this Section 8.2.

8.3. In the event of a default hereunder, except as otherwise provided in this Agreement, the non-defaulting party may immediately terminate this Agreement at its sole discretion by delivering written notice to the other Party. In addition, the non-defaulting Party may pursue any and all legal or equitable remedies provided by law or pursuant to this Agreement including damages related to the need to procure replacement power. A termination hereunder shall be effective upon the date of delivery of notice, as provided in Section 20. The rights provided in this Section 8 are cumulative such that the exercise of one or more rights shall not constitute a waiver of any other rights.

8.4. If this Agreement is terminated as provided in this Section 8, PGE shall make all payments, within thirty (30) days, that, pursuant to the terms of this Agreement, are owed to Seller as of the time of receipt of notice of default. PGE shall not be required to pay Seller for any Net Output delivered by Seller after such notice of default.

8.5. In the event PGE terminates this Agreement pursuant to this Section 8, and Seller wishes to again sell Net Output to PGE following such termination, PGE in its sole discretion may require that Seller shall do so subject to the terms of this Agreement, including but not limited to the Contract Price until the Term of this Agreement (as set forth in Section 2.3) would have run in due course had the Agreement remained in effect. At such time Seller and PGE agree to execute a written document ratifying the terms of this Agreement.

8.6. Sections 8.1, 8.4, 8.5, 10, and 19.2 shall survive termination of this Agreement.

#### SECTION 9: TRANSMISSION CURTAILMENTS

9.1. Seller shall give PGE notice as soon as reasonably practicable of any Transmission Curtailment that is likely to affect Seller's ability to deliver any portion of energy scheduled pursuant to Section 4.4 of this Agreement.

9.2. If as the result of a Transmission Curtailment, Seller does not deliver any portion of energy (including real-time adjustments), scheduled pursuant to Section 4.4 of this Agreement, Seller shall pay PGE the Transmission Curtailment Replacement Energy Cost for the number of MWh of energy reasonably determined by PGE as the difference between (i) the scheduled energy that would have been delivered to PGE under this Agreement during the period of Transmission Curtailment and (ii) the actual energy, if any, that was delivered to PGE for the period.

#### SECTION 10: INDEMNIFICATION AND LIABILITY

10.1. Seller agrees to defend, indemnify and hold harmless PGE, its directors, officers, agents, and representatives against and from any and all loss, claims, actions or suits, including costs and attorney's fees, both at trial and on appeal, resulting from, or arising out of or in any way connected with Seller's delivery of electric power to PGE or with the facilities at or prior to the Point of Delivery, or otherwise arising out of this Agreement, including without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property belonging to PGE, Seller or others, excepting to the extent such loss, claim, action or suit may be caused by the negligence of PGE, its directors, officers, employees, agents or representatives.

10.2. PGE agrees to defend, indemnify and hold harmless Seller, its directors, officers, agents, and representatives against and from any and all loss, claims, actions or suits, including costs and attorney's fees, both at trial and on appeal, resulting from, or arising out of or in any way connected with PGE's receipt of electric power from Seller or with the facilities at or after the Point of Delivery, or otherwise arising out of this

Agreement, including without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property belonging to PGE, Seller or others, excepting to the extent such loss, claim, action or suit may be caused by the negligence of Seller, its directors, officers, employees, agents or representatives.

10.3. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a Party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or to the public, nor affect the status of PGE as an independent public utility corporation or Seller as an independent individual or entity.

10.4. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR SPECIAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES, WHETHER ARISING FROM CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.

#### SECTION 11: INSURANCE

11.1. Prior to the connection of the Facility to PGE's electric system, provided such Facility has a design capacity of 200 kW or more, Seller shall secure and continuously carry for the Term hereof, with an insurance company or companies rated not lower than "B+" by the A. M. Best Company, insurance policies for bodily injury and property damage liability. Such insurance shall include provisions or endorsements naming PGE, its directors, officers and employees as additional insureds; provisions that such insurance is primary insurance with respect to the interest of PGE and that any insurance or self-insurance maintained by PGE is excess and not contributory insurance with the insurance required hereunder; a cross-liability or severability of insurance interest clause; and provisions that such policies shall not be canceled or their limits of liability reduced without thirty (30) days' prior written notice to PGE. Initial limits of liability for all requirements under this section shall be \$1,000,000 million single limit, which limits may be required to be increased or decreased by PGE as PGE determines in its reasonable judgment economic conditions or claims experience may warrant.

11.2. Prior to the connection of the Facility to PGE's electric system, provided such facility has a design capacity of 200 kW or more, Seller shall secure and continuously carry for the Term hereof, in an insurance company or companies rated not lower than "B+" by the A. M. Best Company, insurance acceptable to PGE against property damage or destruction in an amount not less than the cost of replacement of the Facility. Seller promptly shall notify PGE of any loss or damage to the Facility. Unless the Parties agree otherwise, Seller shall repair or replace the damaged or destroyed Facility, or if the facility is destroyed or substantially destroyed, it may terminate this Agreement. Such termination shall be effective upon receipt by PGE of written notice from Seller. Seller shall waive its insurers' rights of subrogation against PGE regarding Facility property losses.

11.3. Prior to the connection of the Facility to PGE's electric system and at all other times such insurance policies are renewed or changed, Seller shall provide PGE with a copy of each insurance policy required under this Section, certified as a true copy by an authorized representative of the issuing insurance company or, at the discretion of PGE, in lieu thereof, a certificate in a form satisfactory to PGE certifying the issuance of such insurance. If Seller fails to provide PGE with copies of such currently effective insurance policies or certificates of insurance, PGE at its sole discretion and without limitation of other remedies, may upon ten (10) days advance written notice by certified or registered mail to Seller either withhold payments due Seller until PGE has received such documents, or purchase the satisfactory insurance and offset the cost of obtaining such insurance from subsequent power purchase payments under this Agreement.

## SECTION 12: FORCE MAJEURE

12.1. As used in this Agreement, "Force Majeure" or "an event of Force Majeure" means any cause beyond the reasonable control of the Seller or of PGE which, despite the exercise of due diligence, such Party is unable to prevent or overcome. By way of example, Force Majeure may include but is not limited to acts of God, fire, flood, storms, wars, hostilities, civil strife, strikes, and other labor disturbances, earthquakes, fires, lightning, epidemics, sabotage, restraint by court order or other delay or failure in the performance as a result of any action or inaction on behalf of a public authority which by the exercise of reasonable foresight such Party could not reasonably have been expected to avoid and by the exercise of due diligence, it shall be unable to overcome, subject, in each case, to the requirements of the first sentence of this paragraph. Force Majeure, however, specifically excludes the cost or availability of resources to operate the Facility, changes in market conditions that affect the price of energy or transmission, wind or water droughts, and obligations for the payment of money when due.

12.2. If either Party is rendered wholly or in part unable to perform its obligation under this Agreement because of an event of Force Majeure, that Party shall be excused from whatever performance is affected by the event of Force Majeure to the extent and for the duration of the Force Majeure, after which such Party shall recommence performance of such obligation, provided that:

12.2.1. the non-performing Party, shall, promptly, but in any case within one (1) week after the occurrence of the Force Majeure, give the other Party written notice describing the particulars of the occurrence; and

12.2.2. the suspension of performance shall be of no greater scope and of no longer duration than is required by the Force Majeure; and

12.2.3. the non-performing Party uses its best efforts to remedy its inability to perform its obligations under this Agreement.

12.3. No obligations of either Party which arose before the Force Majeure causing the suspension of performance shall be excused as a result of the Force Majeure.

12.4. Neither Party shall be required to settle any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to the Party's best interests.

#### SECTION 13: SEVERAL OBLIGATIONS

Nothing contained in this Agreement shall ever be construed to create an association, trust, partnership or joint venture or to impose a trust or partnership duty, obligation or liability between the Parties. If Seller includes two or more parties, each such party shall be jointly and severally liable for Seller's obligations under this Agreement.

#### SECTION 14: CHOICE OF LAW

This Agreement shall be interpreted and enforced in accordance with the laws of the state of Oregon, excluding any choice of law rules which may direct the application of the laws of another jurisdiction.

#### SECTION 15: PARTIAL INVALIDITY AND PURPA REPEAL

It is not the intention of the Parties to violate any laws governing the subject matter of this Agreement. If any of the terms of the Agreement are finally held or determined to be invalid, illegal or void as being contrary to any applicable law or public policy, all other terms of the Agreement shall remain in effect. If any terms are finally held or determined to be invalid, illegal or void, the Parties shall enter into negotiations concerning the terms affected by such decision for the purpose of achieving conformity with requirements of any applicable law and the intent of the Parties to this Agreement.

In the event the Public Utility Regulatory Policies Act (PURPA) is repealed, this Agreement shall not terminate prior to the Termination Date, unless such termination is mandated by state or federal law.

#### SECTION 16: WAIVER

Any waiver at any time by either Party of its rights with respect to a default under this Agreement or with respect to any other matters arising in connection with this Agreement must be in writing, and such waiver shall not be deemed a waiver with respect to any subsequent default or other matter.

#### SECTION 17: GOVERNMENTAL JURISDICTION AND AUTHORIZATIONS

This Agreement is subject to the jurisdiction of those governmental agencies having control over either Party or this Agreement. Seller shall at all times maintain in effect all local, state and federal licenses, permits and other approvals as then may be required by law for the construction, operation and maintenance of the Facility, and shall provide upon request copies of the same to PGE.

#### SECTION 18: SUCCESSORS AND ASSIGNS

This Agreement and all of the terms hereof shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties. No assignment hereof by either Party shall become effective without the written consent of the other Party being first obtained and such consent shall not be unreasonably withheld.

Notwithstanding the foregoing, either Party may assign this Agreement without the other Party's consent as part of (a) a sale of all or substantially all of the assigning Party's assets, or (b) a merger, consolidation or other reorganization of the assigning Party.

#### SECTION 19: ENTIRE AGREEMENT

19.1. This Agreement supersedes all prior agreements, proposals, representations, negotiations, discussions or letters, whether oral or in writing, regarding PGE's purchase of Net Output from the Facility. No modification of this Agreement shall be effective unless it is in writing and signed by both Parties.

19.2. By executing this Agreement, Seller releases PGE from any third party claims related to the Facility, known or unknown, which may have arisen prior to the Effective Date.

#### SECTION 20: NOTICES

20.1. All notices except as otherwise provided in this Agreement shall be in writing, shall be directed as follows and shall be considered delivered if delivered in person or when deposited in the U.S. Mail, postage prepaid by certified or registered mail and return receipt requested:

To Seller:                   Starvation Solar I LLC  
                                  c/o Jacob Stephens  
                                  3033 E Hawthorne St  
                                  Tucson, AZ 85716

with a copy to:           Stephane Nguyen  
                                  c/o Reed Smith  
                                  1901 Avenue of the Stars #700  
                                  Los Angeles, CA 90067-6078

and a copy to:           Greg Adams  
                                  c/o Richardson Adams, PLLC  
                                  515 N. 27th Street, 83702  
                                  P.O. Box 7218, 83707  
                                  Boise, Idaho

To PGE:                    Contracts Manager  
                                  QF Contracts, 3WTC0306  
                                  PGE - 121 SW Salmon St.  
                                  Portland, Oregon 97204

20.2 The Parties may change the person to whom such notices are addressed, or their addresses, by providing written notices thereof in accordance with this Section 20.



B-1

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in their respective names as of the Effective Date.

PGE

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

STARVATION SOLAR I LLC  
(Name Seller)

By: \_\_\_\_\_  
Name: Jacob Stephens  
Title: Authorized Representative  
Date: \_\_\_\_\_

### EXHIBIT A DESCRIPTION OF SELLER'S FACILITY

Starvation Solar I is a photovoltaics-based solar generating facility which upon reaching full commercial operations have nameplate capacity of 10 MW-AC net output at the point of interconnection subject to available solar energy input. The facility will consist of the following primary equipment:

1. PV Modules - Commercially-available photovoltaic modules for utility-scale DC energy production. Nominal per module DC production rating of 350W +/-50W-DC. Qty <= [14MM/(module rating)].
2. Inverter AC Generator Units: Commercially-available string inverter (90kW-AC, nominal) convert DC to AC power, collected by AC wiring to switchboard. Each such collected aggregation of inverters shall constitute a single sub-generator for the facility, which once all aggregated shall constitute the entire generator for the facility.
3. Pad-mounted transformers: for each sub-generator shall transform inverter output voltage to plant AC collection voltage (12.47 KV, nominally)

4. Racking systems, commercially-available, will mount the PV Modules and direct them and control their angle to receive light from the sun. Racking systems will be arranged in generally uniform rows on the facility site.5. Additional interconnection, transformation, switching, storage, metering, communications, tie-line, and meteorological observations facilities as may be required, subject to final interconnection, permitting, and design requirements.

**EXHIBIT B  
REQUIRED FACILITY DOCUMENTS**

1. Seller's Generation Interconnection Agreement
2. Harney County CUP & Building Permits
3. BPA: Transmission Service Agreement
4. Additional as may be determined by Seller to be required for facility permitting, construction, and interconnection.

## EXHIBIT C START-UP TESTING

### **Seller-identified start-up tests**

As part of the start-up of Facility, Seller will perform the following tests, in addition to any further tests deemed required in coordination with EPC contractor (the Facility's manufacturer) and primary supply vendors (PV modules, inverters, transformers) and interconnecting utility. This will include required factory checks and tests necessary to determine that the equipment systems and subsystems have been properly manufactured and installed, function properly, and are in a condition to permit safe and efficient start-up of the Facility, which may include but are not limited to (as applicable). This will include required start-up tests and checks which necessary to determine that all features and equipment, systems, and subsystems have been properly designed, manufactured, installed and adjusted, function properly, and are capable of operating simultaneously in such condition that the Facility is capable of continuous delivery into PGE's electrical system, which may include but are not limited to (as applicable):

1. Validation of mechanical assembly completion for sign-off on EPC vendor warranty of mechanical completion and workmanship, including racking system, wiring (module connections, DC collection, string terminations, inverter connections to collected strings, AC delivery to switchboard and step-up/collection transformers, and AC collection system deliver to interconnection facilities), inverter mounting, and module installation.
2. Electrical performance validation by facility PV string and sub-generator, per insolation input, including:
  - a) DC wiring inputs to inverters
  - b) AC wiring delivery to transformers
3. Inverter Commissioning, per manufacturer specifications, including commissioning report;
4. Facility daily start-up and shut-down automation confirmed;
5. Energization of transformers;
6. Full system performance test;
7. Interconnection facilities: Commissioning of on-site, tie-line, and off-site interconnection facilities (as applicable), including switchyard, substation, breakers, and metering equipment (as applicable), in coordination with interconnecting utility and performing electrical contractor;
8. Cataloguing of installed equipment on-site, including primary equipment serial numbers and manufacturer information for O&M documentation;
9. Complete pre-parallel checks with PGE;
10. Test energy delivery and metering checks.
11. Excitation and voltage regulation operation tests per insolation inputs.
12. Meteorological station commissioning and report;
13. Facility communications equipment commissioning and report; and
14. Other tests as may be required by equipment manufacturers.

EXHIBIT D  
SCHEDULE

**[Attach currently in-effect Schedule 201]**

**SCHEDULE 201 (Continued)**

PRICING OPTIONS FOR STANDARD PPA (Continued)  
 Renewable Fixed Price Option (Continued)

TABLE 6a												
Renewable Avoided Costs												
Renewable Fixed Price Option for Solar QF												
On-Peak Forecast (\$/MWH)												
Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2015	31.13	25.13	26.13	21.66	22.66	25.13	33.13	34.73	29.63	27.38	29.68	33.13
2016	31.43	30.01	28.93	25.51	24.81	23.06	31.90	36.26	32.22	30.97	31.97	34.43
2017	34.12	32.56	29.20	28.13	27.35	25.40	34.51	39.28	34.86	33.83	34.92	37.63
2018	36.46	34.80	31.19	29.53	28.71	26.67	37.01	42.11	37.38	35.92	37.09	39.97
2019	38.14	36.40	32.63	30.89	30.03	27.89	38.72	44.06	39.11	37.58	38.80	41.81
2020	90.01	90.80	89.99	91.31	104.33	109.84	91.65	94.79	91.02	90.75	91.10	90.77
2021	91.63	92.46	91.84	93.60	105.26	110.91	93.15	96.99	93.38	93.37	92.70	92.70
2022	93.66	93.76	93.13	94.96	109.63	114.13	92.07	97.80	94.14	95.42	94.37	94.02
2023	95.65	95.40	94.17	96.50	111.28	116.40	95.15	98.68	95.95	97.21	95.93	96.48
2024	97.23	97.75	96.73	97.65	106.30	117.33	97.35	101.95	98.68	98.48	97.92	98.07
2025	99.10	99.12	98.31	100.06	110.92	119.16	99.24	105.55	100.78	100.27	99.79	100.25
2026	100.57	101.09	99.35	101.04	112.20	119.15	102.18	106.55	102.12	101.05	101.43	101.63
2027	102.25	102.59	100.63	103.03	115.03	120.12	102.66	109.14	103.72	103.12	102.13	102.82
2028	103.68	103.34	101.96	104.33	112.95	122.67	104.44	109.68	104.55	105.12	103.60	104.56
2029	105.79	105.38	103.96	105.98	114.07	124.22	106.94	112.24	108.46	106.07	105.40	105.83
2030	107.13	106.53	108.06	107.76	114.95	127.70	108.39	113.63	109.08	107.05	106.85	107.79
2031	108.69	107.80	107.47	109.33	116.28	128.44	109.64	116.52	110.47	109.12	108.50	110.22
2032	110.36	110.11	108.39	111.18	118.61	128.41	111.91	118.67	111.94	110.49	110.33	111.16
2033	112.90	111.08	110.05	112.92	120.45	128.96	113.31	119.67	113.39	111.85	112.52	112.91
2034	114.73	112.87	111.66	115.44	121.12	132.66	115.56	121.34	115.09	114.26	114.22	115.22
2035	117.24	114.47	113.77	117.41	122.07	132.79	118.17	124.75	117.70	115.61	116.14	117.31
2036	119.22	115.79	115.97	119.90	124.14	134.40	120.45	129.78	119.82	118.92	117.61	118.60
2037	119.91	116.45	117.83	122.26	126.19	135.53	123.87	131.76	123.11	118.70	120.69	120.39
2038	122.36	120.87	119.99	124.68	129.66	137.52	125.74	134.93	123.85	121.13	122.49	122.34
2039	124.04	122.45	121.73	126.00	132.47	140.16	126.54	133.23	124.63	123.29	124.46	124.08
2040	125.85	124.33	123.44	128.77	133.66	142.06	129.44	135.37	126.71	125.04	126.71	126.61

Effective for service  
 on and after September 23, 2015

**SCHEDULE 201 (Continued)**

PRICING OPTIONS FOR STANDARD PPA (Continued)  
 Renewable Fixed Price Option (Continued)

TABLE 6b												
Renewable Avoided Costs												
Renewable Fixed Price Option for Solar QF												
Off-Peak Forecast (\$/MWH)												
Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2015	26.98	20.38	20.88	15.88	17.88	19.13	23.98	26.13	25.63	23.13	25.38	28.38
2016	27.06	25.99	23.32	18.54	16.65	13.43	23.13	27.74	25.51	27.30	27.97	30.11
2017	30.27	26.06	26.04	21.47	19.23	15.43	25.37	30.49	28.02	29.93	30.97	33.03
2018	32.90	31.29	28.03	22.20	19.89	15.98	27.80	33.43	30.71	32.89	33.71	36.32
2019	34.42	33.04	29.59	23.42	20.98	16.82	29.35	35.30	32.42	34.73	35.60	38.36
2020	68.58	67.81	70.03	66.95	51.47	41.59	66.31	63.57	67.34	67.56	68.43	67.52
2021	71.70	70.03	70.67	68.13	54.41	44.45	68.58	64.91	68.43	69.50	69.36	69.20
2022	72.93	72.10	72.50	70.14	52.58	43.90	73.59	66.03	71.26	70.61	70.94	71.27
2023	74.08	73.80	75.03	73.19	51.34	44.74	74.72	68.53	72.72	72.11	72.75	73.03
2024	74.27	73.88	76.02	73.85	53.94	50.44	74.10	67.73	72.49	72.53	73.47	74.32
2025	78.37	78.84	78.49	75.22	60.00	52.58	78.18	69.30	74.23	74.75	78.80	74.78
2026	78.55	78.33	81.13	78.05	64.87	53.26	79.32	71.90	76.57	77.89	79.72	77.07
2027	81.57	80.52	82.48	79.59	65.38	56.20	79.64	72.83	78.65	80.47	80.82	79.73
2028	83.33	83.05	84.80	82.68	63.45	56.44	82.37	73.98	81.24	81.50	82.54	82.21
2029	84.45	85.45	86.98	85.41	72.98	59.37	84.03	75.52	82.32	84.06	85.12	85.43
2030	87.14	88.37	89.47	88.42	76.31	62.58	85.40	78.15	85.83	87.25	87.66	87.28
2031	89.62	91.21	92.09	88.87	79.11	66.01	89.30	81.28	87.31	89.03	90.93	87.50
2032	91.36	92.90	94.09	90.37	81.89	66.80	89.22	81.75	89.34	92.12	91.54	90.26
2033	94.30	96.19	97.29	93.45	84.73	71.50	93.78	83.69	92.61	95.63	94.00	93.33
2034	96.65	98.62	99.97	95.91	86.88	71.32	95.58	86.58	95.37	97.26	96.55	96.04
2035	97.26	101.30	102.07	98.18	90.58	76.12	97.06	86.87	97.82	99.24	98.90	98.15
2036	100.30	103.84	104.15	98.13	92.11	81.09	97.21	87.79	98.23	102.10	102.08	99.77
2037	103.90	106.19	107.32	100.80	96.72	82.63	98.42	89.65	98.63	105.58	103.83	103.24
2038	108.63	108.17	109.11	102.78	97.37	85.19	101.14	90.89	103.90	109.20	105.75	105.85
2039	109.65	111.37	112.13	106.34	98.97	86.98	106.48	96.20	108.22	110.80	108.44	108.86
2040	112.13	113.43	114.50	109.34	100.07	89.08	107.33	97.98	110.92	112.29	110.09	110.91

Effective for service  
 on and after September 23, 2015



**UM 1931 NewSun Parties Exhibit 122**

December 14, 2015, Email from  
John Morton to Jake Stephens

Appointment





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**From:** John Morton [John.Morton@pqn.com]  
**Sent:** 12/14/2015 8:51:16 AM  
**To:** Jake Stephens [jake@jakestephens.com]  
**Subject:** Declined: Invitation: John Morton PGE / Jake Stephens NewSun @ Mon Dec 14, 2015 10am - 11am (jake@jakestephens.com)  
**Location:** Portland General Electric, 121 SW Salmon St, Portland, OR 97204, United States  
**Start:** 12/14/2015 9:00:00 AM  
**End:** 12/14/2015 10:00:00 AM  
**Show Time As:** Busy  
**Recurrence:** (none)

Hi Jake,

I'm sorry to cancel on such short notice. I understand that your attorney and PGE's legal are in discussions about a contract. Until current business is resolved, I don't believe that it is prudent to discuss future plans. Thank you for your understanding.

**John Morton | Origination and Structuring**  
**Portland General Electric Co.** | 121 SW Salmon Street, 3WTC0306 | Portland, OR 97204

 503-464-7305 |  503-866-1287 |  503.464-2605 |  [john.morton@pqn.com](mailto:john.morton@pqn.com)  
[www.portlandgeneral.com](http://www.portlandgeneral.com)

 Think Green before printing!

**UM 1931 NewSun Parties Exhibit 123**

January 3, 2016, Letter from  
Jake Stephens to PUC Commission



January 3, 2016

RE: Objections to “PGE Filings”, as follows:

1) PGE’s “Proposed Price Changes”, via revisions to Schedule 201 for Qualifying Facilities 10 MW or Less, docketed as UM 1752, filed 12/3/2015, which are affected by:

2) PGE’s “IRP Update”, filed 12/2/2015; and,

3) PGE’s “AR593 Rulemaking Comments”, filed 12/18/2015, which includes to PGE assertions on QF contracting, which seek to influence this matter;

Dear PUC Commissioners and Staff:

**I write this letter in protest of the above PGE Filings** and to present comments. PGE’s Proposed Price Changes therein attempts to radically and unilaterally slash (some by 70%+) the rates available to QFs and restructure them (by removing seasonal pricing) without sufficient (if any) appropriate scrutiny nor any meaningful public process. PGE does so based on incorrect, unscrutinized, hasty, insufficiently considered, selective, selectively omissive, and sometimes invented assumptions. Their requests should be rejected [with prejudice].

**I submit these comments as a small power project developer.** I own 100% of the interests in the QF projects my company develops. Contrary to PGE’s claims that current QFs are *not* “Mom and Pop”: I am not rich. I am not a multi-billion dollar nor multi-national company. Nor am I a lawyer or corporate big-shot. I’m just a young guy trying to start a business and pursue his dream. So I will do my best to explain here my view on these matters, as they are consequential, I believe, to me, and to the Oregon regulatory space, and the entire competitive electrical market in Oregon.

Indeed, much like me and my projects, most QF projects before PGE now are small, privately owned, not-yet-built, and already facing challenging economics at current pricing, and real development risks, including worst-in-nation level solar resource and the prospect of having to repeatedly sue PGE for performance on QF PPAs approved by the Commission, as other projects (such as PaTu) have had to do.

PGE’s rate proposals and AR593 requests (each and collectively) would destroy QF development for PGE in Oregon.

Further, PGE’s proposals, in both the specifics and in their method (and the precedent it would create), would harm economic development in Oregon (\$10s of millions for construction jobs in high unemployment areas), harm competition in the Oregon electrical market, harm general investment in Oregon, harm options for future RPS compliance, harm me, harm my projects, and especially harm the ratepayer, due to the direct, indirect, short-term, and long-term consequences of these actions to market competition and the required regulatory reliability as a necessary back-drop for investment in Oregon.

**MY COMMENTS AND OBSERVATIONS:**



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- 1) **PGE's proposed changes are radical. As such, they merit extra scrutiny, not less.** For example:
  - a. **Rate reductions of over 70%** are proposed for summer on-peak pricing in 2020 and beyond. All solar pricing categories in 2020 and beyond are cut by 35-73%. These economics were challenging (at best) before this proposal.
  - b. **Restructuring of rates to eliminate seasonal considerations:** PGE unilaterally proposes to flatten prices across all months in certain categories, eliminating all seasonal performance incentive, without public discussion, and despite prior meticulously-constructed month- and year-specific pricing. Coincidentally, this also diminishes project returns for solar projects, paying them a slightly higher energy price in low production months (when PGE doesn't need the energy as much) and less in high production months (summer, when PGE needs the energy more).
  - c. **Pushing out PGE's physical renewables compliance by 4 years undermines any non-PGE project development (QF or otherwise) for the next 5-8 years,** practically ensuring no options exist to benefit the ratepayer, except PGE's own internal projects. Because why would a developer invest in a developing a project with a PUC-approved non-market. (Meanwhile, can PGE still develop assets and be ready to bid, then act in contradiction of their IRP?) Does the Commission want PGE's own projects to become the only game in town?
  - d. **Complete change of PGE RPS compliance strategy for next 5-8 years.** See consequences in (c) above per effect on future competitive market options.
- 2) **PGE's attempt to avoid scrutiny of assumptions is a dangerous precedent.** In their IRP Update PGE states repeatedly that no action or approval is requested of the Commission. It was followed the next day with a radical request based on the same information. It is proposed for approval administratively, outside the extensive process designed explicitly to avoid questionable and/or self-interested actions and assumptions resulting in insufficiently scrutinized, consequential policy changes.
- 3) **PGE's attempts to make changes out-of-cycle, out of process frighten me, and undermine my willingness to invest in Oregon,** particularly given #2 and #1, especially in energy development, QF or otherwise. I'm scared I won't be able to fight the utility's unsubstantiated claims, due to their superior financial resources and disregard for the rules and process, and therefore any investment could be at risk of total arbitrary loss.
- 4) **Unpredictable electrical regulatory framework threatens all electric competition in Oregon:** This type of utility behavior (history and precedent), threatens not just QF development, but any development and investment in the state by those seeking bring competitive projects into the market. How can a small or large developer, deal with these costs and risks, justify investment against this backdrop in Oregon? ...if at any moment the utility just changes the rules, changes their IRP radically, pushes out the need for physical resources by 4 years with no proper scrutiny



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of assumptions (while maintaining their own ability to participate and conduct development they would buy from themselves). Projects take *years* of work and capital and risk to be developed. How would any company justify material expense in the context of radical regulatory change risk?

- 5) **PGE's action should undermine OPUC faith in PGE's future representations** of assumptions and consequences therefrom, factually, analytically, and in terms of self-dealing conflicts of interest.
- 6) **Current efforts by utilities to squelch PURPA QF contracting are antithetical to PURPA's express intent, Oregon law, and OPUC policy.**
- 7) **QFs are a powerful and efficient means of market participation to create competition and alternate solutions.** Self-motivated sellers which can creatively seek to perform at current avoided costs is a ratepayer-favorable mechanism, which reduces the need for utilities to invest as much time in running RFPs and other costly, time-consuming, ratepayer-billed efforts.
- 8) **Threats to competition are a threat to Oregon ratepayers.**
- 9) **False/Invented Assumptions by PGE in IRP Update.** PGE somehow \*invented\* the extension of the PTC and ITC, taking it upon themselves to *predict an act of Congress* in a period of extreme partisanship and gridlock. PGE thought this was an appropriate state policymaking backdrop for radical, unscrutinized changes. Their assumptions are now known to be incorrect.
- 10) **PGE PTC/ITC Extensions are materially different than PGE's IRP Update assumption:** When federal tax credit extension did occur, it was driven by a rare budget deal, and under materially different terms than PGE assumed. The tax credits are now designed to phase out quickly. (I.e. not be extended indefinitely, per PGE assumptions.) They will not exist for wind by 2020, having tapered in prior years, and will be almost gone for solar. This materially changes the economic analysis and imperative surrounding consideration and timing of physical renewable resources. Indeed, their permanent expiration coincides substantially with (and/or precedes) PGE's current resource and renewable insufficiency periods, suggesting that more procurement prior to 2020 is needed, rather than delaying it to 2024 when these material incentives won't exist.
- 11) **PGE Assumptions are Selective and Omissive,** leaving out, disregarding, or treating casually factors which would push pricing up instead of down, such as solar's favorable energy production alignment with system needs (PGE wrongly credits only 5% capacity, not updated in the Update), and anti-competitive impacts. It also ignores immediately surrounding events, which could counter the wisdom of a submission at that point in time, including: 1) Unresolved federal ITC/PTC outcomes, 2) the Paris Climate accord, and 3) the simultaneous bankruptcy of their contractor at Carty, which resulted in (a few days later) stop of construction of PGE's most critical new resource (a good time to squash options which might address resource insufficiencies?).
- 12) **PGE's proposals will impair economic development.** Projects my companies are developing would have tens of millions of dollars of economic impact in multiple rural Oregon communities, including areas with high unemployment (>11%). Construction labor for solar projects would be primarily, perhaps entirely, local, comprising hundreds of jobs across only a few projects.



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Additional QFs will distribute these affects more fully around the state of Oregon, mostly in rural areas, with the potential for hundreds of millions of economic benefit over 5-10 years. Whether this should be encouraged or discouraged is a question for the PUC.

- 13) **PGE's hostile, unilateral actions are *exactly* why PURPA was passed. PGE is effectively arguing for *stronger* PURPA policies in Oregon** by demonstrating how utilities still strongly have, and indiscriminately wield, the power to squelch competition and small project development, despite even Oregon's relatively mature PURPA policy framework. The same observation applies to the actions of the other Oregon IOUs.
- 14) **PGE's proposal will harm me, my company, and my projects**, and my surrounding investment in Oregon. Their proposed pricing would destroy the viability of my proposed projects, causing a total loss of investment, months of work, and reputational damage. Despite stating clearly in its IRP Update cover letter that avoided cost changes could harm QF developers, PGE made no effort to ask me if any impact to my projects would occur; PGE didn't even notify me of its planned filings, despite same-day and surrounding-day contact, at lawyer and contracting levels (both), much less seek to assure me that projects in negotiation would be seen through completion.
- 15) **I fear this is an effort by PGE to avoid its Legally Enforceable Obligation to purchase power from projects** for which I'm currently in contracting with PGE and for all of which I have confirmed the commitment to sell all output to PGE under their standard contract and current pricing.
- 16) **The costs to me, personally, and as a small project developer, of dealing with PGE's hostile filings are disproportionately huge, stressful, expensive, risk-creating, and distracting.** Since December 3, the substantial threat of of PGE's actions has resulted *in multiple days of lost productivity* to response strategy, planning, analysis, and implementation, not to mention thousands in legal costs, opportunity costs, and pressure to make hasty actions and decisions against the context of total loss if these changes are approved. If I then need outside capital to support development and deal with PGE's challenges, can you imagine explaining to investors PGE's hostility and how that affects project risk? (I.e. the likelihood of a successful return realization?)
- 17) **PGE makes incorrect and exaggerated claims about QFs** in their AR593 Rulemaking Comments, **the intention of which appears to be scare the Commission into hasty action.** *Mom & Pops or multi-nationals?* PGE strongly and falsely states that these QFs are "not Mom and Pops", but rather multi-national, multi-billion dollar companies are dominating the process, and that seven 10 MW solar QFs is a threat.

***In reality:*** PGE is crying wolf, for self-interest. I'm just a young American entrepreneur, trying to start a business, who owns 100% of four of the seven 10 MW projects they exclaim concern about. I guess that makes me "Mom and Pop". I'm certainly not a multi-national.

(Further, my company's projects are strategically dispersed around the state, in multiple counties, thus benefiting many areas and creating improved generation resource diversity.)

They also incorrectly assert that this "flood" of QFs occurred as a result of developers switching to the only game in town. In reality, I've never developed in Pacific Power or IPC



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territories (whose regulatory antagonism clearly squelched any potential interest in doing so). PGE also never asked me this question before asserting this “fact” to the Commission. And nearly all of the QF PPAs actually signed by PGE in 2015 *are from before* those two utilities upended their PURPA obligations, shutting down new development, which is what PGE hopes to emulate.

The other project PGE references on 12/3/2015 were basically inquiry phone calls, not sufficient basis for a huge policy shift, and likely also not if all those projects were contracted (which wouldn’t all get built).

**The overwhelming majority of their QF projects, past and current, are: 1) Very Small** (under 3 MW); **2) Owned and developed by small companies** or individuals (4 of the 7 10MW projects referenced definitely are); and/or **3) Not yet built**, due to challenging economics (many never will be).

PGE claims it is actually in testing of a QF project, but omits relevant details about its size and attributes, which could be collocated with load and/or a net-metering type alternative, and is certainly less than 2.5 MW, because it isn’t a 10 MW.

**Some scale context is also merited here.** Oregon has functionally *zero* utility-scale solar. The largest projects in PGE territory are basically a couple sub-3 MW projects. Further, these 10 MW projects aren’t even at the rounding error level of PGE’s system management. Other states are installing hundreds of MW of solar. 10 MW is *small-scale* utility-scale solar.

- 10 of the 12 QF PPAs signed in 2015 are 2.5 MW or less (one is 0.5 MW). This is the “triple” which PGE fearmongers about. Three times four. Triple of almost nothing.
- I know for a fact that at least four or more of the seven 10 MW solar projects PGE claims are a problem are owned by small companies or individuals.
- Nevermind that 10 MW is a small project too, and is already burdened with disproportionate development, legal, and financing costs.
- Nevermind that solar projects actually offer a solution to Pacific Northwest utilities’ complaints about wind projects’ delivery profiles, in that solar project performance largely lines up with system demand, and thus a superior and portfolio diversifying renewable resource.
- Nevermind the almost non-existent history of operational QF solar projects selling to PGE.
- Nevermind PGE’s currently projected renewable and energy insufficiencies.
- Meanwhile, larger companies doing business bring benefits too, including the financial resources to weather certain development challenges. And to deal with hostile utilities and the legal bills and stresses and additional project costs which result – and either cause project failures or unnecessary ratepayer expense. And which aren’t excluded under PURPA.





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And what exactly is the history of viable, currently operational new QFs with PGE? What percentage of PGE power is produced by them?

Does the lack of meaningful solar in Oregon (and related economic development and resource diversity) have anything to do with the hostile utility environment? What is the impact of this on ratepayers?

**18) Substantial Risks and Challenges to QF Development:** Solar resources in PGE's service territory are *worst-in-nation*, approximately 2/3rds of that east of the Cascades, and lower than Maine. Off System projects would face serious wheeling costs, interconnection study timelines and delays, and upgrade cost risks for interconnection on congested paths.

*Any off-system QFs also would face PGE-specific counterparty risk, given a) PGE's history of their QFs having to sue them at FERC and in courts to get performance (PaTu), and b) 1 MW increment scheduling with BPA and PGE's refusal to include typical PPA language (which Pac and IPC have) to reconcile imbalance energy, which puts 10% of a 10 MW off-system project output at risk of payment by PGE, even if PGE gets the energy. Meanwhile, in contracting, PGE refuses to provide the extra time for COD based on transmission provider timelines, despite the *explicit* language right there in their own contract which says they will.*

**PGE ACTIONS DEMONSTRATE CLEAR NEED FOR STANDARD QF CONTRACTS – AND LARGER NOT SMALLER STANDARD CONTRACTS.** PGE's all-out assault on QFs, based on misrepresentations, scrutiny-avoidance, regulatory process circumvention *clearly demonstrates why standard QF contracts are necessary.* Permit me to address this item here, because these PGE filings demonstrate an extremely important point, currently in front of the commission in multiple proceedings.

**Please consider my own experience negotiating STANDARD Schedule 201 PPAs with PGE, in which:**

I have been denied basic explicit provisions in the contract (extra COD time in 2.1), denied terms previously provided to other QFs in Commission approved contracts (denied contract length within Commission guidance; i.e. discriminatory treatment), forced to accept unpreferred PPA entries which are completely unaffacting to the contract intent and language which affect development options (eg, GIA counterparty), told that explicit COD timeline information provided by a transmission owner isn't sufficient (despite the fact them being the only relevant authority) and forced into additional project risk (despite explicit standard contract language that upon reasonable demonstration such additional time would be granted), and prevented from considering proper challenges to PGE's position due to **this proceeding's** implications, the timeline imperatives to complete contracting before threatened project-destroying price changes, and resulting existential threats to my projects if PGE's request is approved, and being told "We will fight you on that".

Meanwhile I am forced to incur delays, stress, project risk, and legal costs in order to debate how to address just simple basic reasonable issues, while simultaneously PGE attempts to pull the pricing out from under me, without telling me, and then cancels meetings for unrelated matters (effect on market competition?) because I had my lawyer send them a letter on a QF contract question (to discuss their odd interpretation of PPA "term", which subverts an industry-wide interpretation of "term" for PPAs).



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Meanwhile, PGE takes 15 business days to respond to minor items as a delay tactic (other utilities do too), despite clear human resource availability. And then I learn that other QFs have had to sue PGE at FERC just to get paid, and then even upon winning at FERC look forward to suing again in Oregon courts to get performance.

**\*\* PGE may also want to consider whether their own actions – in filing this radical change – actually precipitated the supposed rush of filings they claim in their complaint to the Commission. \*\*** There didn't seem to be (m)any in the hopper until their 12/4/2015 filing. The Commission shouldn't reward their cry of wolf if PGE is causing the problem they claim, when they create stresses which accelerate market participant actions which might be planned over longer times in a stable environment (or never occur).

**This is exactly why the standard QF contract is needed.** Can Staff or Commissioners imagine how much more challenging and risky this process would be for a non-standard contract? If PGE could theoretically negotiate any item in a NON-standard PPA – and refuses to accommodate items in the STANDARD contract, even which are explicitly permitted in the very language in the contract paragraph (2.1, outside COD) – *what level of obstruction is to be expected in a non-standard contracting process?*

**The current situation is what the utilities want:** That all QF projects face the full force of their obstructive power and superior financial resources (billable to the ratepayer) to deter QF participation in the market. *And this is exactly what these PGE Filings clearly, clearly demonstrates the means and willingness to do.*

**And, thus PGE is also demonstrating why a LARGER (i.e. 20 MW), not smaller, standard QF contract size is merited,** due increased \$-per-KW build costs at smaller scales, and disproportionate to size transactional costs (including regulatory risk and legal), because small projects have nearly identical such costs to larger projects, but fewer MWH to spread them over. Have no doubt, the proposal to cut the standard contract to 2 MW or 100 KW is intended to kill PURPA projects.

Smaller projects have:

**1) Unbearable per-project transactional, legal, development, regulatory, and financing costs:** The financing costs on a few million dollar 2 MW project could be \$500,000; the development expenses might be exactly the same as a 10 or 20 MW project, hundreds of thousands; the legal costs of PPA negotiation alone could be \$50-\$100k without a standard contract, plus regulatory fights. These costs are perhaps bearable for \$25-\$50MM projects (without regulatory fight risk). *But these transactional costs will crush small projects, potentially becoming 10-25% of total costs for 2-3 MW sizes, and potentially costing more than the entire cost of a non-load-sited 100-200KW project.*

**2) Increased \$-per-KW unit costs at smaller scale.** Further, for solar, construction costs probably TRIPLE on a \$/KW basis from 10 MW to 100 kW, and are perhaps double at 2MW vs 10 MW. Per-unit EPC costs taper down to a reasonable economy of scale by 20 MW – *which is what the standard contract size should be, 20 MW* – so ratepayers and developers aren't bearing pointless transactional expense on more projects for the same MW outcome, projects and competitive options are pointlessly killed, and that economies of scale can be realized in costs, and future price setting. Wind projects also are basically killed

by the utilities proposals for smaller contracts, with *utility-proposed thresholds being less than the size of a SINGLE MODERN TURBINE*, when in reality, proper project development – and competing with avoided cost pricing levels set by large-scale, mature technology, fossil and hydro – requires full-scale project development. If Oregon ever wants solar or wind that can compete with hydro and natural gas, it should be thinking about facilitating 80 MW QF projects and 200+ MW non-QF projects.

**THUS, I URGE THE COMMISSION TO:**

**1) Reject PGE's Proposed Avoided Cost Price Changes.**

**2) Reject PGE's IRP Update** which it out of cycle, contrary to OPUC process and intentions, and includes false, speculative, invented, and insufficiently scrutinized assumptions and consequences.

**3) Reject PGE's requests in its AR593 Rulemaking Comments** to impede and undermine the PURPA contracting process through changes to the rules, standard project sizes, pricing, and contract, particularly where based on unexamined information.

**4) Consider not only the direct harm and incorrectness of PGE's proposals, but to also address the broader harm to the regulated process itself**, if such changes can occur at all through these administrative means, much less such draconian and indefensible changes occur. It threatens competition, stability of markets, and thus, ultimately, the ratepayer in real, consequential, long-term ways.

**5) Reject PGE's proposed changes of the Renewable Sufficiency Period in the IRP Update.** It is based on insufficiently considered, omitted, and incorrect information.

**6) Reject PGE's proposed reshaping of renewable avoided costs**, which has stripped seasonality from pricing structures and is a radical change, and removes or diminishes incentives for projects to provide energy at times aligned with ratepayer needs.

**7) Increase the standard contract maximum eligible project size to 20 MW** to counteract the clearly-demonstrated threats from utilities to challenge QFs through all available means, including (but not limited to) regulatory circumvention, crying wolf, misrepresenting QF participants characteristics to the Commission, exaggerating QF project impacts, outright refusal to cooperate, delays, regulatory risk, burdensome costs and delays, superior financial means, ability to bill the ratepayer, ignoring QF benefits (even when already quantified), forcing QFs to seek due performance at FERC and in the courts, provision of incorrect and selective information to regulators, among others.

*Such an action would also send a clear message to the utilities that their misuse and circumvention of the regulatory process to attack QFs and impede competition to the detriment of ratepayer benefiting healthy markets is unequivocally unacceptable.*

**8) If any PGE pricing change is approved by the Commission, it should explicitly grandfather currently under-negotiation projects.** PGE should not be allowed to evade its obligations by pulling the rug. All of the projects which I have presented, including specifically those submitted with Seller-signed contracts, to PGE should be granted the pricing then in effect at the time of their presentation.



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## CONCLUSION

Ironically, PURPA was passed with the explicit purpose of leveling the playing field for not only small guys like me, but so that anyone could participate, small, medium, or large. Because competition is good for the ratepayer. PURPA also explicitly sought to facilitate renewables.

These, and other actions in Oregon right now, seem targeted to stomp out the small guy, by burdening him once again with unbearable financial risk, unbearable transactional costs, unbearable legal expenses to enforce his rights, unceasing legal challenges to enforce language blatantly in contracts, unacceptable challenges and denials, and the long list of issues already described here.

*It is valuable that PGE and other Oregon utilities are demonstrating so clearly the importance and relevance still today of PURPA's QF provisions, mandatory avoided cost purchase obligation, and competition-protecting provisions, in ensuring market access for small power producers, renewable generation, and for preserving competition in the market place.*

The Staff and Commission should send a clear signal to the utilities, including PGE here, by rejecting these requests and increasing its scrutiny of the utility. Ratepayers' money shouldn't be wasted on these matters. Staff time should be respected by utilities not filing contentious, clearly inappropriate dockets. Competition should not be squelched for the IOU shareholders' interests over the ratepayers.

Thank you for your time and the opportunity to make comments. I expect I will fly to Oregon to make additional comments at the open meeting regarding PGE's filing, given the importance of these matters. I'm hoping I still get the opportunity to continue doing business and investing in your beautiful state.

A handwritten signature in black ink, appearing to read "J. Stephens". The signature is stylized and fluid.

Jake Stephens  
Principal  
NewSun Energy Holdings Oregon LLC

**UM 1931 NewSun Parties Exhibit 124**

December 17, 2015, Email from  
Bruce True to Jake Stephens

Message

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**From:** Bruce True [Bruce.True@pgn.com]  
**Sent:** 12/17/2015 2:24:39 PM  
**To:** Jake Stephens (jake@jakestephens.com) [jake@jakestephens.com]  
**Subject:** FYI / Starvation Solar

The others in my judgement have issues that we have discussed.

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**From:** Bruce True  
**Sent:** Tuesday, December 15, 2015 12:51 PM  
**To:** Emily Scharringhausen  
**Cc:** Shawn Davis  
**Subject:** Could you print this on stationary and prepare an envelope for mailing? / Starvation Solar

December 16,

Starvation Solar I LLC  
C/O Jacob Stephens  
3033 E Hawthorne St  
Tucson, AZ 85716

Dear Jake,

Thank you for providing general project documents for the Starvation Solar Project. Portland General Electric (PGE) has determined that the written information provided satisfies PGE's requirements to proceed. As of the date of this letter, PGE will commence preparing a draft Standard Power Purchase Agreement (PPA), in accordance with PGE Schedule 201.

In accordance with PGE's schedule 201 dated August 26, 2015 please expect to receive from PGE a draft Standard PPA on or before December 28, 2015. If after Your review of the draft Standard PPA Starvation Solar wishes to advance to final draft of the contract please notify PGE in writing of this decision. At this point PGE will determine if additional information is required for Starvation Solar. Once any requested documentation or information has been received in writing, PGE will notify Starvation Solar in writing and commence preparation of a final draft Standard PPA.

Please contact me at any time if you have questions regarding this process.

Kindest Regards

PGE

**UM 1931 NewSun Parties Exhibit 125**

December 18, 2015, Email from  
Jake Stephens to Bruce True

Message

**From:** Jake Stephens [jake@jakestephens.com]  
**Sent:** 12/18/2015 4:20:36 PM  
**To:** Bruce True [bruce.true@pgn.com]  
**Subject:** PPAs for Tygh Valley, Wasco, and Dayton Solar I projects  
**Attachments:** Schedule 201 RENEWABLE Off System Variable PPA\_Effective\_09.23.15 - TYGH VALLEY SOLAR I v2 - REDLINE vs Blank Orig PPA form.docx; Schedule 201 RENEWABLE Off System Variable PPA\_Effective\_09.23.15 - TYGH VALLEY SOLAR I v2 - REDLINE vs Starvation v1.docx; Schedule 201 RENEWABLE Off System Variable PPA\_Effective\_09.23.15 - TYGH VALLEY SOLAR I v2 CLEAN (submitted to PGE 2015.12.18) SIGNED by SELLER.pdf; Schedule 201 RENEWABLE Off System Variable PPA\_Effective\_09.23.15 - TYGH VALLEY SOLAR I v2 CLEAN (submitted to PGE 2015.12.18).docx; Schedule 201 RENEWABLE Off System Variable PPA\_Effective\_09.23.15 - WASCO SOLAR I v2 - REDLINE vs blank 2015.09.23 Sched 201 Renewable Off System PPA.docx; Schedule 201 RENEWABLE Off System Variable PPA\_Effective\_09.23.15 - WASCO SOLAR I v2 - REDLINE vs Starvation v1.docx; Schedule 201 RENEWABLE Off System Variable PPA\_Effective\_09.23.15 - WASCO SOLAR I v2 CLEAN (submitted to PGE 2015.12.18) SIGNED by Seller.pdf; Schedule 201 RENEWABLE Off System Variable PPA\_Effective\_09.23.15 - WASCO SOLAR I v2 CLEAN (submitted to PGE 2015.12.18).docx; RENEWABLE In System Variable PPA\_Effective\_09.23.15 - Dayton Solar I v2 CLEAN.doc; RENEWABLE In System Variable PPA\_Effective\_09.23.15 - Dayton Solar I v2 Redline vs blank orig Sched 201 in system renewable variable PPA.docx; RENEWABLE In System Variable PPA\_Effective\_09.23.15 - Dayton Solar I v2 Redline vs v1.docx; Schedule 201 RENEWABLE Off System Variable PPA\_Effective\_09.23.15 - DAYTON SOLAR I v2 CLEAN (submitted to PGE 2015.12.18) SIGNED by Seller.pdf

Dear Bruce,

As regards the planned three 10 MW Qualified Facilities for which NewSun Energy Holdings Oregon LLC had previously submitted PPAs to you for the projects and companies below, please find attached updated PPAs in which the sole remaining items of concern identified by PGE are addressed (outside COD and contract termination dates), per your prior correspondence to me on each. The Sellers remain committed to their obligation to sell their entire outputs and perform under the PGE Schedule 201 renewable energy standard contracts and solar pricing in effect upon their submission dates (the September 23, 2015 editions) as applicable to each project, as they have been since their original submission.

Projects (Sellers)

- Tygh Valley Solar I (Tygh Valley Solar I LLC)
- Wasco Solar I (Wasco Solar I LLC)
- Dayton Solar I (Dayton Solar I LLC)

Per PGE's preference, a) the COD has been set for 3 years from Effective Date; and, b) termination date has been defined as after 16th Contract Year -- both exactly as in the Starvation Solar I submission which PGE approved.

For your convenience, I've attached four (4) versions of the PPA standard contract, as follows, for each project:

- **Clean word doc**
- **PPA redline vs Starvation Solar I v1 (off system) or last submission (Dayton)**, so you can compare against the PPA and language already approved by PGE for that project. Other project info and the contract remains the same as previously submitted and I'm happy to provide a redline against each project's last submission as well.
- **PPA redline vs the original Schedule 201** renewable PPA (in system or off system, as applicable)
- **Signed Copy**. As the Sellers each remain committed to selling their full output to PGE per the original submissions under the Sept 23, 2015 Schedule 201 renewable variable PPA standard contracts, as they have been since their original submission, a signed copy is attached here, in honor of that Seller's agreement to this.

Other Notes:

- **COD**: Set to 3 years from Effective Date (same as Starvation Solar I), despite our belief that we reasonably demonstrated, per correspondence from the account executive at transmission provider BPA, and section 2.2 language, that more than 3 years was necessary.
- **Termination Date**: Set to end of 16th Contract Year (same as Starvation Solar I)
- **Tygh Valley Solar I GIA** updated to be with BPA, not Wasco Coop, as PGE preferred this.
- **Other corresponding project information and language** from the original PPA submissions for each remains the same as per the prior PPA drafts submitted, so should be the same as your last review per project. Seller, location, energy forecasts, facility size and description and energy production levels.



- While we don't agree with PGE's position and interpretation on the matters of the outside allowable COD and termination date and the length of fixed pricing, changes acceptable to PGE have been made to COD and termination date to allow the process of finishing these contracts to move forward, as the development needs to move forward.
- You have separately received the current Form 556 for each project.

I appreciate your efforts on processing these, Bruce, and am excited to bring these projects into the PGE resource portfolio. I appreciate your assistance and look forward to the formal execution of this agreement by PGE. I presume that if the document that the Effective Date will be updated based on PGE date of signing the document.

Best regards,

Jake Stephens  
Principal  
NewSun Energy Holdings Oregon LLC  
520-981-7303

**UM 1931 NewSun Parties Exhibit 126**

Attachment #1 to Email in Exhibit 125:  
Tygh Valley Solar I LLC PPA

## STANDARD RENEWABLE OFF-SYSTEM VARIABLE POWER PURCHASE AGREEMENT

THIS AGREEMENT, entered into this 30th day, November 2015, is between TYGH VALLEY SOLAR I LLC ("Seller") and Portland General Electric Company ("PGE") (hereinafter each a "Party" or collectively, "Parties").

### RECITALS

Seller intends to construct, own, operate and maintain a photovoltaics-based solar generation facility for the generation of electric power located in \_\_\_\_\_  
Wasco County, Oregon with a Nameplate Capacity Rating of  
10,000 kilowatt-AC ("kW"), as further described in Exhibit A ("Facility");  
and

Seller intends to operate the Facility as a "Qualifying Facility," as such term is defined in Section 3.1.3, below.

Seller shall sell and PGE shall purchase the entire Net Output, as such term is defined in Section 1.21, below, from the Facility in accordance with the terms and conditions of this Agreement.

### AGREEMENT

NOW, THEREFORE, the Parties mutually agree as follows:

#### SECTION 1: DEFINITIONS

When used in this Agreement, the following terms shall have the following meanings:

1.1. "As-built Supplement" means the supplement to Exhibit A provided by Seller in accordance with Section 4.3 following completion of construction of the Facility, describing the Facility as actually built.

1.2. "Base Hours" is defined as the total number of hours in each Contract Year (8,760 or 8,784 for leap year)

1.3. "Billing Period" means from the start of the first day of each calendar month to the end of the last day of each calendar month.

1.4. "Cash Escrow" means an agreement by two parties to place money into the custody of a third party for delivery to a grantee only after the fulfillment of the conditions specified.

1.5. "Commercial Operation Date" means the date that the Facility is deemed by PGE to be fully operational and reliable. PGE may, at its discretion require, among other things, that all of the following events have occurred:

1.5.1. (facilities with nameplate under 500 kW exempt from following requirement) PGE has received a certificate addressed to PGE from a Licensed Professional Engineer ("LPE") acceptable to PGE in its reasonable judgment stating

that the Facility is able to generate electric power reliably in accordance with the terms and conditions of this Agreement (certifications required under this Section 1.5 can be provided by one or more LPEs);

1.5.2. Start-Up Testing of the Facility has been completed in accordance with Section 1.36;

1.5.3. (facilities with nameplate under 500 kW exempt from following requirement) After PGE has received notice of completion of Start-Up Testing, PGE has received a certificate addressed to PGE from an LPE stating that the Facility has operated for testing purposes under this Agreement and was continuously mechanically available for operation for a minimum of 120 hours. The Facility must provide ten (10) working days written notice to PGE prior to the start of the initial testing period. If the mechanical availability of the Facility is interrupted during this initial testing period or any subsequent testing period, the Facility shall promptly start a new Test Period and provide PGE forty-eight (48) hours written notice prior to the start of such testing period;

1.5.4. (facilities with nameplate under 500 kW exempt from following requirement) PGE has received a certificate addressed to PGE from an LPE stating that all required interconnection facilities have been constructed and all required interconnection tests have been completed;

1.5.5. (facilities with nameplate under 500 kW exempt from following requirement) PGE has received a certificate addressed to PGE from an LPE stating that Seller has obtained all Required Facility Documents and, if requested by PGE in writing, has provided copies of any or all such requested Required Facility Documents;

1.5.6. PGE has received a copy of the executed Generation Interconnection and Transmission Agreements.

1.6. "Contract Price" means the applicable price, including on-peak and off-peak prices, as specified in the Schedule.

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.

1.9. "Environmental Attributes" shall mean any and all claims, credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, resulting from the avoidance of the emission of any gas, chemical or other substance to the air, soil or water. Environmental Attributes include but are not limited to: (1) any avoided emissions of pollutants to the air, soil or water such as (subject to the foregoing) sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO), and other pollutants; and (2) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), and other greenhouse gasses (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere.

1.10. "Facility" has the meaning set forth in the Recitals.

1.11. "Generation Interconnection Agreement" means an agreement governing the interconnection of the Facility with Bonneville Power Administration's electric system.

1.12. "Generation Unit" means each separate electrical generator that contributes toward Nameplate Capacity Rating included in Exhibit A. For solar facilities, a generating unit is a complete solar electrical generation system within the Facility that is able to generate and deliver energy to the Point of Delivery independent of other Generation Units within the same Facility.

1.13. "Letter of Credit" means an engagement by a bank or other person made at the request of a customer that the issuer will honor drafts or other demands for payment upon compliance with the conditions specified in the letter of credit.

1.14. "Licensed Professional Engineer" or "LPE" means a person who is licensed to practice engineering in the state where the Facility is located, who has no economic relationship, association, or nexus with the Seller, and who is not a representative of a consulting engineer, contractor, designer or other individual involved in the development of the Facility, or of a manufacturer or supplier of any equipment installed in the Facility. Such Licensed Professional Engineer shall be licensed in an appropriate engineering discipline for the required certification being made and be acceptable to PGE in its reasonable judgment.

1.15. "Lost Energy" means "Lost Energy" means ((the Guarantee of Mechanical Availability as set forth in 3.1.10 / MAP) X Net Output for a Calendar Year) – Net Output for the Calendar Year. Lost Energy shall be zero unless the result of the calculation in this subsection results in a positive number.

1.16. "Lost Energy Value" means Lost Energy X the excess of the annual time-weighted average Mid-C Index Price for On Peak Hours and Off Peak Hours over the time weighted average Contract Price for On Peak and Off Peak Hours for the corresponding time period (provided that such excess shall not exceed the Contract Price and further provided that Lost Energy is deemed to be zero prior to reaching the Commercial Operation Date) plus any reasonable costs incurred by PGE to purchase replacement power and/or transmission to deliver the replacement power to the Point of Delivery (For Start-Up Lost Energy Value See 1.35).

1.17. "Mechanical Availability Percentage" or "MAP" shall mean that percentage for any Contract Year for the Facility calculated in accordance with the following formula:

$$\text{MAP} = 100 \times (\text{Operational Hours}) / (\text{Base Hours} \times \text{Number of Units})$$

1.18. "Mid-C Index Price" means the Day Ahead Intercontinental Exchange ("ICE") index price for the bilateral OTC market for energy at the Mid-C Physical for Average On Peak Power and Average Off Peak Power found on the following website: <https://www.theice.com/products/OTC/Physical-Energy/Electricity>. In the event ICE no longer publishes this index, PGE and the Seller agree to select an alternative successor index representative of the Mid-C trading hub.

1.19. "Nameplate Capacity Rating" means the maximum capacity of the Facility as stated by the manufacturer, expressed in kW, which shall not exceed 10,000 kW.

1.20. "Net Dependable Capacity" means the maximum capacity the Facility can sustain over a specified period modified for seasonal limitations, if any, and reduced by the capacity required for station service or auxiliaries.

1.21. "Net Output" means all energy expressed in kWhs produced by the Facility, less station and other onsite use and less transformation and transmission losses.

1.22. "Number of Units" means the number of Generation Units in the Facility as specified in Exhibit A.

1.23. "Off-Peak Hours" has the meaning provided in the Schedule.

1.24. "On-Peak Hours" has the meaning provided in the Schedule.

1.25. "Operational Hours" for the Facility means the total across all Generation Units of the number of hours each of the Facility's Generation Units are potentially capable of producing power at its Nameplate Capacity Rating regardless of actual weather conditions, season and the time of day or night, without any mechanical operating constraint or restriction, and potentially capable of delivering such power to the Point of Delivery in a Contract Year. During up to, but not more than, two hundred (200) hours of Planned Maintenance during a Contract Year for each Generation Unit and hours during which an event of Force Majeure exists, a Generation Unit shall be considered potentially capable of delivering such power to the Point of Delivery. For example, in the absence of any Planned Maintenance beyond 200 hours on any Generation Unit or Event of Force Majeure, the Operational Hours for a wind farm with five (5) separate two (2) MW turbines would be 43,800 for a Contract Year.

1.26. "Planned Maintenance" means outages scheduled ninety (90) days in advance, with PGE's prior written consent, which shall not be unreasonably withheld.

1.27. "Point of Delivery" means the PGE system.

1.28. "Pre-Commercial Operation Date Minimum Net Output" shall mean, unless such MWh is specifically set forth by Seller in Exhibit A, an amount in MWh equal to seventy-five percent (75%) of Nameplate Capacity Rating X thirty percent (30%) for a wind or other renewable QF or fifty percent (50%) for a solar QF X (whole months since the date selected in Section 2.2.1 / 12) X (8760 hours – 200 hours (assumed Planned Maintenance)) for each month. If Seller has provided specific expected monthly Net Output amounts for the Facility in Exhibit A, "Pre-Commercial Operation Date Minimum Net Output" shall mean seventy-five percent (75%) X expected net output set forth in Exhibit A for each month.

1.29. "Prime Rate" means the publicly announced prime rate or reference rate for commercial loans to large businesses with the highest credit rating in the United States in effect from time to time quoted by Citibank, N.A. If a Citibank, N.A. prime rate is not available, the applicable Prime Rate shall be the announced prime rate or reference rate for commercial loans in effect from time to time quoted by a bank with \$10 billion or more in assets in New York City, N.Y., selected by the Party to whom interest based on the prime rate is being paid.

1.30. "Prudent Electrical Practices" means those practices, methods, standards and acts engaged in or approved by a significant portion of the electric power industry in the Western Electricity Coordinating Council that at the relevant time period, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with good business practices, reliability, economy, safety and expedition, and which practices, methods, standards and acts reflect due regard for operation and maintenance standards recommended by applicable equipment suppliers and manufacturers, operational limits, and all applicable laws and regulations. Prudent Electrical Practices are not intended to be limited to the optimum practice, method, standard or act to the exclusion of all others, but rather to those practices, methods and acts generally acceptable or approved by a significant portion of the electric power generation industry in the relevant region, during the relevant period, as described in the immediate preceding sentence.

1.31. "Required Facility Documents" means all licenses, permits, authorizations, and agreements necessary for construction, operation, interconnection, and maintenance of the Facility including without limitation those set forth in Exhibit B.

1.32. "RPS Attributes" means all attributes related to the Net Output generated by the Facility that are required in order to provide PGE with "qualifying electricity," as that term is defined in Oregon's Renewable Portfolio Standard Act, Ore. Rev. Stat. 469A.010, in effect at the time of execution of this Agreement. RPS Attributes do not include Environmental Attributes that are greenhouse gas offsets from methane capture not associated with the generation of electricity and not needed to ensure that there are zero net emissions associated with the generation of electricity.

1.33. "Schedule" shall mean PGE Schedule 201 filed with the Oregon Public Utilities Commission ("Commission") in effect on the Effective Date of this Agreement and attached hereto as Exhibit D, the terms of which are hereby incorporated by reference.

1.34. "Senior Lien" means a prior lien which has precedence as to the property under the lien over another lien or encumbrance

1.35. "Start-Up Lost Energy Value" means for the period after the date specified in Section 2.2.2 but prior to achievement of the Commercial Operation Date: zero, unless the Net Output is less than the pro-rated Pre-Commercial Operation Date Minimum Net Output for the applicable delay period, and the time-weighted average of the delay period's Mid-C Index Price for On-Peak Hours and Off-Peak Hours is greater than the time-weighted average of the delay period's Contract Price for On-Peak Hours and Off-Peak Hours, in which case Startup Lost Energy Value equals: (pro-rated Pre-Commercial Operation Date Minimum Net Output for the applicable period - Net Output for the applicable period) X (the lower of: the time-weighted average of the Contract Price for On-Peak hours and Off-Peak Hours during the applicable period; or (the time-weighted average of the Mid-C Index Price for On-Peak Hours and Off-Peak Hours during the applicable period - the time-weighted average of the Contract Price for On-Peak Hours and Off-Peak Hours during the applicable period)). The time-weighted

average in this section will reflect the relative proportions of On-Peak Hours and Off-Peak Hours in each day.

1.36. "Start-Up Testing" means the completion of applicable required factory and start-up tests as set forth in Exhibit C.

1.37. "Step-in Rights" means the right of one party to assume an intervening position to satisfy all terms of an agreement in the event the other party fails to perform its obligations under the agreement.

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

1.39. "Test Period" shall mean a period of sixty (60) days or a commercially reasonable period determined by the Seller.

1.40. "Transmission Agreement" means an agreement executed by the Seller and the Transmission Provider(s) for Transmission Services.

1.41. "Transmission Curtailment" means a limitation on Seller's ability to deliver any portion of the scheduled energy to PGE due to the unavailability of transmission to the Point of Delivery (for any reason other than Force Majeure).

1.42. "Transmission Curtailment Replacement Energy Cost" means the greater of zero or the amount calculated as: ((Mid-C Index Price – Contract Price) X curtailed energy) for periods of Transmission Curtailment.

1.43. "Transmission Provider(s)" means the signatory (other than the Seller) to the Transmission Agreement.

1.44. "Transmission Services" means any and all services (including but not limited to ancillary services and control area services) required for the firm transmission and delivery of Energy from the Facility to the Point of Delivery for a term not less than the Term of this Agreement.

References to Recitals, Sections, and Exhibits are to be the recitals, sections and exhibits of this Agreement.

## SECTION 2: TERM; COMMERCIAL OPERATION DATE

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

2.2. Time is of the essence of this Agreement, and Seller's ability to meet certain requirements prior to the Commercial Operation Date and to complete all requirements to establish the Commercial Operation Date is critically important. Therefore,

2.2.1. By thirty-five (35) months after the Effective Date Seller shall begin initial deliveries of Net Output; and

2.2.2. By the thirty-six (36) month anniversary of the Effective Date, *subject to Section 2.2.3 below*, Seller shall have completed all requirements under Section 1.5 and shall have established the Commercial Operation Date.



2.2.3. Unless the Parties agree in writing that a later Commercial Operation Date is reasonable and necessary, the Commercial Operation Date shall be no more than three (3) years from the Effective Date. PGE will not unreasonably withhold agreement to a Commercial Operation Date that is more than three (3) years from the Effective date if the Seller has demonstrated that a later Commercial Operation Date is reasonable and necessary.

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

### SECTION 3: REPRESENTATIONS AND WARRANTIES

3.1. Seller and PGE represent, covenant, and warrant as follows:

3.1.1. Seller warrants it is a Limited Liability Corporation duly organized under the laws of Delaware.

3.1.2. Seller warrants that the execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on Seller or any valid order of any court, or any regulatory agency or other body having authority to which Seller is subject.

3.1.3. Seller warrants that the Facility is and shall for the Term of this Agreement continue to be a "Qualifying Facility" ("QF") as that term is defined in the version of 18 C.F.R. Part 292 in effect on the Effective Date. Seller has provided the appropriate QF certification, which may include a Federal Energy Regulatory Commission ("FERC") self-certification to PGE prior to PGE's execution of this Agreement. At any time during the Term of this Agreement, PGE may require Seller to provide PGE with evidence satisfactory to PGE in its reasonable discretion that the Facility continues to qualify as a QF under all applicable requirements.

3.1.4. Seller warrants that it has not within the past two (2) years been the debtor in any bankruptcy proceeding, and Seller is and will continue to be for the Term of this Agreement current on all of its financial obligations.

3.1.5. Seller warrants that during the Term of this Agreement, all of Seller's right, title and interest in and to the Facility shall be free and clear of all liens and encumbrances other than liens and encumbrances arising from third-party financing of the Facility other than workers', mechanics', suppliers' or similar liens, or tax liens, in each case arising in the ordinary course of business that are either not yet due and payable or that have been released by means of a performance bond acceptable to PGE posted within eight (8) calendar days of the commencement of any proceeding to foreclose the lien.

3.1.6. Seller warrants that it will design and operate the Facility consistent with Prudent Electrical Practices.

3.1.7. Seller warrants that the Facility has a Nameplate Capacity Rating not greater than 10,000 kW.

3.1.8. Seller warrants that Net Dependable Capacity of the Facility is 9,920 kW.

3.1.9. Seller estimates that the average annual Net Output to be delivered by the Facility to PGE is 18,500,000 kilowatt-hours ("kWh"), which amount PGE will include in its resource planning.

3.1.10. Seller represents and warrants that the Facility shall achieve the following Mechanical Availability Percentages ("Guarantee of Mechanical Availability"):

3.1.10.1. Ninety percent (90%) beginning in the first Contract Year and extending through the Term for the Facility, if the Facility was operational and sold electricity to PGE or another buyer prior to the Effective Date of this Agreement; or

3.1.10.2. Ninety percent (90%) beginning in Contract Year three and extending throughout the remainder of the Term.

3.1.10.3. Annually, within 90 days of the end of each Contract Year, Seller shall send to PGE a detailed written report demonstrating and providing evidence of the actual MAP for the previous Contract Year.

3.1.10.4. Seller's failure to meet the Guarantee of Mechanical Availability in a Calendar Year shall result in damages payable to PGE by Seller equal to the Lost Energy Value. PGE shall bill Seller for such damages in accordance with Section 7.

3.1.11. Seller will deliver from the Facility to PGE at the Point of Delivery Net Output not to exceed a maximum of 27,000,000 kWh of Net Output during each Contract Year ("Maximum Net Output"). The cost of delivering energy from the Facility to PGE is the sole responsibility of the Seller.

3.1.12. By the Commercial Operation Date, Seller has entered into a Generation Interconnection Agreement for a term not less than the term of this Agreement.

3.1.13. PGE warrants that it has not within the past two (2) years been the debtor in any bankruptcy proceeding, and PGE is and will continue to be for the Term of this Agreement current on all of its financial obligations.

3.1.14. Seller warrants that the Facility satisfies the eligibility requirements specified in the Definition of a Small Cogeneration Facility or Small Power Production Facility Eligible to Receive the Standard Renewable Rates and Standard Renewable PPA in PGE's Schedule and Seller will not make any changes in its ownership, control or management during the term of this Agreement that would cause it to not be in compliance with the Definition of a Small Cogeneration Facility or Small Power Production Facility Eligible to Receive the Standard Renewable Rates and Standard Renewable PPA in PGE's Schedule. Seller will provide, upon request by PGE not more frequently than every 36 months, such documentation and information as may be reasonably required to establish Seller's continued compliance with such Definition. PGE agrees to take reasonable steps to maintain the confidentiality of any portion of the above described documentation and information that the Seller identifies as confidential except PGE will provide all such confidential information to the Commission upon the Commission's request.

3.1.15. Seller warrants that it will comply with all requirements necessary for all Transferred RECs (as defined in Section 4.5) associated with Net Output to be issued, monitored, accounted for, and transferred by and through the Western Renewable

Energy Generation System consistent with the provisions of OAR 330-160-0005 through OAR 330-160-0050. PGE warrants that it will reasonably cooperate in Seller's efforts to meet such requirements, including, for example serving as the qualified reporting entity for the Facility if the Facility is located in PGE's balancing authority.

#### 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.

4.3. Upon completion of construction of the Facility, Seller shall provide PGE an As-built Supplement to specify the actual Facility as built. Seller shall not increase the Nameplate Capacity Rating above that specified in Exhibit A or increase the ability of the Facility to deliver Net Output in quantities in excess of the Net Dependable Capacity, or the Maximum Net Output as described in Section 3.1.11 above, through any means including, but not limited to, replacement, modification, or addition of existing equipment, except with prior written notice to PGE. In the event Seller increases the Nameplate Capacity Rating of the Facility to no more than 10,000 kW pursuant to this section, PGE shall pay the Contract Price for the additional delivered Net Output. In the event Seller increases the Nameplate Capacity Rating to greater than 10,000 kW, then Seller shall be required to enter into a new power purchase agreement for all delivered Net Output proportionally related to the increase of Nameplate Capacity above 10,000 kW.

4.4. Seller shall provide preschedules for all deliveries of energy hereunder, including identification of receiving and generating control areas, by 9:00:00 PPT on the last business day prior to the scheduled date of delivery. All energy shall be scheduled according to the most current North America Energy Reliability Corporation (NERC) and Western Electricity Coordinating Council (WECC) scheduling rules and practices. The Parties' respective representatives shall maintain hourly real-time schedule coordination; provided, however, that in the absence of such coordination, the hourly schedule established by the exchange of preschedules shall be considered final. Seller and PGE shall maintain records of hourly energy schedules for accounting and operating purposes. The final E-Tag shall be the controlling evidence of the Parties' schedule. All energy shall be prescheduled according to customary WECC scheduling practices. Seller shall make commercially reasonable efforts to schedule in any hour an amount equal to its expected Net Output for such hour. Seller shall maintain a minimum of two years records of Net Output and shall agree to allow PGE to have access to such records and to imbalance information kept by the Transmission Provider.

4.5. During the Renewable Resource Deficiency Period, Seller shall provide and PGE shall acquire the RPS Attributes for the Contract Years as specified in the Schedule and Seller shall retain ownership of all other Environmental Attributes (if any). During the Renewable Resource Sufficiency Period, 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. With respect to Environmental Attributes not transferred to PGE under this Agreement ("Seller-Retained Environmental Attributes") Seller may report under §1605(b) of the Energy Policy Act of 1992 or under any applicable program as belonging to Seller any of the Seller-Retained Environmental Attributes, and PGE shall not report under such program that such Seller-Retained Environmental Attributes belong to it. With respect to RPS Attributes transferred to PGE under this Agreement ("Transferred RECs"), PGE may report under §1605(b) of the Energy Policy Act of 1992 or under any applicable program as belonging to it any of the Transferred RECs, and Seller shall not report under such program that such Transferred RECs belong to it.

#### SECTION 5: OPERATION AND CONTROL

5.1. Seller shall operate and maintain the Facility in a safe manner in accordance with the Generation Interconnection Agreement, and Prudent Electrical Practices. PGE shall have no obligation to purchase Net Output from the Facility to the extent the interconnection of the Facility to PGE's electric system is disconnected, suspended or interrupted, in whole or in part, pursuant to the Generation Interconnection Agreement, or to the extent generation curtailment is required as a result of Seller's noncompliance with the Generation Interconnection Agreement. Seller is solely responsible for the operation and maintenance of the Facility. PGE shall not, by reason of its decision to inspect or not to inspect the Facility, or by any action or inaction taken with respect to any such inspection, assume or be held responsible for any liability or occurrence arising from the operation and maintenance by Seller of the Facility.

5.2. Seller agrees to provide sixty (60) days advance written notice of any scheduled maintenance that would require shut down of the Facility for any period of time.

5.3. If the Facility ceases operation for unscheduled maintenance, Seller immediately shall notify PGE of the necessity of such unscheduled maintenance, the time when such maintenance has occurred or will occur, and the anticipated duration of such maintenance. Seller shall take all reasonable measures and exercise its best efforts to avoid unscheduled maintenance, to limit the duration of such unscheduled maintenance, and to perform unscheduled maintenance during Off-Peak hours.

#### SECTION 6: CREDITWORTHINESS

In the event Seller: a) is unable to represent or warrant as required by Section 3 that it has not been a debtor in any bankruptcy proceeding within the past two (2) years; b) becomes such a debtor during the Term; or c) is not or will not be current on all its financial obligations, Seller shall immediately notify PGE and shall promptly (and in no less than 10 days after notifying PGE) provide default security in an amount reasonably acceptable to PGE in one of the following forms: Senior Lien, Step-in Rights, a Cash Escrow or Letter of Credit. The amount of such default security that shall be acceptable to PGE shall be equal to: (annual On Peak Hours) X (On Peak Price – Off Peak Price) X (Net Dependable Capacity). Notwithstanding the foregoing, in the event Seller is not current on construction related financial obligations, Seller shall notify PGE of such delinquency and PGE may, in its discretion, grant an exception to the

requirements to provide default security if the QF has negotiated financial arrangements with the construction loan lender that mitigate Seller's financial risk to PGE.

#### SECTION 7: BILLINGS, COMPUTATIONS AND PAYMENTS

7.1. On or before the thirtieth (30<sup>th</sup>) day following the end of each Billing Period, PGE shall send to Seller payment for Seller's deliveries of Net Output to PGE, together with computations supporting such payment. PGE may offset any such payment to reflect amounts owing from Seller to PGE pursuant to this Agreement and any other agreement related to the Facility between the Parties or otherwise. On or before the thirtieth (30<sup>th</sup>) day following the end of each Contract Year, PGE shall bill for any Lost Energy Value accrued pursuant to this Agreement.

7.2. Any amounts owing after the due date thereof shall bear interest at the Prime Rate plus two percent (2%) from the date due until paid; provided, however, that the interest rate shall at no time exceed the maximum rate allowed by applicable law.

#### SECTION 8: DEFAULT, REMEDIES AND TERMINATION

8.1. In addition to any other event that may constitute a default under this Agreement, the following events shall constitute defaults under this Agreement:

8.1.1. Breach by Seller or PGE of a representation or warranty, except for Section 3.1.4, set forth in this Agreement.

8.1.2. Seller's failure to provide default security, if required by Section 6, prior to delivery of any Net Output to PGE or within 10 days of notice.

8.1.3. Seller's failure to meet the Guarantee of Mechanical Availability established in Section 3.1.10 for two consecutive Contract Years or Seller's failure to provide any written report required by that section.

8.1.4. If Seller is no longer a Qualifying Facility.

8.1.5. Failure of PGE to make any required payment pursuant to Section 7.1.

8.1.6. Seller's failure to meet the Commercial Operation Date.

8.2. In the event of a default under Section 8.1.6, PGE may provide Seller with written notice of default. Seller shall have one year in which to cure the default during which time the Seller shall pay PGE damages equal to the Lost Energy Value. If Seller is unable to cure the default, PGE may immediately terminate this Agreement as provided in Section 8.3. PGE's resource sufficiency/deficiency position shall have no bearing on PGE's right to terminate the Agreement under this Section 8.2.

8.3. In the event of a default hereunder, except as otherwise provided in this Agreement, the non-defaulting party may immediately terminate this Agreement at its sole discretion by delivering written notice to the other Party. In addition, the non-defaulting Party may pursue any and all legal or equitable remedies provided by law or pursuant to this Agreement including damages related to the need to procure replacement power. A termination hereunder shall be effective upon the date of delivery of notice, as provided in Section 20. The rights provided in this Section 8 are cumulative such that the exercise of one or more rights shall not constitute a waiver of any other rights.

8.4. If this Agreement is terminated as provided in this Section 8, PGE shall make all payments, within thirty (30) days, that, pursuant to the terms of this Agreement, are owed to Seller as of the time of receipt of notice of default. PGE shall not be required to pay Seller for any Net Output delivered by Seller after such notice of default.

8.5. In the event PGE terminates this Agreement pursuant to this Section 8, and Seller wishes to again sell Net Output to PGE following such termination, PGE in its sole discretion may require that Seller shall do so subject to the terms of this Agreement, including but not limited to the Contract Price until the Term of this Agreement (as set forth in Section 2.3) would have run in due course had the Agreement remained in effect. At such time Seller and PGE agree to execute a written document ratifying the terms of this Agreement.

8.6. Sections 8.1, 8.4, 8.5, 10, and 19.2 shall survive termination of this Agreement.

#### SECTION 9: TRANSMISSION CURTAILMENTS

9.1. Seller shall give PGE notice as soon as reasonably practicable of any Transmission Curtailment that is likely to affect Seller's ability to deliver any portion of energy scheduled pursuant to Section 4.4 of this Agreement.

9.2. If as the result of a Transmission Curtailment, Seller does not deliver any portion of energy (including real-time adjustments), scheduled pursuant to Section 4.4 of this Agreement, Seller shall pay PGE the Transmission Curtailment Replacement Energy Cost for the number of MWh of energy reasonably determined by PGE as the difference between (i) the scheduled energy that would have been delivered to PGE under this Agreement during the period of Transmission Curtailment and (ii) the actual energy, if any, that was delivered to PGE for the period.

#### SECTION 10: INDEMNIFICATION AND LIABILITY

10.1. Seller agrees to defend, indemnify and hold harmless PGE, its directors, officers, agents, and representatives against and from any and all loss, claims, actions or suits, including costs and attorney's fees, both at trial and on appeal, resulting from, or arising out of or in any way connected with Seller's delivery of electric power to PGE or with the facilities at or prior to the Point of Delivery, or otherwise arising out of this Agreement, including without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property belonging to PGE, Seller or others, excepting to the extent such loss, claim, action or suit may be caused by the negligence of PGE, its directors, officers, employees, agents or representatives.

10.2. PGE agrees to defend, indemnify and hold harmless Seller, its directors, officers, agents, and representatives against and from any and all loss, claims, actions or suits, including costs and attorney's fees, both at trial and on appeal, resulting from, or arising out of or in any way connected with PGE's receipt of electric power from Seller or with the facilities at or after the Point of Delivery, or otherwise arising out of this

Agreement, including without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property belonging to PGE, Seller or others, excepting to the extent such loss, claim, action or suit may be caused by the negligence of Seller, its directors, officers, employees, agents or representatives.

10.3. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a Party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or to the public, nor affect the status of PGE as an independent public utility corporation or Seller as an independent individual or entity.

10.4. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR SPECIAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES, WHETHER ARISING FROM CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.

#### SECTION 11: INSURANCE

11.1. Prior to the connection of the Facility to PGE's electric system, provided such Facility has a design capacity of 200 kW or more, Seller shall secure and continuously carry for the Term hereof, with an insurance company or companies rated not lower than "B+" by the A. M. Best Company, insurance policies for bodily injury and property damage liability. Such insurance shall include provisions or endorsements naming PGE, its directors, officers and employees as additional insureds; provisions that such insurance is primary insurance with respect to the interest of PGE and that any insurance or self-insurance maintained by PGE is excess and not contributory insurance with the insurance required hereunder; a cross-liability or severability of insurance interest clause; and provisions that such policies shall not be canceled or their limits of liability reduced without thirty (30) days' prior written notice to PGE. Initial limits of liability for all requirements under this section shall be \$1,000,000 million single limit, which limits may be required to be increased or decreased by PGE as PGE determines in its reasonable judgment economic conditions or claims experience may warrant.

11.2. Prior to the connection of the Facility to PGE's electric system, provided such facility has a design capacity of 200 kW or more, Seller shall secure and continuously carry for the Term hereof, in an insurance company or companies rated not lower than "B+" by the A. M. Best Company, insurance acceptable to PGE against property damage or destruction in an amount not less than the cost of replacement of the Facility. Seller promptly shall notify PGE of any loss or damage to the Facility. Unless the Parties agree otherwise, Seller shall repair or replace the damaged or destroyed Facility, or if the facility is destroyed or substantially destroyed, it may terminate this Agreement. Such termination shall be effective upon receipt by PGE of written notice from Seller. Seller shall waive its insurers' rights of subrogation against PGE regarding Facility property losses.

11.3. Prior to the connection of the Facility to PGE's electric system and at all other times such insurance policies are renewed or changed, Seller shall provide PGE with a copy of each insurance policy required under this Section, certified as a true copy by an authorized representative of the issuing insurance company or, at the discretion of PGE, in lieu thereof, a certificate in a form satisfactory to PGE certifying the issuance of such insurance. If Seller fails to provide PGE with copies of such currently effective insurance policies or certificates of insurance, PGE at its sole discretion and without limitation of other remedies, may upon ten (10) days advance written notice by certified or registered mail to Seller either withhold payments due Seller until PGE has received such documents, or purchase the satisfactory insurance and offset the cost of obtaining such insurance from subsequent power purchase payments under this Agreement.

## SECTION 12: FORCE MAJEURE

12.1. As used in this Agreement, "Force Majeure" or "an event of Force Majeure" means any cause beyond the reasonable control of the Seller or of PGE which, despite the exercise of due diligence, such Party is unable to prevent or overcome. By way of example, Force Majeure may include but is not limited to acts of God, fire, flood, storms, wars, hostilities, civil strife, strikes, and other labor disturbances, earthquakes, fires, lightning, epidemics, sabotage, restraint by court order or other delay or failure in the performance as a result of any action or inaction on behalf of a public authority which by the exercise of reasonable foresight such Party could not reasonably have been expected to avoid and by the exercise of due diligence, it shall be unable to overcome, subject, in each case, to the requirements of the first sentence of this paragraph. Force Majeure, however, specifically excludes the cost or availability of resources to operate the Facility, changes in market conditions that affect the price of energy or transmission, wind or water droughts, and obligations for the payment of money when due.

12.2. If either Party is rendered wholly or in part unable to perform its obligation under this Agreement because of an event of Force Majeure, that Party shall be excused from whatever performance is affected by the event of Force Majeure to the extent and for the duration of the Force Majeure, after which such Party shall recommence performance of such obligation, provided that:

12.2.1. the non-performing Party, shall, promptly, but in any case within one (1) week after the occurrence of the Force Majeure, give the other Party written notice describing the particulars of the occurrence; and

12.2.2. the suspension of performance shall be of no greater scope and of no longer duration than is required by the Force Majeure; and

12.2.3. the non-performing Party uses its best efforts to remedy its inability to perform its obligations under this Agreement.

12.3. No obligations of either Party which arose before the Force Majeure causing the suspension of performance shall be excused as a result of the Force Majeure.



12.4. Neither Party shall be required to settle any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to the Party's best interests.

#### SECTION 13: SEVERAL OBLIGATIONS

Nothing contained in this Agreement shall ever be construed to create an association, trust, partnership or joint venture or to impose a trust or partnership duty, obligation or liability between the Parties. If Seller includes two or more parties, each such party shall be jointly and severally liable for Seller's obligations under this Agreement.

#### SECTION 14: CHOICE OF LAW

This Agreement shall be interpreted and enforced in accordance with the laws of the state of Oregon, excluding any choice of law rules which may direct the application of the laws of another jurisdiction.

#### SECTION 15: PARTIAL INVALIDITY AND PURPA REPEAL

It is not the intention of the Parties to violate any laws governing the subject matter of this Agreement. If any of the terms of the Agreement are finally held or determined to be invalid, illegal or void as being contrary to any applicable law or public policy, all other terms of the Agreement shall remain in effect. If any terms are finally held or determined to be invalid, illegal or void, the Parties shall enter into negotiations concerning the terms affected by such decision for the purpose of achieving conformity with requirements of any applicable law and the intent of the Parties to this Agreement.

In the event the Public Utility Regulatory Policies Act (PURPA) is repealed, this Agreement shall not terminate prior to the Termination Date, unless such termination is mandated by state or federal law.

#### SECTION 16: WAIVER

Any waiver at any time by either Party of its rights with respect to a default under this Agreement or with respect to any other matters arising in connection with this Agreement must be in writing, and such waiver shall not be deemed a waiver with respect to any subsequent default or other matter.

#### SECTION 17: GOVERNMENTAL JURISDICTION AND AUTHORIZATIONS

This Agreement is subject to the jurisdiction of those governmental agencies having control over either Party or this Agreement. Seller shall at all times maintain in effect all local, state and federal licenses, permits and other approvals as then may be required by law for the construction, operation and maintenance of the Facility, and shall provide upon request copies of the same to PGE.

#### SECTION 18: SUCCESSORS AND ASSIGNS

This Agreement and all of the terms hereof shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties. No assignment hereof by either Party shall become effective without the written consent of the other Party being first obtained and such consent shall not be unreasonably withheld.

Notwithstanding the foregoing, either Party may assign this Agreement without the other Party's consent as part of (a) a sale of all or substantially all of the assigning Party's assets, or (b) a merger, consolidation or other reorganization of the assigning Party.

#### SECTION 19: ENTIRE AGREEMENT

19.1. This Agreement supersedes all prior agreements, proposals, representations, negotiations, discussions or letters, whether oral or in writing, regarding PGE's purchase of Net Output from the Facility. No modification of this Agreement shall be effective unless it is in writing and signed by both Parties.

19.2. By executing this Agreement, Seller releases PGE from any third party claims related to the Facility, known or unknown, which may have arisen prior to the Effective Date.

#### SECTION 20: NOTICES

20.1. All notices except as otherwise provided in this Agreement shall be in writing, shall be directed as follows and shall be considered delivered if delivered in person or when deposited in the U.S. Mail, postage prepaid by certified or registered mail and return receipt requested:

To Seller: Tygh Valley Solar I LLC  
3500 South DuPont Highway  
Dover, DE 19901  
jstephens@newsunenergy.net

with a copy to: Stephane Nguyen  
c/o Reed Smith  
1901 Avenue of the Stars #700  
Los Angeles, CA 90067-6078  
snguyen@reedsmith.com

and a copy to: Greg Adams  
c/o Richardson Adams, PLLC  
515 N. 27th Street, 83702  
P.O. Box 7218, 83707  
Boise, Idaho  
greg@richardsonadams.com

To PGE: Contracts Manager  
QF Contracts, 3WTC0306  
PGE - 121 SW Salmon St.  
Portland, Oregon 97204

20.2 The Parties may change the person to whom such notices are addressed, or their addresses, by providing written notices thereof in accordance with this Section 20.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in their respective names as of the Effective Date.

PGE

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

TYGH VALLEY SOLAR I LLC  
(Name Seller)

By: \_\_\_\_\_  
Name: Jacob Stephens  
Title: Authorized Representative  
Date: \_\_\_\_\_

## EXHIBIT A DESCRIPTION OF SELLER'S FACILITY

TYGH VALLEY Solar I is a photovoltaics-based solar generating facility which upon reaching full commercial operations have nameplate capacity of 10 MW-AC net output at the point of interconnection subject to available solar energy input. The facility will consist of the following primary equipment:

1. PV Modules - Commercially-available photovoltaic modules for utility-scale DC energy production. Nominal per module DC production rating of 350W +/-50W-DC. Qty <= [14MM/(module rating)].
2. Inverter AC Generator Units: Commercially-available string inverter (90kW-AC, nominal) convert DC to AC power, collected by AC wiring to switchboard. Each such collected aggregation of inverters shall constitute a single sub-generator for the facility, which once all aggregated shall constitute the entire generator for the facility.
3. Pad-mounted transformers: for each sub-generator shall transform inverter output voltage to plant AC collection voltage (12.47 KV, nominally)
4. Racking systems, commercially-available, will mount the PV Modules and direct them and control their angle to receive light from the sun. Racking systems will be arranged in generally uniform rows on the facility site.
5. Additional interconnection, transformation, switching, storage, metering, communications, tie-line, and meteorological observations facilities as may be required, subject to final interconnection, permitting, and design requirements.

**EXHIBIT B  
REQUIRED FACILITY DOCUMENTS**

1. Seller's Generation Interconnection Agreement
2. Wasco County CUP & Building Permits
3. BPA: Transmission Service Agreement
4. Additional as may be determined by Seller to be required for facility permitting, construction, and interconnection.

## EXHIBIT C START-UP TESTING

### **Seller-identified start-up tests**

As part of the start-up of Facility, Seller will perform the following tests, in addition to any further tests deemed required in coordination with EPC contractor (the Facility's manufacturer) and primary supply vendors (PV modules, inverters, transformers) and interconnecting utility. This will include required factory checks and tests necessary to determine that the equipment systems and subsystems have been properly manufactured and installed, function properly, and are in a condition to permit safe and efficient start-up of the Facility, which may include but are not limited to (as applicable). This will include required start-up tests and checks which necessary to determine that all features and equipment, systems, and subsystems have been properly designed, manufactured, installed and adjusted, function properly, and are capable of operating simultaneously in such condition that the Facility is capable of continuous delivery into PGE's electrical system, which may include but are not limited to (as applicable):

1. Validation of mechanical assembly completion for sign-off on EPC vendor warranty of mechanical completion and workmanship, including racking system, wiring (module connections, DC collection, string terminations, inverter connections to collected strings, AC delivery to switchboard and step-up/collection transformers, and AC collection system deliver to interconnection facilities), inverter mounting, and module installation.
2. Electrical performance validation by facility PV string and sub-generator, per insolation input, including:
  - a) DC wiring inputs to inverters
  - b) AC wiring delivery to transformers
3. Inverter Commissioning, per manufacturer specifications, including commissioning report;
4. Facility daily start-up and shut-down automation confirmed;
5. Energization of transformers;
6. Full system performance test;
7. Interconnection facilities: Commissioning of on-site, tie-line, and off-site interconnection facilities (as applicable), including switchyard, substation, breakers, and metering equipment (as applicable), in coordination with interconnecting utility and performing electrical contractor;
8. Cataloguing of installed equipment on-site, including primary equipment serial numbers and manufacturer information for O&M documentation;
9. Complete pre-parallel checks with PGE;
10. Test energy delivery and metering checks.
11. Excitation and voltage regulation operation tests per insolation inputs.
12. Meteorological station commissioning and report;
13. Facility communications equipment commissioning and report; and
14. Other tests as may be required by equipment manufacturers.

EXHIBIT D  
SCHEDULE

**[Attach currently in-effect Schedule 201]**



**SCHEDULE 201 (Continued)**

PRICING OPTIONS FOR STANDARD PPA (Continued)  
 Renewable Fixed Price Option (Continued)

TABLE 6a												
Renewable Avoided Costs												
Renewable Fixed Price Option for Solar QF												
On-Peak Forecast (\$/MWH)												
Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2015	31.13	25.13	26.13	21.66	22.66	25.13	33.13	34.73	29.63	27.38	29.68	33.13
2016	31.43	30.01	28.93	25.51	24.81	23.06	31.90	36.26	32.22	30.97	31.97	34.43
2017	34.12	32.56	29.20	28.13	27.35	25.40	34.51	39.28	34.86	33.83	34.92	37.63
2018	36.46	34.80	31.19	29.53	28.71	26.67	37.01	42.11	37.38	35.92	37.09	39.97
2019	38.14	36.40	32.63	30.89	30.03	27.89	38.72	44.06	39.11	37.58	38.80	41.81
2020	90.01	90.80	89.99	91.31	104.33	109.84	91.65	94.79	91.02	90.75	91.10	90.77
2021	91.63	92.46	91.84	93.60	105.26	110.91	93.15	96.99	93.38	93.37	92.70	92.70
2022	93.66	93.76	93.13	94.96	109.63	114.13	92.07	97.80	94.14	95.42	94.37	94.02
2023	95.65	95.40	94.17	96.50	111.28	116.40	95.15	98.68	95.95	97.21	95.93	96.48
2024	97.23	97.75	96.73	97.65	106.30	117.33	97.35	101.95	98.68	98.48	97.92	98.07
2025	99.10	99.12	98.31	100.06	110.92	119.16	99.24	105.55	100.78	100.27	99.79	100.25
2026	100.57	101.09	99.35	101.04	112.20	119.15	102.18	106.55	102.12	101.05	101.43	101.63
2027	102.25	102.59	100.63	103.03	115.03	120.12	102.66	109.14	103.72	103.12	102.13	102.82
2028	103.68	103.34	101.96	104.33	112.95	122.67	104.44	109.68	104.55	105.12	103.60	104.56
2029	105.79	105.38	103.96	105.98	114.07	124.22	106.94	112.24	108.46	106.07	105.40	105.83
2030	107.13	106.53	105.06	107.76	114.95	127.70	108.39	113.63	109.08	107.05	106.85	107.79
2031	108.69	107.80	107.47	109.33	116.28	128.44	109.64	116.52	110.47	109.12	108.50	110.22
2032	110.36	110.11	108.39	111.18	118.61	128.41	111.91	118.67	111.94	110.49	110.33	111.16
2033	112.90	111.08	110.05	112.92	120.45	128.96	113.31	119.67	113.39	111.85	112.52	112.91
2034	114.73	112.87	111.66	115.44	121.12	132.66	115.56	121.34	115.09	114.26	114.22	115.22
2035	117.24	114.47	113.77	117.41	122.07	132.79	118.17	124.75	117.70	115.81	116.14	117.31
2036	119.22	115.79	115.97	119.90	124.14	134.40	120.45	129.78	119.82	118.92	117.61	118.60
2037	119.91	116.45	117.83	122.26	126.19	135.53	123.87	131.76	123.11	118.70	120.69	120.39
2038	122.36	120.87	119.99	124.68	129.66	137.52	125.74	134.93	123.85	121.13	122.49	122.34
2039	124.04	122.45	121.73	126.00	132.47	140.16	126.54	133.23	124.63	123.29	124.46	124.08
2040	125.85	124.33	123.44	128.77	133.66	142.06	129.44	135.37	126.71	125.04	126.71	126.61

Effective for service  
 on and after September 23, 2015

**SCHEDULE 201 (Continued)**

PRICING OPTIONS FOR STANDARD PPA (Continued)  
Renewable Fixed Price Option (Continued)

TABLE 6b												
Renewable Avoided Costs												
Renewable Fixed Price Option for Solar QF												
Off-Peak Forecast (\$/MWH)												
Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2015	26.98	20.38	20.88	15.88	17.88	19.13	23.98	26.13	25.63	23.13	25.38	28.38
2016	27.06	25.99	23.32	18.54	16.65	13.43	23.13	27.74	25.51	27.30	27.97	30.11
2017	30.27	26.06	26.04	21.47	19.23	15.43	25.37	30.49	28.02	29.93	30.97	33.03
2018	32.90	31.29	28.03	22.20	19.89	15.98	27.80	33.43	30.71	32.89	33.71	36.32
2019	34.42	33.04	29.59	23.42	20.98	16.82	29.35	35.30	32.42	34.73	35.60	38.36
2020	68.58	67.81	70.03	66.95	51.47	41.59	66.31	63.57	67.34	67.56	68.43	67.52
2021	71.70	70.03	70.67	68.13	54.41	44.45	68.58	64.91	68.43	69.50	69.36	69.20
2022	72.93	72.10	72.50	70.14	52.58	43.90	73.59	66.03	71.26	70.61	70.94	71.27
2023	74.08	73.80	75.03	73.19	51.34	44.74	74.72	68.53	72.72	72.11	72.75	73.03
2024	74.27	73.88	76.02	73.85	53.94	50.44	74.10	67.73	72.49	72.53	73.47	74.32
2025	78.37	78.84	78.49	75.22	60.00	52.58	78.18	69.30	74.23	74.75	78.80	74.78
2026	78.55	78.33	81.13	78.05	64.87	53.26	79.32	71.90	76.57	77.89	79.72	77.07
2027	81.57	80.52	82.48	79.59	65.38	56.20	79.64	72.83	78.65	80.47	80.82	79.73
2028	83.33	83.05	84.80	82.68	63.45	56.44	82.37	73.98	81.24	81.50	82.54	82.21
2029	84.45	85.45	86.98	85.41	72.98	59.37	84.03	75.52	82.32	84.06	85.12	85.43
2030	87.14	88.37	89.47	88.42	76.31	62.58	85.40	78.15	85.83	87.25	87.66	87.28
2031	89.62	91.21	92.09	88.87	79.11	66.01	89.30	81.28	87.31	89.03	90.93	87.50
2032	91.36	92.90	94.09	90.37	81.89	66.80	89.22	81.75	89.34	92.12	91.54	90.26
2033	94.30	96.19	97.29	93.45	84.73	71.50	93.78	83.69	92.61	95.63	94.00	93.33
2034	96.65	98.62	99.97	95.91	86.88	71.32	95.58	86.58	95.37	97.26	96.55	96.04
2035	97.26	101.30	102.07	98.18	90.58	76.12	97.06	86.87	97.82	99.24	98.90	98.15
2036	100.30	103.84	104.15	98.13	92.11	81.09	97.21	87.79	98.23	102.10	102.08	99.77
2037	103.90	106.19	107.32	100.80	96.72	82.63	98.42	89.65	98.63	105.58	103.83	103.24
2038	108.63	108.17	109.11	102.78	97.37	85.19	101.14	90.89	103.90	109.20	105.75	105.85
2039	109.65	111.37	112.13	106.34	98.97	86.98	106.48	96.20	108.22	110.80	108.44	108.86
2040	112.13	113.43	114.50	109.34	100.07	89.08	107.33	97.98	110.92	112.29	110.09	110.91

Effective for service  
on and after September 23, 2015

**UM 1931 NewSun Parties Exhibit 127**

Attachment #2 to Email in Exhibit 125:  
Wasco Solar I LLC PPA

## STANDARD RENEWABLE OFF-SYSTEM VARIABLE POWER PURCHASE AGREEMENT

THIS AGREEMENT, entered into this 15th day, November 2015, is between WASCO SOLAR I LLC ("Seller") and Portland General Electric Company ("PGE") (hereinafter each a "Party" or collectively, "Parties").

### RECITALS

Seller intends to construct, own, operate and maintain a photovoltaics-based solar generation facility for the generation of electric power located in \_\_\_\_\_  
Wasco County, Oregon with a Nameplate Capacity Rating of  
10,000 kilowatt-AC ("kW"), as further described in Exhibit A ("Facility");  
and

Seller intends to operate the Facility as a "Qualifying Facility," as such term is defined in Section 3.1.3, below.

Seller shall sell and PGE shall purchase the entire Net Output, as such term is defined in Section 1.21, below, from the Facility in accordance with the terms and conditions of this Agreement.

### AGREEMENT

NOW, THEREFORE, the Parties mutually agree as follows:

#### SECTION 1: DEFINITIONS

When used in this Agreement, the following terms shall have the following meanings:

1.1. "As-built Supplement" means the supplement to Exhibit A provided by Seller in accordance with Section 4.3 following completion of construction of the Facility, describing the Facility as actually built.

1.2. "Base Hours" is defined as the total number of hours in each Contract Year (8,760 or 8,784 for leap year)

1.3. "Billing Period" means from the start of the first day of each calendar month to the end of the last day of each calendar month.

1.4. "Cash Escrow" means an agreement by two parties to place money into the custody of a third party for delivery to a grantee only after the fulfillment of the conditions specified.

1.5. "Commercial Operation Date" means the date that the Facility is deemed by PGE to be fully operational and reliable. PGE may, at its discretion require, among other things, that all of the following events have occurred:

1.5.1. (facilities with nameplate under 500 kW exempt from following requirement) PGE has received a certificate addressed to PGE from a Licensed Professional Engineer ("LPE") acceptable to PGE in its reasonable judgment stating

that the Facility is able to generate electric power reliably in accordance with the terms and conditions of this Agreement (certifications required under this Section 1.5 can be provided by one or more LPEs);

1.5.2. Start-Up Testing of the Facility has been completed in accordance with Section 1.36;

1.5.3. (facilities with nameplate under 500 kW exempt from following requirement) After PGE has received notice of completion of Start-Up Testing, PGE has received a certificate addressed to PGE from an LPE stating that the Facility has operated for testing purposes under this Agreement and was continuously mechanically available for operation for a minimum of 120 hours. The Facility must provide ten (10) working days written notice to PGE prior to the start of the initial testing period. If the mechanical availability of the Facility is interrupted during this initial testing period or any subsequent testing period, the Facility shall promptly start a new Test Period and provide PGE forty-eight (48) hours written notice prior to the start of such testing period;

1.5.4. (facilities with nameplate under 500 kW exempt from following requirement) PGE has received a certificate addressed to PGE from an LPE stating that all required interconnection facilities have been constructed and all required interconnection tests have been completed;

1.5.5. (facilities with nameplate under 500 kW exempt from following requirement) PGE has received a certificate addressed to PGE from an LPE stating that Seller has obtained all Required Facility Documents and, if requested by PGE in writing, has provided copies of any or all such requested Required Facility Documents;

1.5.6. PGE has received a copy of the executed Generation Interconnection and Transmission Agreements.

1.6. "Contract Price" means the applicable price, including on-peak and off-peak prices, as specified in the Schedule.

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.

1.9. "Environmental Attributes" shall mean any and all claims, credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, resulting from the avoidance of the emission of any gas, chemical or other substance to the air, soil or water. Environmental Attributes include but are not limited to: (1) any avoided emissions of pollutants to the air, soil or water such as (subject to the foregoing) sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO), and other pollutants; and (2) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), and other greenhouse gasses (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere.

1.10. "Facility" has the meaning set forth in the Recitals.

1.11. "Generation Interconnection Agreement" means an agreement governing the interconnection of the Facility with Wasco Electric Cooperative's electric system.

1.12. "Generation Unit" means each separate electrical generator that contributes toward Nameplate Capacity Rating included in Exhibit A. For solar facilities, a generating unit is a complete solar electrical generation system within the Facility that is able to generate and deliver energy to the Point of Delivery independent of other Generation Units within the same Facility.

1.13. "Letter of Credit" means an engagement by a bank or other person made at the request of a customer that the issuer will honor drafts or other demands for payment upon compliance with the conditions specified in the letter of credit.

1.14. "Licensed Professional Engineer" or "LPE" means a person who is licensed to practice engineering in the state where the Facility is located, who has no economic relationship, association, or nexus with the Seller, and who is not a representative of a consulting engineer, contractor, designer or other individual involved in the development of the Facility, or of a manufacturer or supplier of any equipment installed in the Facility. Such Licensed Professional Engineer shall be licensed in an appropriate engineering discipline for the required certification being made and be acceptable to PGE in its reasonable judgment.

1.15. "Lost Energy" means "Lost Energy" means ((the Guarantee of Mechanical Availability as set forth in 3.1.10 / MAP) X Net Output for a Calendar Year) – Net Output for the Calendar Year. Lost Energy shall be zero unless the result of the calculation in this subsection results in a positive number.

1.16. "Lost Energy Value" means Lost Energy X the excess of the annual time-weighted average Mid-C Index Price for On Peak Hours and Off Peak Hours over the time weighted average Contract Price for On Peak and Off Peak Hours for the corresponding time period (provided that such excess shall not exceed the Contract Price and further provided that Lost Energy is deemed to be zero prior to reaching the Commercial Operation Date) plus any reasonable costs incurred by PGE to purchase replacement power and/or transmission to deliver the replacement power to the Point of Delivery (For Start-Up Lost Energy Value See 1.35).

1.17. "Mechanical Availability Percentage" or "MAP" shall mean that percentage for any Contract Year for the Facility calculated in accordance with the following formula:

$$\text{MAP} = 100 \times (\text{Operational Hours}) / (\text{Base Hours} \times \text{Number of Units})$$

1.18. "Mid-C Index Price" means the Day Ahead Intercontinental Exchange ("ICE") index price for the bilateral OTC market for energy at the Mid-C Physical for Average On Peak Power and Average Off Peak Power found on the following website: <https://www.theice.com/products/OTC/Physical-Energy/Electricity>. In the event ICE no longer publishes this index, PGE and the Seller agree to select an alternative successor index representative of the Mid-C trading hub.

1.19. "Nameplate Capacity Rating" means the maximum capacity of the Facility as stated by the manufacturer, expressed in kW, which shall not exceed 10,000 kW.

1.20. "Net Dependable Capacity" means the maximum capacity the Facility can sustain over a specified period modified for seasonal limitations, if any, and reduced by the capacity required for station service or auxiliaries.

1.21. "Net Output" means all energy expressed in kWhs produced by the Facility, less station and other onsite use and less transformation and transmission losses.

1.22. "Number of Units" means the number of Generation Units in the Facility as specified in Exhibit A.

1.23. "Off-Peak Hours" has the meaning provided in the Schedule.

1.24. "On-Peak Hours" has the meaning provided in the Schedule.

1.25. "Operational Hours" for the Facility means the total across all Generation Units of the number of hours each of the Facility's Generation Units are potentially capable of producing power at its Nameplate Capacity Rating regardless of actual weather conditions, season and the time of day or night, without any mechanical operating constraint or restriction, and potentially capable of delivering such power to the Point of Delivery in a Contract Year. During up to, but not more than, two hundred (200) hours of Planned Maintenance during a Contract Year for each Generation Unit and hours during which an event of Force Majeure exists, a Generation Unit shall be considered potentially capable of delivering such power to the Point of Delivery. For example, in the absence of any Planned Maintenance beyond 200 hours on any Generation Unit or Event of Force Majeure, the Operational Hours for a wind farm with five (5) separate two (2) MW turbines would be 43,800 for a Contract Year.

1.26. "Planned Maintenance" means outages scheduled ninety (90) days in advance, with PGE's prior written consent, which shall not be unreasonably withheld.

1.27. "Point of Delivery" means the PGE system.

1.28. "Pre-Commercial Operation Date Minimum Net Output" shall mean, unless such MWh is specifically set forth by Seller in Exhibit A, an amount in MWh equal to seventy-five percent (75%) of Nameplate Capacity Rating X thirty percent (30%) for a wind or other renewable QF or fifty percent (50%) for a solar QF X (whole months since the date selected in Section 2.2.1 / 12) X (8760 hours – 200 hours (assumed Planned Maintenance)) for each month. If Seller has provided specific expected monthly Net Output amounts for the Facility in Exhibit A, "Pre-Commercial Operation Date Minimum Net Output" shall mean seventy-five percent (75%) X expected net output set forth in Exhibit A for each month.

1.29. "Prime Rate" means the publicly announced prime rate or reference rate for commercial loans to large businesses with the highest credit rating in the United States in effect from time to time quoted by Citibank, N.A. If a Citibank, N.A. prime rate is not available, the applicable Prime Rate shall be the announced prime rate or reference rate for commercial loans in effect from time to time quoted by a bank with \$10 billion or more in assets in New York City, N.Y., selected by the Party to whom interest based on the prime rate is being paid.

1.30. "Prudent Electrical Practices" means those practices, methods, standards and acts engaged in or approved by a significant portion of the electric power industry in the Western Electricity Coordinating Council that at the relevant time period, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with good business practices, reliability, economy, safety and expedition, and which practices, methods, standards and acts reflect due regard for operation and maintenance standards recommended by applicable equipment suppliers and manufacturers, operational limits, and all applicable laws and regulations. Prudent Electrical Practices are not intended to be limited to the optimum practice, method, standard or act to the exclusion of all others, but rather to those practices, methods and acts generally acceptable or approved by a significant portion of the electric power generation industry in the relevant region, during the relevant period, as described in the immediate preceding sentence.

1.31. "Required Facility Documents" means all licenses, permits, authorizations, and agreements necessary for construction, operation, interconnection, and maintenance of the Facility including without limitation those set forth in Exhibit B.

1.32. "RPS Attributes" means all attributes related to the Net Output generated by the Facility that are required in order to provide PGE with "qualifying electricity," as that term is defined in Oregon's Renewable Portfolio Standard Act, Ore. Rev. Stat. 469A.010, in effect at the time of execution of this Agreement. RPS Attributes do not include Environmental Attributes that are greenhouse gas offsets from methane capture not associated with the generation of electricity and not needed to ensure that there are zero net emissions associated with the generation of electricity.

1.33. "Schedule" shall mean PGE Schedule 201 filed with the Oregon Public Utilities Commission ("Commission") in effect on the Effective Date of this Agreement and attached hereto as Exhibit D, the terms of which are hereby incorporated by reference.

1.34. "Senior Lien" means a prior lien which has precedence as to the property under the lien over another lien or encumbrance

1.35. "Start-Up Lost Energy Value" means for the period after the date specified in Section 2.2.2 but prior to achievement of the Commercial Operation Date: zero, unless the Net Output is less than the pro-rated Pre-Commercial Operation Date Minimum Net Output for the applicable delay period, and the time-weighted average of the delay period's Mid-C Index Price for On-Peak Hours and Off-Peak Hours is greater than the time-weighted average of the delay period's Contract Price for On-Peak Hours and Off-Peak Hours, in which case Startup Lost Energy Value equals: (pro-rated Pre-Commercial Operation Date Minimum Net Output for the applicable period - Net Output for the applicable period) X (the lower of: the time-weighted average of the Contract Price for On-Peak hours and Off-Peak Hours during the applicable period; or (the time-weighted average of the Mid-C Index Price for On-Peak Hours and Off-Peak Hours during the applicable period - the time-weighted average of the Contract Price for On-Peak Hours and Off-Peak Hours during the applicable period)). The time-weighted



average in this section will reflect the relative proportions of On-Peak Hours and Off-Peak Hours in each day.

1.36. "Start-Up Testing" means the completion of applicable required factory and start-up tests as set forth in Exhibit C.

1.37. "Step-in Rights" means the right of one party to assume an intervening position to satisfy all terms of an agreement in the event the other party fails to perform its obligations under the agreement.

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

1.39. "Test Period" shall mean a period of sixty (60) days or a commercially reasonable period determined by the Seller.

1.40. "Transmission Agreement" means an agreement executed by the Seller and the Transmission Provider(s) for Transmission Services.

1.41. "Transmission Curtailment" means a limitation on Seller's ability to deliver any portion of the scheduled energy to PGE due to the unavailability of transmission to the Point of Delivery (for any reason other than Force Majeure).

1.42. "Transmission Curtailment Replacement Energy Cost" means the greater of zero or the amount calculated as: ((Mid-C Index Price – Contract Price) X curtailed energy) for periods of Transmission Curtailment.

1.43. "Transmission Provider(s)" means the signatory (other than the Seller) to the Transmission Agreement.

1.44. "Transmission Services" means any and all services (including but not limited to ancillary services and control area services) required for the firm transmission and delivery of Energy from the Facility to the Point of Delivery for a term not less than the Term of this Agreement.

References to Recitals, Sections, and Exhibits are to be the recitals, sections and exhibits of this Agreement.

## SECTION 2: TERM; COMMERCIAL OPERATION DATE

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

2.2. Time is of the essence of this Agreement, and Seller's ability to meet certain requirements prior to the Commercial Operation Date and to complete all requirements to establish the Commercial Operation Date is critically important. Therefore,

2.2.1. By thirty-five (35) months after the Effective Date Seller shall begin initial deliveries of Net Output; and

2.2.2. By the thirty-six (36) month anniversary of the Effective Date, *subject to Section 2.2.3 below*, Seller shall have completed all requirements under Section 1.5 and shall have established the Commercial Operation Date.

2.2.3. Unless the Parties agree in writing that a later Commercial Operation Date is reasonable and necessary, the Commercial Operation Date shall be no more than three (3) years from the Effective Date. PGE will not unreasonably withhold agreement to a Commercial Operation Date that is more than three (3) years from the Effective date if the Seller has demonstrated that a later Commercial Operation Date is reasonable and necessary.

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

### SECTION 3: REPRESENTATIONS AND WARRANTIES

3.1. Seller and PGE represent, covenant, and warrant as follows:

3.1.1. Seller warrants it is a Limited Liability Corporation duly organized under the laws of Delaware.

3.1.2. Seller warrants that the execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on Seller or any valid order of any court, or any regulatory agency or other body having authority to which Seller is subject.

3.1.3. Seller warrants that the Facility is and shall for the Term of this Agreement continue to be a "Qualifying Facility" ("QF") as that term is defined in the version of 18 C.F.R. Part 292 in effect on the Effective Date. Seller has provided the appropriate QF certification, which may include a Federal Energy Regulatory Commission ("FERC") self-certification to PGE prior to PGE's execution of this Agreement. At any time during the Term of this Agreement, PGE may require Seller to provide PGE with evidence satisfactory to PGE in its reasonable discretion that the Facility continues to qualify as a QF under all applicable requirements.

3.1.4. Seller warrants that it has not within the past two (2) years been the debtor in any bankruptcy proceeding, and Seller is and will continue to be for the Term of this Agreement current on all of its financial obligations.

3.1.5. Seller warrants that during the Term of this Agreement, all of Seller's right, title and interest in and to the Facility shall be free and clear of all liens and encumbrances other than liens and encumbrances arising from third-party financing of the Facility other than workers', mechanics', suppliers' or similar liens, or tax liens, in each case arising in the ordinary course of business that are either not yet due and payable or that have been released by means of a performance bond acceptable to PGE posted within eight (8) calendar days of the commencement of any proceeding to foreclose the lien.

3.1.6. Seller warrants that it will design and operate the Facility consistent with Prudent Electrical Practices.

3.1.7. Seller warrants that the Facility has a Nameplate Capacity Rating not greater than 10,000 kW.

3.1.8. Seller warrants that Net Dependable Capacity of the Facility is 9,920 kW.

3.1.9. Seller estimates that the average annual Net Output to be delivered by the Facility to PGE is 18,500,000 kilowatt-hours ("kWh"), which amount PGE will include in its resource planning.

3.1.10. Seller represents and warrants that the Facility shall achieve the following Mechanical Availability Percentages ("Guarantee of Mechanical Availability"):

3.1.10.1. Ninety percent (90%) beginning in the first Contract Year and extending through the Term for the Facility, if the Facility was operational and sold electricity to PGE or another buyer prior to the Effective Date of this Agreement; or

3.1.10.2. Ninety percent (90%) beginning in Contract Year three and extending throughout the remainder of the Term.

3.1.10.3. Annually, within 90 days of the end of each Contract Year, Seller shall send to PGE a detailed written report demonstrating and providing evidence of the actual MAP for the previous Contract Year.

3.1.10.4. Seller's failure to meet the Guarantee of Mechanical Availability in a Calendar Year shall result in damages payable to PGE by Seller equal to the Lost Energy Value. PGE shall bill Seller for such damages in accordance with Section 7.

3.1.11. Seller will deliver from the Facility to PGE at the Point of Delivery Net Output not to exceed a maximum of 27,000,000 kWh of Net Output during each Contract Year ("Maximum Net Output"). The cost of delivering energy from the Facility to PGE is the sole responsibility of the Seller.

3.1.12. By the Commercial Operation Date, Seller has entered into a Generation Interconnection Agreement for a term not less than the term of this Agreement.

3.1.13. PGE warrants that it has not within the past two (2) years been the debtor in any bankruptcy proceeding, and PGE is and will continue to be for the Term of this Agreement current on all of its financial obligations.

3.1.14. Seller warrants that the Facility satisfies the eligibility requirements specified in the Definition of a Small Cogeneration Facility or Small Power Production Facility Eligible to Receive the Standard Renewable Rates and Standard Renewable PPA in PGE's Schedule and Seller will not make any changes in its ownership, control or management during the term of this Agreement that would cause it to not be in compliance with the Definition of a Small Cogeneration Facility or Small Power Production Facility Eligible to Receive the Standard Renewable Rates and Standard Renewable PPA in PGE's Schedule. Seller will provide, upon request by PGE not more frequently than every 36 months, such documentation and information as may be reasonably required to establish Seller's continued compliance with such Definition. PGE agrees to take reasonable steps to maintain the confidentiality of any portion of the above described documentation and information that the Seller identifies as confidential except PGE will provide all such confidential information to the Commission upon the Commission's request.

3.1.15. Seller warrants that it will comply with all requirements necessary for all Transferred RECs (as defined in Section 4.5) associated with Net Output to be issued, monitored, accounted for, and transferred by and through the Western Renewable

Energy Generation System consistent with the provisions of OAR 330-160-0005 through OAR 330-160-0050. PGE warrants that it will reasonably cooperate in Seller's efforts to meet such requirements, including, for example serving as the qualified reporting entity for the Facility if the Facility is located in PGE's balancing authority.

#### 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.

4.3. Upon completion of construction of the Facility, Seller shall provide PGE an As-built Supplement to specify the actual Facility as built. Seller shall not increase the Nameplate Capacity Rating above that specified in Exhibit A or increase the ability of the Facility to deliver Net Output in quantities in excess of the Net Dependable Capacity, or the Maximum Net Output as described in Section 3.1.11 above, through any means including, but not limited to, replacement, modification, or addition of existing equipment, except with prior written notice to PGE. In the event Seller increases the Nameplate Capacity Rating of the Facility to no more than 10,000 kW pursuant to this section, PGE shall pay the Contract Price for the additional delivered Net Output. In the event Seller increases the Nameplate Capacity Rating to greater than 10,000 kW, then Seller shall be required to enter into a new power purchase agreement for all delivered Net Output proportionally related to the increase of Nameplate Capacity above 10,000 kW.

4.4. Seller shall provide preschedules for all deliveries of energy hereunder, including identification of receiving and generating control areas, by 9:00:00 PPT on the last business day prior to the scheduled date of delivery. All energy shall be scheduled according to the most current North America Energy Reliability Corporation (NERC) and Western Electricity Coordinating Council (WECC) scheduling rules and practices. The Parties' respective representatives shall maintain hourly real-time schedule coordination; provided, however, that in the absence of such coordination, the hourly schedule established by the exchange of preschedules shall be considered final. Seller and PGE shall maintain records of hourly energy schedules for accounting and operating purposes. The final E-Tag shall be the controlling evidence of the Parties' schedule. All energy shall be prescheduled according to customary WECC scheduling practices. Seller shall make commercially reasonable efforts to schedule in any hour an amount equal to its expected Net Output for such hour. Seller shall maintain a minimum of two years records of Net Output and shall agree to allow PGE to have access to such records and to imbalance information kept by the Transmission Provider.

4.5. During the Renewable Resource Deficiency Period, Seller shall provide and PGE shall acquire the RPS Attributes for the Contract Years as specified in the Schedule and Seller shall retain ownership of all other Environmental Attributes (if any). During the Renewable Resource Sufficiency Period, 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. With respect to Environmental Attributes not transferred to PGE under this Agreement ("Seller-Retained Environmental Attributes") Seller may report under §1605(b) of the Energy Policy Act of 1992 or under any applicable program as belonging to Seller any of the Seller-Retained Environmental Attributes, and PGE shall not report under such program that such Seller-Retained Environmental Attributes belong to it. With respect to RPS Attributes transferred to PGE under this Agreement ("Transferred RECs"), PGE may report under §1605(b) of the Energy Policy Act of 1992 or under any applicable program as belonging to it any of the Transferred RECs, and Seller shall not report under such program that such Transferred RECs belong to it.

#### SECTION 5: OPERATION AND CONTROL

5.1. Seller shall operate and maintain the Facility in a safe manner in accordance with the Generation Interconnection Agreement, and Prudent Electrical Practices. PGE shall have no obligation to purchase Net Output from the Facility to the extent the interconnection of the Facility to PGE's electric system is disconnected, suspended or interrupted, in whole or in part, pursuant to the Generation Interconnection Agreement, or to the extent generation curtailment is required as a result of Seller's noncompliance with the Generation Interconnection Agreement. Seller is solely responsible for the operation and maintenance of the Facility. PGE shall not, by reason of its decision to inspect or not to inspect the Facility, or by any action or inaction taken with respect to any such inspection, assume or be held responsible for any liability or occurrence arising from the operation and maintenance by Seller of the Facility.

5.2. Seller agrees to provide sixty (60) days advance written notice of any scheduled maintenance that would require shut down of the Facility for any period of time.

5.3. If the Facility ceases operation for unscheduled maintenance, Seller immediately shall notify PGE of the necessity of such unscheduled maintenance, the time when such maintenance has occurred or will occur, and the anticipated duration of such maintenance. Seller shall take all reasonable measures and exercise its best efforts to avoid unscheduled maintenance, to limit the duration of such unscheduled maintenance, and to perform unscheduled maintenance during Off-Peak hours.

#### SECTION 6: CREDITWORTHINESS

In the event Seller: a) is unable to represent or warrant as required by Section 3 that it has not been a debtor in any bankruptcy proceeding within the past two (2) years; b) becomes such a debtor during the Term; or c) is not or will not be current on all its financial obligations, Seller shall immediately notify PGE and shall promptly (and in no less than 10 days after notifying PGE) provide default security in an amount reasonably acceptable to PGE in one of the following forms: Senior Lien, Step-in Rights, a Cash Escrow or Letter of Credit. The amount of such default security that shall be acceptable to PGE shall be equal to: (annual On Peak Hours) X (On Peak Price – Off Peak Price) X (Net Dependable Capacity). Notwithstanding the foregoing, in the event Seller is not current on construction related financial obligations, Seller shall notify PGE of such delinquency and PGE may, in its discretion, grant an exception to the

requirements to provide default security if the QF has negotiated financial arrangements with the construction loan lender that mitigate Seller's financial risk to PGE.

#### SECTION 7: BILLINGS, COMPUTATIONS AND PAYMENTS

7.1. On or before the thirtieth (30<sup>th</sup>) day following the end of each Billing Period, PGE shall send to Seller payment for Seller's deliveries of Net Output to PGE, together with computations supporting such payment. PGE may offset any such payment to reflect amounts owing from Seller to PGE pursuant to this Agreement and any other agreement related to the Facility between the Parties or otherwise. On or before the thirtieth (30<sup>th</sup>) day following the end of each Contract Year, PGE shall bill for any Lost Energy Value accrued pursuant to this Agreement.

7.2. Any amounts owing after the due date thereof shall bear interest at the Prime Rate plus two percent (2%) from the date due until paid; provided, however, that the interest rate shall at no time exceed the maximum rate allowed by applicable law.

#### SECTION 8: DEFAULT, REMEDIES AND TERMINATION

8.1. In addition to any other event that may constitute a default under this Agreement, the following events shall constitute defaults under this Agreement:

8.1.1. Breach by Seller or PGE of a representation or warranty, except for Section 3.1.4, set forth in this Agreement.

8.1.2. Seller's failure to provide default security, if required by Section 6, prior to delivery of any Net Output to PGE or within 10 days of notice.

8.1.3. Seller's failure to meet the Guarantee of Mechanical Availability established in Section 3.1.10 for two consecutive Contract Years or Seller's failure to provide any written report required by that section.

8.1.4. If Seller is no longer a Qualifying Facility.

8.1.5. Failure of PGE to make any required payment pursuant to Section 7.1.

8.1.6. Seller's failure to meet the Commercial Operation Date.

8.2. In the event of a default under Section 8.1.6, PGE may provide Seller with written notice of default. Seller shall have one year in which to cure the default during which time the Seller shall pay PGE damages equal to the Lost Energy Value. If Seller is unable to cure the default, PGE may immediately terminate this Agreement as provided in Section 8.3. PGE's resource sufficiency/deficiency position shall have no bearing on PGE's right to terminate the Agreement under this Section 8.2.

8.3. In the event of a default hereunder, except as otherwise provided in this Agreement, the non-defaulting party may immediately terminate this Agreement at its sole discretion by delivering written notice to the other Party. In addition, the non-defaulting Party may pursue any and all legal or equitable remedies provided by law or pursuant to this Agreement including damages related to the need to procure replacement power. A termination hereunder shall be effective upon the date of delivery of notice, as provided in Section 20. The rights provided in this Section 8 are cumulative such that the exercise of one or more rights shall not constitute a waiver of any other rights.

8.4. If this Agreement is terminated as provided in this Section 8, PGE shall make all payments, within thirty (30) days, that, pursuant to the terms of this Agreement, are owed to Seller as of the time of receipt of notice of default. PGE shall not be required to pay Seller for any Net Output delivered by Seller after such notice of default.

8.5. In the event PGE terminates this Agreement pursuant to this Section 8, and Seller wishes to again sell Net Output to PGE following such termination, PGE in its sole discretion may require that Seller shall do so subject to the terms of this Agreement, including but not limited to the Contract Price until the Term of this Agreement (as set forth in Section 2.3) would have run in due course had the Agreement remained in effect. At such time Seller and PGE agree to execute a written document ratifying the terms of this Agreement.

8.6. Sections 8.1, 8.4, 8.5, 10, and 19.2 shall survive termination of this Agreement.

#### SECTION 9: TRANSMISSION CURTAILMENTS

9.1. Seller shall give PGE notice as soon as reasonably practicable of any Transmission Curtailment that is likely to affect Seller's ability to deliver any portion of energy scheduled pursuant to Section 4.4 of this Agreement.

9.2. If as the result of a Transmission Curtailment, Seller does not deliver any portion of energy (including real-time adjustments), scheduled pursuant to Section 4.4 of this Agreement, Seller shall pay PGE the Transmission Curtailment Replacement Energy Cost for the number of MWh of energy reasonably determined by PGE as the difference between (i) the scheduled energy that would have been delivered to PGE under this Agreement during the period of Transmission Curtailment and (ii) the actual energy, if any, that was delivered to PGE for the period.

#### SECTION 10: INDEMNIFICATION AND LIABILITY

10.1. Seller agrees to defend, indemnify and hold harmless PGE, its directors, officers, agents, and representatives against and from any and all loss, claims, actions or suits, including costs and attorney's fees, both at trial and on appeal, resulting from, or arising out of or in any way connected with Seller's delivery of electric power to PGE or with the facilities at or prior to the Point of Delivery, or otherwise arising out of this Agreement, including without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property belonging to PGE, Seller or others, excepting to the extent such loss, claim, action or suit may be caused by the negligence of PGE, its directors, officers, employees, agents or representatives.

10.2. PGE agrees to defend, indemnify and hold harmless Seller, its directors, officers, agents, and representatives against and from any and all loss, claims, actions or suits, including costs and attorney's fees, both at trial and on appeal, resulting from, or arising out of or in any way connected with PGE's receipt of electric power from Seller or with the facilities at or after the Point of Delivery, or otherwise arising out of this

Agreement, including without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property belonging to PGE, Seller or others, excepting to the extent such loss, claim, action or suit may be caused by the negligence of Seller, its directors, officers, employees, agents or representatives.

10.3. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a Party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or to the public, nor affect the status of PGE as an independent public utility corporation or Seller as an independent individual or entity.

10.4. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR SPECIAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES, WHETHER ARISING FROM CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.

#### SECTION 11: INSURANCE

11.1. Prior to the connection of the Facility to PGE's electric system, provided such Facility has a design capacity of 200 kW or more, Seller shall secure and continuously carry for the Term hereof, with an insurance company or companies rated not lower than "B+" by the A. M. Best Company, insurance policies for bodily injury and property damage liability. Such insurance shall include provisions or endorsements naming PGE, its directors, officers and employees as additional insureds; provisions that such insurance is primary insurance with respect to the interest of PGE and that any insurance or self-insurance maintained by PGE is excess and not contributory insurance with the insurance required hereunder; a cross-liability or severability of insurance interest clause; and provisions that such policies shall not be canceled or their limits of liability reduced without thirty (30) days' prior written notice to PGE. Initial limits of liability for all requirements under this section shall be \$1,000,000 million single limit, which limits may be required to be increased or decreased by PGE as PGE determines in its reasonable judgment economic conditions or claims experience may warrant.

11.2. Prior to the connection of the Facility to PGE's electric system, provided such facility has a design capacity of 200 kW or more, Seller shall secure and continuously carry for the Term hereof, in an insurance company or companies rated not lower than "B+" by the A. M. Best Company, insurance acceptable to PGE against property damage or destruction in an amount not less than the cost of replacement of the Facility. Seller promptly shall notify PGE of any loss or damage to the Facility. Unless the Parties agree otherwise, Seller shall repair or replace the damaged or destroyed Facility, or if the facility is destroyed or substantially destroyed, it may terminate this Agreement. Such termination shall be effective upon receipt by PGE of written notice from Seller. Seller shall waive its insurers' rights of subrogation against PGE regarding Facility property losses.



11.3. Prior to the connection of the Facility to PGE's electric system and at all other times such insurance policies are renewed or changed, Seller shall provide PGE with a copy of each insurance policy required under this Section, certified as a true copy by an authorized representative of the issuing insurance company or, at the discretion of PGE, in lieu thereof, a certificate in a form satisfactory to PGE certifying the issuance of such insurance. If Seller fails to provide PGE with copies of such currently effective insurance policies or certificates of insurance, PGE at its sole discretion and without limitation of other remedies, may upon ten (10) days advance written notice by certified or registered mail to Seller either withhold payments due Seller until PGE has received such documents, or purchase the satisfactory insurance and offset the cost of obtaining such insurance from subsequent power purchase payments under this Agreement.

## SECTION 12: FORCE MAJEURE

12.1. As used in this Agreement, "Force Majeure" or "an event of Force Majeure" means any cause beyond the reasonable control of the Seller or of PGE which, despite the exercise of due diligence, such Party is unable to prevent or overcome. By way of example, Force Majeure may include but is not limited to acts of God, fire, flood, storms, wars, hostilities, civil strife, strikes, and other labor disturbances, earthquakes, fires, lightning, epidemics, sabotage, restraint by court order or other delay or failure in the performance as a result of any action or inaction on behalf of a public authority which by the exercise of reasonable foresight such Party could not reasonably have been expected to avoid and by the exercise of due diligence, it shall be unable to overcome, subject, in each case, to the requirements of the first sentence of this paragraph. Force Majeure, however, specifically excludes the cost or availability of resources to operate the Facility, changes in market conditions that affect the price of energy or transmission, wind or water droughts, and obligations for the payment of money when due.

12.2. If either Party is rendered wholly or in part unable to perform its obligation under this Agreement because of an event of Force Majeure, that Party shall be excused from whatever performance is affected by the event of Force Majeure to the extent and for the duration of the Force Majeure, after which such Party shall recommence performance of such obligation, provided that:

12.2.1. the non-performing Party, shall, promptly, but in any case within one (1) week after the occurrence of the Force Majeure, give the other Party written notice describing the particulars of the occurrence; and

12.2.2. the suspension of performance shall be of no greater scope and of no longer duration than is required by the Force Majeure; and

12.2.3. the non-performing Party uses its best efforts to remedy its inability to perform its obligations under this Agreement.

12.3. No obligations of either Party which arose before the Force Majeure causing the suspension of performance shall be excused as a result of the Force Majeure.

12.4. Neither Party shall be required to settle any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to the Party's best interests.

#### SECTION 13: SEVERAL OBLIGATIONS

Nothing contained in this Agreement shall ever be construed to create an association, trust, partnership or joint venture or to impose a trust or partnership duty, obligation or liability between the Parties. If Seller includes two or more parties, each such party shall be jointly and severally liable for Seller's obligations under this Agreement.

#### SECTION 14: CHOICE OF LAW

This Agreement shall be interpreted and enforced in accordance with the laws of the state of Oregon, excluding any choice of law rules which may direct the application of the laws of another jurisdiction.

#### SECTION 15: PARTIAL INVALIDITY AND PURPA REPEAL

It is not the intention of the Parties to violate any laws governing the subject matter of this Agreement. If any of the terms of the Agreement are finally held or determined to be invalid, illegal or void as being contrary to any applicable law or public policy, all other terms of the Agreement shall remain in effect. If any terms are finally held or determined to be invalid, illegal or void, the Parties shall enter into negotiations concerning the terms affected by such decision for the purpose of achieving conformity with requirements of any applicable law and the intent of the Parties to this Agreement.

In the event the Public Utility Regulatory Policies Act (PURPA) is repealed, this Agreement shall not terminate prior to the Termination Date, unless such termination is mandated by state or federal law.

#### SECTION 16: WAIVER

Any waiver at any time by either Party of its rights with respect to a default under this Agreement or with respect to any other matters arising in connection with this Agreement must be in writing, and such waiver shall not be deemed a waiver with respect to any subsequent default or other matter.

#### SECTION 17: GOVERNMENTAL JURISDICTION AND AUTHORIZATIONS

This Agreement is subject to the jurisdiction of those governmental agencies having control over either Party or this Agreement. Seller shall at all times maintain in effect all local, state and federal licenses, permits and other approvals as then may be required by law for the construction, operation and maintenance of the Facility, and shall provide upon request copies of the same to PGE.

#### SECTION 18: SUCCESSORS AND ASSIGNS

This Agreement and all of the terms hereof shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties. No assignment hereof by either Party shall become effective without the written consent of the other Party being first obtained and such consent shall not be unreasonably withheld.

Notwithstanding the foregoing, either Party may assign this Agreement without the other Party's consent as part of (a) a sale of all or substantially all of the assigning Party's assets, or (b) a merger, consolidation or other reorganization of the assigning Party.

#### SECTION 19: ENTIRE AGREEMENT

19.1. This Agreement supersedes all prior agreements, proposals, representations, negotiations, discussions or letters, whether oral or in writing, regarding PGE's purchase of Net Output from the Facility. No modification of this Agreement shall be effective unless it is in writing and signed by both Parties.

19.2. By executing this Agreement, Seller releases PGE from any third party claims related to the Facility, known or unknown, which may have arisen prior to the Effective Date.

#### SECTION 20: NOTICES

20.1. All notices except as otherwise provided in this Agreement shall be in writing, shall be directed as follows and shall be considered delivered if delivered in person or when deposited in the U.S. Mail, postage prepaid by certified or registered mail and return receipt requested:

To Seller: Wasco Solar I LLC  
3500 South DuPont Highway  
Dover, DE 19901  
jstephens@newsunenergy.net

with a copy to: Stephane Nguyen  
c/o Reed Smith  
1901 Avenue of the Stars #700  
Los Angeles, CA 90067-6078  
snguyen@reedsmith.com

and a copy to: Greg Adams  
c/o Richardson Adams, PLLC  
515 N. 27th Street, 83702  
P.O. Box 7218, 83707  
Boise, Idaho  
greg@richardsonadams.com

To PGE: Contracts Manager  
QF Contracts, 3WTC0306  
PGE - 121 SW Salmon St.  
Portland, Oregon 97204

20.2 The Parties may change the person to whom such notices are addressed, or their addresses, by providing written notices thereof in accordance with this Section 20.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in their respective names as of the Effective Date.

PGE

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

WASCO SOLAR I LLC  
(Name Seller)

By: \_\_\_\_\_  
Name: Jacob Stephens  
Title: Authorized Representative  
Date: \_\_\_\_\_

## EXHIBIT A DESCRIPTION OF SELLER'S FACILITY

WASCO Solar I is a photovoltaics-based solar generating facility which upon reaching full commercial operations have nameplate capacity of 10 MW-AC net output at the point of interconnection subject to available solar energy input. The facility will consist of the following primary equipment:

1. PV Modules - Commercially-available photovoltaic modules for utility-scale DC energy production. Nominal per module DC production rating of 350W +/-50W-DC. Qty  $\leq$  [14MM/(module rating)].
2. Inverter AC Generator Units: Commercially-available string inverter (90kW-AC, nominal) convert DC to AC power, collected by AC wiring to switchboard. Each such collected aggregation of inverters shall constitute a single sub-generator for the facility, which once all aggregated shall constitute the entire generator for the facility.
3. Pad-mounted transformers: for each sub-generator shall transform inverter output voltage to plant AC collection voltage (12.47 KV, nominally)
4. Racking systems, commercially-available, will mount the PV Modules and direct them and control their angle to receive light from the sun. Racking systems will be arranged in generally uniform rows on the facility site.
5. Additional interconnection, transformation, switching, storage, metering, communications, tie-line, and meteorological observations facilities as may be required, subject to final interconnection, permitting, and design requirements.

**EXHIBIT B  
REQUIRED FACILITY DOCUMENTS**

1. Seller's Generation Interconnection Agreement
2. Wasco County CUP & Building Permits
3. BPA: Transmission Service Agreement
4. Additional as may be determined by Seller to be required for facility permitting, construction, and interconnection.

## EXHIBIT C START-UP TESTING

### **Seller-identified start-up tests**

As part of the start-up of Facility, Seller will perform the following tests, in addition to any further tests deemed required in coordination with EPC contractor (the Facility's manufacturer) and primary supply vendors (PV modules, inverters, transformers) and interconnecting utility. This will include required factory checks and tests necessary to determine that the equipment systems and subsystems have been properly manufactured and installed, function properly, and are in a condition to permit safe and efficient start-up of the Facility, which may include but are not limited to (as applicable). This will include required start-up tests and checks which necessary to determine that all features and equipment, systems, and subsystems have been properly designed, manufactured, installed and adjusted, function properly, and are capable of operating simultaneously in such condition that the Facility is capable of continuous delivery into PGE's electrical system, which may include but are not limited to (as applicable):

1. Validation of mechanical assembly completion for sign-off on EPC vendor warranty of mechanical completion and workmanship, including racking system, wiring (module connections, DC collection, string terminations, inverter connections to collected strings, AC delivery to switchboard and step-up/collection transformers, and AC collection system deliver to interconnection facilities), inverter mounting, and module installation.
2. Electrical performance validation by facility PV string and sub-generator, per insolation input, including:
  - a) DC wiring inputs to inverters
  - b) AC wiring delivery to transformers
3. Inverter Commissioning, per manufacturer specifications, including commissioning report;
4. Facility daily start-up and shut-down automation confirmed;
5. Energization of transformers;
6. Full system performance test;
7. Interconnection facilities: Commissioning of on-site, tie-line, and off-site interconnection facilities (as applicable), including switchyard, substation, breakers, and metering equipment (as applicable), in coordination with interconnecting utility and performing electrical contractor;
8. Cataloguing of installed equipment on-site, including primary equipment serial numbers and manufacturer information for O&M documentation;
9. Complete pre-parallel checks with PGE;
10. Test energy delivery and metering checks.
11. Excitation and voltage regulation operation tests per insolation inputs.
12. Meteorological station commissioning and report;
13. Facility communications equipment commissioning and report; and
14. Other tests as may be required by equipment manufacturers.



EXHIBIT D  
SCHEDULE

**[Attach currently in-effect Schedule 201]**

**SCHEDULE 201 (Continued)**

PRICING OPTIONS FOR STANDARD PPA (Continued)  
 Renewable Fixed Price Option (Continued)

TABLE 6a												
Renewable Avoided Costs												
Renewable Fixed Price Option for Solar QF												
On-Peak Forecast (\$/MWH)												
Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2015	31.13	25.13	26.13	21.66	22.66	25.13	33.13	34.73	29.63	27.38	29.68	33.13
2016	31.43	30.01	28.93	25.51	24.81	23.06	31.90	36.26	32.22	30.97	31.97	34.43
2017	34.12	32.56	29.20	28.13	27.35	25.40	34.51	39.28	34.86	33.83	34.92	37.63
2018	36.46	34.80	31.19	29.53	28.71	26.67	37.01	42.11	37.38	35.92	37.09	39.97
2019	38.14	36.40	32.63	30.89	30.03	27.89	38.72	44.06	39.11	37.58	38.80	41.81
2020	90.01	90.80	89.99	91.31	104.33	109.84	91.65	94.79	91.02	90.75	91.10	90.77
2021	91.63	92.46	91.84	93.60	105.26	110.91	93.15	96.99	93.38	93.37	92.70	92.70
2022	93.66	93.76	93.13	94.96	109.63	114.13	92.07	97.80	94.14	95.42	94.37	94.02
2023	95.65	95.40	94.17	96.50	111.28	116.40	95.15	98.68	95.95	97.21	95.93	96.48
2024	97.23	97.75	96.73	97.65	106.30	117.33	97.35	101.95	98.68	98.48	97.92	98.07
2025	99.10	99.12	98.31	100.06	110.92	119.16	99.24	105.55	100.78	100.27	99.79	100.25
2026	100.57	101.09	99.35	101.04	112.20	119.15	102.18	106.55	102.12	101.05	101.43	101.63
2027	102.25	102.59	100.63	103.03	115.03	120.12	102.66	109.14	103.72	103.12	102.13	102.82
2028	103.68	103.34	101.96	104.33	112.95	122.67	104.44	109.68	104.55	105.12	103.60	104.56
2029	105.79	105.38	103.96	105.98	114.07	124.22	106.94	112.24	108.46	106.07	105.40	105.83
2030	107.13	106.53	108.06	107.76	114.95	127.70	108.39	113.63	109.08	107.05	106.85	107.79
2031	109.69	107.80	107.47	109.33	116.28	128.44	109.64	116.52	110.47	109.12	108.50	110.22
2032	110.36	110.11	108.39	111.18	118.61	128.41	111.91	118.67	111.94	110.49	110.33	111.16
2033	112.90	111.08	110.05	112.92	120.45	128.96	113.31	119.67	113.39	111.85	112.52	112.91
2034	114.73	112.87	111.66	115.44	121.12	132.66	115.56	121.34	115.09	114.26	114.22	115.22
2035	117.24	114.47	113.77	117.41	122.07	132.79	118.17	124.75	117.70	115.81	116.14	117.31
2036	119.22	115.79	115.97	119.90	124.14	134.40	120.45	129.78	119.82	118.92	117.61	118.60
2037	119.91	116.45	117.83	122.26	126.19	135.53	123.87	131.76	123.11	118.70	120.69	120.39
2038	122.36	120.87	119.99	124.68	129.66	137.52	125.74	134.93	123.85	121.13	122.49	122.34
2039	124.04	122.45	121.73	126.00	132.47	140.16	126.54	133.23	124.63	123.29	124.46	124.08
2040	125.85	124.33	123.44	128.77	133.66	142.06	129.44	135.37	126.71	125.04	126.71	126.61

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**SCHEDULE 201 (Continued)**

PRICING OPTIONS FOR STANDARD PPA (Continued)  
Renewable Fixed Price Option (Continued)

TABLE 6b												
Renewable Avoided Costs												
Renewable Fixed Price Option for Solar QF												
Off-Peak Forecast (\$/MWH)												
Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2015	26.98	20.38	20.88	15.88	17.88	19.13	23.98	26.13	25.63	23.13	25.38	28.38
2016	27.06	25.99	23.32	18.54	16.65	13.43	23.13	27.74	25.51	27.30	27.97	30.11
2017	30.27	26.06	26.04	21.47	19.23	15.43	25.37	30.49	28.02	29.93	30.97	33.03
2018	32.90	31.29	28.03	22.20	19.89	15.98	27.80	33.43	30.71	32.89	33.71	36.32
2019	34.42	33.04	29.59	23.42	20.98	16.82	29.35	35.30	32.42	34.73	35.60	38.36
2020	68.58	67.81	70.03	66.95	51.47	41.59	66.31	63.57	67.34	67.56	68.43	67.52
2021	71.70	70.03	70.67	68.13	54.41	44.45	68.58	64.91	68.43	69.50	69.36	69.20
2022	72.93	72.10	72.50	70.14	52.58	43.90	73.59	66.03	71.26	70.61	70.94	71.27
2023	74.08	73.80	75.03	73.19	51.34	44.74	74.72	68.53	72.72	72.11	72.75	73.03
2024	74.27	73.88	76.02	73.85	53.94	50.44	74.10	67.73	72.49	72.53	73.47	74.32
2025	78.37	78.84	78.49	75.22	60.00	52.58	78.18	69.30	74.23	74.75	78.80	74.78
2026	78.55	78.33	81.13	78.05	64.87	53.26	79.32	71.90	76.57	77.89	79.72	77.07
2027	81.57	80.52	82.48	79.59	65.38	56.20	79.64	72.83	78.65	80.47	80.82	79.73
2028	83.33	83.05	84.80	82.68	63.45	56.44	82.37	73.98	81.24	81.50	82.54	82.21
2029	84.45	85.45	86.98	85.41	72.98	59.37	84.03	75.52	82.32	84.06	85.12	85.43
2030	87.14	88.37	89.47	88.42	76.31	62.58	85.40	78.15	85.83	87.25	87.66	87.28
2031	89.62	91.21	92.09	88.87	79.11	66.01	89.30	81.28	87.31	89.03	90.93	87.50
2032	91.36	92.90	94.09	90.37	81.89	66.80	89.22	81.75	89.34	92.12	91.54	90.26
2033	94.30	96.19	97.29	93.45	84.73	71.50	93.78	83.69	92.61	95.63	94.00	93.33
2034	96.65	98.62	99.97	95.91	86.88	71.32	95.58	86.58	95.37	97.26	96.55	96.04
2035	97.26	101.30	102.07	98.18	90.58	76.12	97.06	86.87	97.82	99.24	98.90	98.15
2036	100.30	103.84	104.15	98.13	92.11	81.09	97.21	87.79	98.23	102.10	102.08	99.77
2037	103.90	106.19	107.32	100.80	96.72	82.63	98.42	89.65	98.63	105.58	103.83	103.24
2038	108.63	108.17	109.11	102.78	97.37	85.19	101.14	90.89	103.90	109.20	105.75	105.85
2039	109.65	111.37	112.13	106.34	98.97	86.98	106.48	96.20	108.22	110.80	108.44	108.86
2040	112.13	113.43	114.50	109.34	100.07	89.08	107.33	97.98	110.92	112.29	110.09	110.91

Effective for service  
on and after September 23, 2015

**UM 1931 NewSun Parties Exhibit 128**

Attachment #3 to Email in Exhibit 125:  
Dayton Solar I LLC PPA

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## STANDARD RENEWABLE IN-SYSTEM VARIABLE POWER PURCHASE

### AGREEMENT

THIS AGREEMENT, entered into this 15th day, November 2015, is between Dayton Solar I LLC ("Seller") and Portland General Electric Company ("PGE") (hereinafter each a "Party" or collectively, "Parties").

### RECITALS

Seller intends to construct, own, operate and maintain a photovoltaic solar facility for the generation of electric power located in Yamhill County, Oregon with a Nameplate Capacity Rating of 10,000 (AC) kilowatt ("kW"), as further described in Exhibit A ("Facility"); and

Seller intends to operate the Facility as a "Qualifying Facility," as such term is defined in Section 3.1.3, below.

Seller shall sell and PGE shall purchase the entire Net Output, as such term is defined in Section 1.21, below, from the Facility in accordance with the terms and conditions of this Agreement.

### AGREEMENT

NOW, THEREFORE, the Parties mutually agree as follows:

#### SECTION 1: DEFINITIONS

When used in this Agreement, the following terms shall have the following meanings:

1.1. "As-built Supplement" means the supplement to Exhibit A provided by Seller in accordance with Section 4.3 following completion of construction of the Facility, describing the Facility as actually built.

1.2. "Base Hours" is defined as the total number of hours in each Contract Year (8,760 or 8,784 for leap year).

1.3. "Billing Period" means a period between PGE's readings of its power purchase billing meter at the Facility in the normal course of PGE's business. Such periods may vary and may not coincide with calendar months; however, PGE shall use best efforts to read the power purchase billing meter in 12 equally spaced periods per year.

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1.4. "Cash Escrow" means an agreement by two parties to place money into the custody of a third party for delivery to a grantee only after the fulfillment of the conditions specified.

1.5. "Commercial Operation Date" means the date that the Facility is deemed by PGE to be fully operational and reliable. PGE may, at its discretion, require, among other things, that all of the following events have occurred:

1.5.1. (facilities with nameplate under 500 kW exempt from following requirement) PGE has received a certificate addressed to PGE from a Licensed Professional Engineer ("LPE") acceptable to PGE in its reasonable judgment stating that the Facility is able to generate electric power reliably in accordance with the terms and conditions of this Agreement (certifications required under this Section 1.5 can be provided by one or more LPEs);

1.5.2. Start-Up Testing of the Facility has been completed in accordance with Section 1.36;

1.5.3. (facilities with nameplate under 500 kW exempt from following requirement) After PGE has received notice of completion of Start-Up Testing, PGE has received a certificate addressed to PGE from an LPE stating that the Facility has operated for testing purposes under this Agreement and was continuously mechanically available for operation for a minimum of 120 hours. The Facility must provide ten (10) working days written notice to PGE prior to the start of the initial testing period. If the mechanical availability of the Facility is interrupted during this initial testing period or any subsequent testing period, the Facility shall promptly start a new Test Period and provide PGE forty-eight (48) hours written notice prior to the start of such testing period;

1.5.4. (facilities with nameplate under 500 kW exempt from following requirement) PGE has received a certificate addressed to PGE from an LPE stating that in accordance with the Generation Interconnection Agreement, all required interconnection facilities have been constructed all required interconnection tests have been completed; and the Facility is physically interconnected with PGE's electric system.

1.5.5. (facilities with nameplate under 500kW exempt from following requirement) PGE has received a certificate addressed to PGE from an LPE stating that Seller has obtained all Required Facility Documents and, if requested by PGE in writing, has provided copies of any or all such requested Required Facility Documents;

1.6. "Contract Price" means the applicable price, including on-peak and off-peak prices, as specified in the Schedule.

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.

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

1.9. "Environmental Attributes" shall mean any and all claims, credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, resulting from the avoidance of the emission of any gas, chemical or other substance to the air, soil or water. Environmental Attributes include but are not limited to: (1) any avoided emissions of pollutants to the air, soil or water such as (subject to the foregoing) sulfur oxides (SO<sub>x</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO), and other pollutants; and (2) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), and other greenhouse gasses (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere.

1.10. "Facility" has the meaning set forth in the Recitals.

1.11. "Generation Interconnection Agreement" means the generation interconnection agreement to be entered into separately between Seller and PGE, providing for the construction, operation, and maintenance of interconnection facilities required to accommodate deliveries of Seller's Net Output.

1.12. "Generation Unit" means each separate electrical generator that contributes towards Nameplate Capacity Rating included in Exhibit A. For solar facilities, a generating unit is a complete solar electrical generation system within the Facility that is able to generate and deliver energy to the Point of Delivery independent of other Generation Units within the same Facility.

1.13. "Letter of Credit" means an engagement by a bank or other person made at the request of a customer that the issuer will honor drafts or other demands for payment upon compliance with the conditions specified in the letter of credit.

1.14. "Licensed Professional Engineer" or "LPE" means a person who is licensed to practice engineering in the state where the Facility is located, who has no economic relationship, association, or nexus with the Seller, and who is not a representative of a consulting engineer, contractor, designer or other individual involved in the development of the Facility, or of a manufacturer or supplier of any equipment installed in the Facility. Such Licensed Professional Engineer shall be licensed in an appropriate engineering discipline for the required certification being made and be acceptable to PGE in its reasonable judgment.

1.15. "Lost Energy" means ((the Guarantee of Mechanical Availability as set forth in 3.1.10 / MAP) X Net Output for a Calendar Year) – Net Output for the Calendar Year. Lost Energy shall be zero unless the result of the calculation in this subsection results in a positive number.

1.16. "Lost Energy Value" means Lost Energy X the excess of the annual time-weighted average Mid-C Index Price for On-Peak and Off-Peak Hours over the time-weighted average Contract Price for On-Peak and Off-Peak Hours for the

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corresponding time period (provided that such excess shall not exceed the Contract Price and further provided that Lost Energy is deemed to be zero prior to reaching the Commercial Operation Date) plus any reasonable costs incurred by PGE to purchase replacement power and/or transmission to deliver the replacement power to the Point of Delivery. (For Start-Up Lost Energy Value see Section 1.35).

1.17. "Mechanical Availability Percentage" or "MAP" shall mean that percentage for any Contract Year for the Facility calculated in accordance with the following formula:

$$\text{MAP} = 100 \times (\text{Operational Hours}) / (\text{Base Hours} \times \text{Number of Units})$$

1.18. "Mid-C Index Price" means the Day Ahead Intercontinental Exchange ("ICE") index price for the bilateral OTC market for energy at the Mid-C Physical for Average On Peak Power and Average Off Peak Power found on the following website: <https://www.theice.com/products/OTC/Physical-Energy/Electricity>. In the event ICE no longer publishes this index, PGE and the Seller agree to select an alternative successor index representative of the Mid-C trading hub.

1.19. "Nameplate Capacity Rating" means the maximum capacity of the Facility as stated by the manufacturer, expressed in kW, which shall not exceed 10,000 kW.

1.20. "Net Dependable Capacity" means the maximum capacity the Facility can sustain over a specified period modified for seasonal limitations, if any, and reduced by the capacity required for station service or auxiliaries.

1.21. "Net Output" means all energy expressed in kWhs produced by the Facility, less station and other onsite use and less transformation and transmission losses. Net Output does not include any environmental attributes.

1.22. "Number of Units" means the number of Generating Units in the Facility described in Exhibit A.

1.23. "Off-Peak Hours" has the meaning provided in the Schedule.

1.24. "On-Peak Hours" has the meaning provided in the Schedule.

1.25. "Operational Hours" for the Facility means the total across all Generating Units of the number of hours each of the Facility's Generating Units are potentially capable of producing power at its Nameplate Capacity Rating regardless of actual weather, season and time of day or night, without any mechanical operating constraint or restriction, and potentially capable of delivering such power to the Point of Delivery in a Contract Year. During up to, but not more than, 200 hours of Planned Maintenance during a Contract Year for each Generation Unit and hours during which an event of Force Majeure exists, a Generation Unit shall be considered potentially capable of delivering such power to the Point of Delivery. For example, in the absence of any Planned Maintenance beyond 200 hours on any Generation Unit of Event of Force



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Majeure, the Operational Hours for a wind farm with five separate two MW turbines would be 43,800 for a Contract Year.

1.26. "Planned Maintenance" means outages scheduled 90 days in advance, with PGE's prior written consent, which shall not be unreasonably withheld.

1.27. "Point of Delivery" means the high side of the generation step up transformer(s) located at the point of interconnection between the Facility and PGE's distribution or transmission system, as specified in the Generation Interconnection Agreement.

1.28. "Pre-Commercial Operation Date Minimum Net Output" shall mean, unless such MWh is specifically set forth by Seller in Exhibit A, an amount in MWh equal to seventy-five percent (75%) of the Nameplate Capacity Rating X thirty percent (30%) for a wind or other renewable QF or fifty percent (50%) for a solar QF X (whole months since the date selected in Section 2.2.1 / 12) X (8760 hours – 200 hours (assumed Planned Maintenance)) for each month. If Seller has provided specific expected monthly Net Output amounts for the Facility in Exhibit A, "Pre-Commercial Operation Date Minimum Net Output" shall mean seventy-five (75%) X expected Net Output set forth in Exhibit A for each month.

1.29. "Prime Rate" means the publicly announced prime rate or reference rate for commercial loans to large businesses with the highest credit rating in the United States in effect from time to time quoted by Citibank, N.A. If a Citibank, N.A. prime rate is not available, the applicable Prime Rate shall be the announced prime rate or reference rate for commercial loans in effect from time to time quoted by a bank with \$10 billion or more in assets in New York City, N.Y., selected by the Party to whom interest based on the prime rate is being paid.

1.30. "Prudent Electrical Practices" means those practices, methods, standards and acts engaged in or approved by a significant portion of the electric power industry in the Western Electricity Coordinating Council that at the relevant time period, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with good business practices, reliability, economy, safety and expedition, and which practices, methods, standards and acts reflect due regard for operation and maintenance standards recommended by applicable equipment suppliers and manufacturers, operational limits, and all applicable laws and regulations. Prudent Electrical Practices are not intended to be limited to the optimum practice, method, standard or act to the exclusion of all others, but rather to those practices, methods and acts generally acceptable or approved by a significant portion of the electric power generation industry in the relevant region, during the relevant period, as described in the immediate preceding sentence.

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1.31. "Required Facility Documents" means all licenses, permits, authorizations, and agreements necessary for construction, operation, interconnection, and maintenance of the Facility including without limitation those set forth in Exhibit B.

1.32. "RPS Attributes" means all attributes related to the Net Output generated by the Facility that are required in order to provide PGE with "qualifying electricity," as that term is defined in Oregon's Renewable Portfolio Standard Act, Ore. Rev. Stat. 469A.010, in effect at the time of execution of this Agreement. RPS Attributes do not include Environmental Attributes that are greenhouse gas offsets from methane capture not associated with the generation of electricity and not needed to ensure that there are zero net emissions associated with the generation of electricity.

1.33. "Schedule" shall mean PGE Schedule 201 filed with the Oregon Public Utilities Commission ("Commission") in effect on the Effective Date of this Agreement and attached hereto as Exhibit D, the terms of which are hereby incorporated by reference.

1.34. "Senior Lien" means a prior lien which has precedence as to the property under the lien over another lien or encumbrance.

1.35. "Start-Up Lost Energy Value" means for the period after the date specified in Section 2.2.2 but prior to achievement of the Commercial Operation Date: zero, unless the Net Output is less than the pro-rated Pre-Commercial Operation Date Minimum Net Output for the applicable delay period, and the time-weighted average of the delay period's Mid-C Index Price for On-Peak Hours and Off-Peak Hours is greater than the time-weighted average of the delay period's Contract Price for On-Peak Hours and Off-Peak Hours, in which case Startup Lost Energy Value equals: (pro-rated Pre-Commercial Operation Date Minimum Net Output for the applicable period - Net Output for the applicable period) X (the lower of: the time-weighted average of the Contract Price for On-Peak hours and Off-Peak Hours during the applicable period; or (the time-weighted average of the Mid-C Index Price for On-Peak Hours and Off-Peak Hours during the applicable period - the time-weighted average of the Contract Price for On-Peak Hours and Off-Peak Hours during the applicable period)). The time-weighted average in this section will reflect the relative proportions of On-Peak Hours and Off-Peak Hours in each day.

1.36. "Start-Up Testing" means the completion of applicable required factory and start-up tests as set forth in Exhibit C.

1.37. "Step-in Rights" means the right of one party to assume an intervening position to satisfy all terms of an agreement in the event the other party fails to perform its obligations under the agreement.

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

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1.39. "Test Period" shall mean a period of sixty (60) days or a commercially reasonable period determined by the Seller.

References to Recitals, Sections, and Exhibits are to be the recitals, sections and exhibits of this Agreement.

## SECTION 2: TERM; COMMERCIAL OPERATION DATE

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

2.2. Time is of the essence of this Agreement, and Seller's ability to meet certain requirements prior to the Commercial Operation Date and to complete all requirements to establish the Commercial Operation Date is critically important. Therefore,

2.2.1 By thirty-five (35) months after the Effective Date [*date to be determined by the Seller*] Seller shall begin initial deliveries of Net Output; and

2.2.2 By thirty-six (36) month anniversary of the Effective Date [*date to be determined by the Seller subject to Section 2.2.3 below*], Seller shall have completed all requirements under Section 1.5 and shall have established the Commercial Operation Date.

2.2.3 Unless the Parties agree in writing that a later Commercial Operation Date is reasonable and necessary, the Commercial Operation Date shall be no more than three (3) years from the Effective Date. PGE will not unreasonably withhold agreement to a Commercial Operation Date that is more than three (3) years from the Effective date if the Seller has demonstrated that a later Commercial Operation Date is reasonable and necessary.

2.3. This Agreement shall terminate on the completion of the last day of the the sixteenth contract year, or the date the Agreement is terminated in accordance with Section 9 or 11, whichever is earlier ("Termination Date").

## SECTION 3: REPRESENTATIONS AND WARRANTIES

3.1. Seller and PGE represent, covenant, and warrant as follows:

3.1.1. Seller warrants it is a Limited Liability Corporation duly organized under the laws of Delaware.

3.1.2. Seller warrants that the execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on Seller or any valid order of any court, or any regulatory agency or other body having authority to which Seller is subject.

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3.1.3. Seller warrants that the Facility is and shall for the Term of this Agreement continue to be a "Qualifying Facility" ("QF") as that term is defined in the version of 18 C.F.R. Part 292 in effect on the Effective Date. Seller has provided the appropriate QF certification, which may include a Federal Energy Regulatory Commission ("FERC") self-certification to PGE prior to PGE's execution of this Agreement. At any time during the Term of this Agreement, PGE may require Seller to provide PGE with evidence satisfactory to PGE in its reasonable discretion that the Facility continues to qualify as a QF under all applicable requirements.

3.1.4. Seller warrants that it has not within the past two (2) years been the debtor in any bankruptcy proceeding, and Seller is and will continue to be for the Term of this Agreement current on all of its financial obligations.

3.1.5. Seller warrants that during the Term of this Agreement, all of Seller's right, title and interest in and to the Facility shall be free and clear of all liens and encumbrances other than liens and encumbrances arising from third-party financing of the Facility other than workers', mechanics', suppliers' or similar liens, or tax liens, in each case arising in the ordinary course of business that are either not yet due and payable or that have been released by means of a performance bond acceptable to PGE posted within eight (8) calendar days of the commencement of any proceeding to foreclose the lien.

3.1.6. Seller warrants that it will design and operate the Facility consistent with Prudent Electrical Practices.

3.1.7. Seller warrants that the Facility has a Nameplate Capacity Rating not greater than 10,000 kW.

3.1.8. Seller warrants that Net Dependable Capacity of the Facility is \_\_\_(during periods of peak local solar resource availability) 9,820 kW.

3.1.9. Seller estimates that the average annual Net Output to be delivered by the Facility to PGE is 16,000,000 kilowatt-hours ("kWh"), which amount PGE will include in its resource planning.

3.1.10. Seller represents and warrants that the Facility shall achieve the following Mechanical Availability Percentages ("Guarantee of Mechanical Availability"):

3.1.10.1 Ninety percent (90%) beginning in the first Contract Year and extending through the Term for the Facility, if the Facility was operational and sold electricity to PGE or another buyer prior to the Effective Date of this Agreement; or

3.1.10.2 Ninety percent (90%) beginning in Contract Year three and extending throughout the remainder of the Term.

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3.1.10.3 Annually, within 90 days of the end of each Contract Year Seller shall send to PGE a detailed written report demonstrating and providing evidence of the actual MAP for the previous Contract Year.

3.1.10.4 Seller's failure to meet the Guarantee of Mechanical Availability in a Calendar Year shall result in damages payable to PGE by Seller equal to the Lost Energy Value. PGE shall bill Seller for such damages in accordance with Section 8.

3.1.11. Seller will deliver from the Facility to PGE at the Point of Delivery Net Output not to exceed a maximum of 24,000,000 kWh of Net Output during each Contract Year ("Maximum Net Output").

3.1.12. By the Commercial Operation Date, Seller has entered into a Generation Interconnection Agreement for a term not less than the term of this Agreement.

3.1.13. PGE warrants that it has not within the past two (2) years been the debtor in any bankruptcy proceeding, and PGE is and will continue to be for the Term of this Agreement current on all of its financial obligations.

3.1.14. Seller warrants that (i) the Facility satisfies the eligibility requirements specified in the Definition of a Small Cogeneration Facility or Small Power Production Facility Eligible to Receive the Standard Renewable Rates and Standard Renewable PPA in PGE's Schedule and (ii) Seller will not make any changes in its ownership, control or management during the term of this Agreement that would cause it to not be in compliance with the Definition of a Small Cogeneration Facility or Small Power Production Facility Eligible to Receive the Standard Renewable Rates and Standard Renewable PPA in PGE's Schedule. Seller will provide, upon request by PGE not more frequently than every 36 months, such documentation and information as may be reasonably required to establish Seller's continued compliance with such Definition. PGE agrees to take reasonable steps to maintain the confidentiality of any portion of the above described documentation and information that the Seller identifies as confidential except PGE will provide all such confidential information to the Public Utility Commission of Oregon upon the Commission's request.

3.1.15. Seller warrants that it will comply with all requirements necessary for all Transferred RECs (as defined in Section 4.5) associated with Net Output to be issued, monitored, accounted for, and transferred by and through the Western Renewable Energy Generation System consistent with the provisions of OAR 330-160-0005 through OAR 330-160-0050. PGE warrants that it will reasonably cooperate in Seller's efforts to meet such requirements, including, for example serving as the qualified reporting entity for the Facility if the Facility is located in PGE's balancing authority.

**SECTION 4: DELIVERY OF POWER, PRICE AND ENVIRONMENTAL ATTRIBUTES**

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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.

4.3. Upon completion of construction of the Facility, Seller shall provide PGE an As-built Supplement to specify the actual Facility as built. Seller shall not increase the Nameplate Capacity Rating above that specified in Exhibit A or increase the ability of the Facility to deliver Net Output in quantities in excess of the Net Dependable Capacity, or the Maximum Net Output as described in Section 3.1.11 above, through any means including, but not limited to, replacement, modification, or addition of existing equipment, except with prior written notice to PGE. In the event Seller increases the Nameplate Capacity Rating of the Facility to no more than 10,000 kW pursuant to this section, PGE shall pay the Contract Price for the additional delivered Net Output. In the event Seller increases the Nameplate Capacity Rating to greater than 10,000 kW, then Seller shall be required to enter into a new power purchase agreement for all delivered Net Output proportionally related to the increase of Nameplate Capacity above 10,000 kW.

4.4. To the extent not otherwise provided in the Generation Interconnection Agreement, all costs associated with the modifications to PGE's interconnection facilities or electric system occasioned by or related to the interconnection of the Facility with PGE's system, or any increase in generating capability of the Facility, or any increase of delivery of Net Dependable Capacity from the Facility, shall be borne by Seller.

4.5. During the Renewable Resource Deficiency Period, Seller shall provide and PGE shall acquire the RPS Attributes for the Contract Years as specified in the Schedule and Seller shall retain ownership of all other Environmental Attributes (if any). During the Renewable Resource Sufficiency Period, 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. With respect to Environmental Attributes not transferred to PGE under this Agreement ("Seller-Retained Environmental Attributes") Seller may report under §1605(b) of the Energy Policy Act of 1992 or under any applicable program as belonging to Seller any of the Seller-Retained Environmental Attributes, and PGE shall not report under such program that such Seller-Retained Environmental Attributes belong to it. With respect to RPS Attributes transferred to PGE under this Agreement ("Transferred RECs"), PGE may report under §1605(b) of the Energy Policy Act of 1992 or under any applicable program as belonging to it any of the Transferred RECs, and Seller shall not report under such program that such Transferred RECs belong to it.

## SECTION 5: OPERATION AND CONTROL

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5.1. Seller shall operate and maintain the Facility in a safe manner in accordance with the Generation Interconnection Agreement, and Prudent Electrical Practices. PGE shall have no obligation to purchase Net Output from the Facility to the extent the interconnection of the Facility to PGE's electric system is disconnected, suspended or interrupted, in whole or in part, pursuant to the Generation Interconnection Agreement, or to the extent generation curtailment is required as a result of Seller's noncompliance with the Generation Interconnection Agreement. Seller is solely responsible for the operation and maintenance of the Facility. PGE shall not, by reason of its decision to inspect or not to inspect the Facility, or by any action or inaction taken with respect to any such inspection, assume or be held responsible for any liability or occurrence arising from the operation and maintenance by Seller of the Facility.

5.2. Seller agrees to provide sixty (60) days advance written notice of any scheduled maintenance that would require shut down of the Facility for any period of time.

5.3. If the Facility ceases operation for unscheduled maintenance, Seller immediately shall notify PGE of the necessity of such unscheduled maintenance, the time when such maintenance has occurred or will occur, and the anticipated duration of such maintenance. Seller shall take all reasonable measures and exercise its best efforts to avoid unscheduled maintenance, to limit the duration of such unscheduled maintenance, and to perform unscheduled maintenance during Off-Peak hours.

#### SECTION 6: CREDITWORTHINESS

In the event Seller: a) is unable to represent or warrant as required by Section 3 that it has not been a debtor in any bankruptcy proceeding within the past two (2) years; b) becomes such a debtor during the Term; or c) is not or will not be current on all its financial obligations, Seller shall immediately notify PGE and shall promptly (and in no less than 10 days after notifying PGE) provide default security in an amount reasonably acceptable to PGE in one of the following forms: Senior Lien, Step-in Rights, a Cash Escrow or Letter of Credit. The amount of such default security that shall be acceptable to PGE shall be equal to: (annual On Peak Hours) X (On Peak Price – Off Peak Price) X (Net Dependable Capacity). Notwithstanding the foregoing, in the event Seller is not current on construction related financial obligations, Seller shall notify PGE of such delinquency and PGE may, in its discretion, grant an exception to the requirements to provide default security if the QF has negotiated financial arrangements with the construction loan lender that mitigate Seller's financial risk to PGE.

#### SECTION 7: METERING

7.1. PGE shall design, furnish, install, own, inspect, test, maintain and replace all metering equipment at Seller's cost and as required pursuant to the Generation Interconnection Agreement.

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7.2. Metering shall be performed at the location and in a manner consistent with this Agreement and as specified in the Generation Interconnection Agreement. All Net Output purchased hereunder shall be adjusted to account for electrical losses, if any, between the point of metering and the Point of Delivery, so that the purchased amount reflects the net amount of power flowing into PGE's system at the Point of Delivery.

7.3. PGE shall periodically inspect, test, repair and replace the metering equipment as provided in the Generation Interconnection Agreement. If any of the inspections or tests discloses an error exceeding two (2%) percent of the actual energy delivery, either fast or slow, proper correction, based upon the inaccuracy found, shall be made of previous readings for the actual period during which the metering equipment rendered inaccurate measurements if that period can be ascertained. If the actual period cannot be ascertained, the proper correction shall be made to the measurements taken during the time the metering equipment was in service since last tested, but not exceeding three (3) months, in the amount the metering equipment shall have been shown to be in error by such test. Any correction in billings or payments resulting from a correction in the meter records shall be made in the next monthly billing or payment rendered. Such correction, when made, shall constitute full adjustment of any claim between Seller and PGE arising out of such inaccuracy of metering equipment.

7.4. To the extent not otherwise provided in the Generation Interconnection Agreement, all of PGE's costs relating to all metering equipment installed to accommodate Seller's Facility shall be borne by Seller.

#### SECTION 8: BILLINGS, COMPUTATIONS AND PAYMENTS

8.1. On or before the thirtieth (30<sup>th</sup>) day following the end of each Billing Period, PGE shall send to Seller payment for Seller's deliveries of Net Output to PGE, together with computations supporting such payment. PGE may offset any such payment to reflect amounts owing from Seller to PGE pursuant to this Agreement, the Generation Interconnection Agreement, and any other agreement related to the Facility between the Parties or otherwise. On or before the thirtieth (30<sup>th</sup>) day following the end of each Contract Year, PGE shall bill for any Lost Energy Value accrued pursuant to this Agreement.

8.2. Any amounts owing after the due date thereof shall bear interest at the Prime Rate plus two percent (2%) from the date due until paid; provided, however, that the interest rate shall at no time exceed the maximum rate allowed by applicable law.

#### SECTION 9: DEFAULT, REMEDIES AND TERMINATION

9.1. In addition to any other event that may constitute a default under this Agreement, the following events shall constitute defaults under this Agreement:



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9.1.1. Breach by Seller or PGE of a representation or warranty, except for Section 3.1.4, set forth in this Agreement.

9.1.2. Seller's failure to provide default security, if required by Section 6, prior to delivery of any Net Output to PGE or within 10 days of notice.

9.1.3. Seller's failure to meet the Guarantee of Mechanical Availability established in Section 3.1.10 for two consecutive Contract Years or Seller's failure to provide any written report required by that section.

9.1.4. If Seller is no longer a Qualifying Facility.

9.1.5. Failure of PGE to make any required payment pursuant to Section 8.1.

9.1.6. Seller's failure to meet the Commercial Operation Date.

9.2. In the event of a default under Section 9.1.6, PGE may provide Seller with written notice of default. Seller shall have one year in which to cure the default during which time the Seller shall pay PGE damages equal to the Lost Energy Value. If Seller is unable to cure the default, PGE may immediately terminate this Agreement as provided in Section 9.3. PGE's resource sufficiency/deficiency position shall have no bearing on PGE's right to terminate the Agreement under this Section 9.2.

9.3. In the event of a default under this Agreement, except as otherwise provided in this Agreement, the non-defaulting party may immediately terminate this Agreement at its sole discretion by delivering written notice to the other Party. In addition, the non-defaulting party may pursue any and all legal or equitable remedies provided by law or pursuant to this Agreement including damages related to the need to procure replacement power. A termination hereunder shall be effective upon the date of delivery of notice, as provided in Section 20. The rights provided in this Section 9 are cumulative such that the exercise of one or more rights shall not constitute a waiver of any other rights.

9.4. If this Agreement is terminated as provided in this Section 9 PGE shall make all payments, within thirty (30) days, that, pursuant to the terms of this Agreement, are owed to Seller as of the time of receipt of notice of default. PGE shall not be required to pay Seller for any Net Output delivered by Seller after such notice of default.

9.5. In the event PGE terminates this Agreement pursuant to this Section 9, and Seller wishes to again sell Net Output to PGE following such termination, PGE in its sole discretion may require that Seller shall do so subject to the terms of this Agreement, including but not limited to the Contract Price until the Term of this Agreement (as set forth in Section 2.3) would have run in due course had the Agreement remained in effect. At such time Seller and PGE agree to execute a written document ratifying the terms of this Agreement.

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9.6. Sections 9.1, 9.4, 9.5, 10, and 19.2 shall survive termination of this Agreement.

### SECTION 10: INDEMNIFICATION AND LIABILITY

10.1. Seller agrees to defend, indemnify and hold harmless PGE, its directors, officers, agents, and representatives against and from any and all loss, claims, actions or suits, including costs and attorney's fees, both at trial and on appeal, resulting from, or arising out of or in any way connected with Seller's delivery of electric power to PGE or with the facilities at or prior to the Point of Delivery, or otherwise arising out of this Agreement, including without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property belonging to PGE, Seller or others, excepting to the extent such loss, claim, action or suit may be caused by the negligence of PGE, its directors, officers, employees, agents or representatives.

10.2. PGE agrees to defend, indemnify and hold harmless Seller, its directors, officers, agents, and representatives against and from any and all loss, claims, actions or suits, including costs and attorney's fees, both at trial and on appeal, resulting from, or arising out of or in any way connected with PGE's receipt of electric power from Seller or with the facilities at or after the Point of Delivery, or otherwise arising out of this Agreement, including without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property belonging to PGE, Seller or others, excepting to the extent such loss, claim, action or suit may be caused by the negligence of Seller, its directors, officers, employees, agents or representatives.

10.3. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a Party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or to the public, nor affect the status of PGE as an independent public utility corporation or Seller as an independent individual or entity.

10.4. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR SPECIAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES, WHETHER ARISING FROM CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.

### SECTION 11: INSURANCE

11.1. Prior to the connection of the Facility to PGE's electric system, provided such Facility has a design capacity of 200 kW or more, Seller shall secure and continuously carry for the Term hereof, with an insurance company or companies rated not lower than "B+" by the A. M. Best Company, insurance policies for bodily injury and property damage liability. Such insurance shall include provisions or endorsements naming PGE, its directors, officers and employees as additional insureds; provisions that

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such insurance is primary insurance with respect to the interest of PGE and that any insurance or self-insurance maintained by PGE is excess and not contributory insurance with the insurance required hereunder; a cross-liability or severability of insurance interest clause; and provisions that such policies shall not be canceled or their limits of liability reduced without thirty (30) days' prior written notice to PGE. Initial limits of liability for all requirements under this section shall be \$1,000,000 million single limit, which limits may be required to be increased or decreased by PGE as PGE determines in its reasonable judgment economic conditions or claims experience may warrant.

11.2. Prior to the connection of the Facility to PGE's electric system, provided such facility has a design capacity of 200 kW or more, Seller shall secure and continuously carry for the Term hereof, in an insurance company or companies rated not lower than "B+" by the A. M. Best Company, insurance acceptable to PGE against property damage or destruction in an amount not less than the cost of replacement of the Facility. Seller promptly shall notify PGE of any loss or damage to the Facility. Unless the Parties agree otherwise, Seller shall repair or replace the damaged or destroyed Facility, or if the facility is destroyed or substantially destroyed, it may terminate this Agreement. Such termination shall be effective upon receipt by PGE of written notice from Seller. Seller shall waive its insurers' rights of subrogation against PGE regarding Facility property losses.

11.3. Prior to the connection of the Facility to PGE's electric system and at all other times such insurance policies are renewed or changed, Seller shall provide PGE with a copy of each insurance policy required under this Section, certified as a true copy by an authorized representative of the issuing insurance company or, at the discretion of PGE, in lieu thereof, a certificate in a form satisfactory to PGE certifying the issuance of such insurance. If Seller fails to provide PGE with copies of such currently effective insurance policies or certificates of insurance, PGE at its sole discretion and without limitation of other remedies, may upon ten (10) days advance written notice by certified or registered mail to Seller either withhold payments due Seller until PGE has received such documents, or purchase the satisfactory insurance and offset the cost of obtaining such insurance from subsequent power purchase payments under this Agreement.

## SECTION 12: FORCE MAJEURE

12.1. As used in this Agreement, "Force Majeure" or "an event of Force Majeure" means any cause beyond the reasonable control of the Seller or of PGE which, despite the exercise of due diligence, such Party is unable to prevent or overcome. By way of example, Force Majeure may include but is not limited to acts of God, fire, flood, storms, wars, hostilities, civil strife, strikes, and other labor disturbances, earthquakes, fires, lightning, epidemics, sabotage, restraint by court order or other delay or failure in the performance as a result of any action or inaction on behalf of a public authority which by the exercise of reasonable foresight such Party could not reasonably have been expected to avoid and by the exercise of due diligence, it shall be unable to overcome, subject, in each case, to the requirements of the first

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sentence of this paragraph. Force Majeure, however, specifically excludes the cost or availability of resources to operate the Facility, changes in market conditions that affect the price of energy or transmission, wind or water droughts, and obligations for the payment of money when due.

12.2. If either Party is rendered wholly or in part unable to perform its obligation under this Agreement because of an event of Force Majeure, that Party shall be excused from whatever performance is affected by the event of Force Majeure to the extent and for the duration of the Force Majeure, after which such Party shall recommence performance of such obligation, provided that:

12.2.1. the non-performing Party shall, promptly, but in any case within one (1) week after the occurrence of the Force Majeure, give the other Party written notice describing the particulars of the occurrence; and

12.2.2. the suspension of performance shall be of no greater scope and of no longer duration than is required by the Force Majeure; and

12.2.3. the non-performing Party uses its best efforts to remedy its inability to perform its obligations under this Agreement.

12.3. No obligations of either Party which arose before the Force Majeure causing the suspension of performance shall be excused as a result of the Force Majeure.

12.4. Neither Party shall be required to settle any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to the Party's best interests.

### SECTION 13: SEVERAL OBLIGATIONS

Nothing contained in this Agreement shall ever be construed to create an association, trust, partnership or joint venture or to impose a trust or partnership duty, obligation or liability between the Parties. If Seller includes two or more parties, each such party shall be jointly and severally liable for Seller's obligations under this Agreement.

### SECTION 14: CHOICE OF LAW

This Agreement shall be interpreted and enforced in accordance with the laws of the state of Oregon, excluding any choice of law rules which may direct the application of the laws of another jurisdiction.

### SECTION 15: PARTIAL INVALIDITY AND PURPA REPEAL

It is not the intention of the Parties to violate any laws governing the subject matter of this Agreement. If any of the terms of the Agreement are finally held or

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determined to be invalid, illegal or void as being contrary to any applicable law or public policy, all other terms of the Agreement shall remain in effect. If any terms are finally held or determined to be invalid, illegal or void, the Parties shall enter into negotiations concerning the terms affected by such decision for the purpose of achieving conformity with requirements of any applicable law and the intent of the Parties to this Agreement.

In the event the Public Utility Regulatory Policies Act (PURPA) is repealed, this Agreement shall not terminate prior to the Termination Date, unless such termination is mandated by state or federal law.

SECTION 16: WAIVER

Any waiver at any time by either Party of its rights with respect to a default under this Agreement or with respect to any other matters arising in connection with this Agreement must be in writing, and such waiver shall not be deemed a waiver with respect to any subsequent default or other matter.

SECTION 17: GOVERNMENTAL JURISDICTION AND AUTHORIZATIONS

This Agreement is subject to the jurisdiction of those governmental agencies having control over either Party or this Agreement. Seller shall at all times maintain in effect all local, state and federal licenses, permits and other approvals as then may be required by law for the construction, operation and maintenance of the Facility, and shall provide upon request copies of the same to PGE.

SECTION 18: SUCCESSORS AND ASSIGNS

This Agreement and all of the terms hereof shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties. No assignment hereof by either Party shall become effective without the written consent of the other Party being first obtained and such consent shall not be unreasonably withheld. Notwithstanding the foregoing, either Party may assign this Agreement without the other Party's consent as part of (a) a sale of all or substantially all of the assigning Party's assets, or (b) a merger, consolidation or other reorganization of the assigning Party.

SECTION 19: ENTIRE AGREEMENT

19.1. This Agreement supersedes all prior agreements, proposals, representations, negotiations, discussions or letters, whether oral or in writing, regarding PGE's purchase of Net Output from the Facility. No modification of this Agreement shall be effective unless it is in writing and signed by both Parties.

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19.2. By executing this Agreement, Seller releases PGE from any third party claims related to the Facility, known or unknown, which may have arisen prior to the Effective Date.

SECTION 20: NOTICES

20.1. All notices except as otherwise provided in this Agreement shall be in writing, shall be directed as follows and shall be considered delivered if delivered in person or when deposited in the U.S. Mail, postage prepaid by certified or registered mail and return receipt requested:

To Seller: Dayton Solar I LLC  
3500 South DuPont Highway  
Dover, DE 19901  
jstephens@newsunenergy.net

with a copy to: Stephane Nguyen  
c/o Reed Smith  
1901 Avenue of the Stars #700  
Los Angeles, CA 90067-6078  
snguyen@reedsmith.com

and a copy to: Greg Adams  
c/o Richardson Adams, PLLC  
515 N. 27th Street, 83702  
P.O. Box 7218, 83707  
Boise, Idaho  
greg@richardsonadams.com

To PGE: Contracts Manager  
QF Contracts, 3WTC0306  
PGE - 121 SW Salmon St.  
Portland, Oregon 97204

20.2 The Parties may change the person to whom such notices are addressed, or their addresses, by providing written notices thereof in accordance with this Section 20.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in their respective names as of the Effective Date.

PGE

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By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

DAYTON SOLAR I LLC  
\_(Name Seller)

By: \_\_\_\_\_  
Name: Jacob Stephens  
Title: Authorized Representative  
  
Date: \_\_\_\_\_

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EXHIBIT A  
DESCRIPTION OF SELLER'S FACILITY

**[Seller to Complete]**

Dayton Solar I is a photovoltaics-based solar generating facility which upon reaching full commercial operations have nameplate capacity of 10 MW-AC net output at the point of interconnection subject to available solar energy input. The facility will consist of the following primary equipment:

1. PV Modules - Commercially-available photovoltaic modules for utility-scale DC energy production. Nominal per module DC production rating of 350W +/-50W-DC. Qty <= [14.5MM/(module rating)].
2. Inverter AC Generator Units: Commercially-available string inverter (90kW-AC, nominal) convert DC to AC power, collected by AC wiring to switchboard. Each such collected aggregation of inverters shall constitute a single sub-generator for the facility, which once all aggregated shall constitute the entire generator for the facility.
3. Pad-mounted transformers: for each sub-generator shall transform inverter output voltage to plant AC collection voltage (12.47 KV, nominally)
4. Racking systems, commercially-available, will mount the PV Modules and direct them and control their angle to receive light from the sun. Racking systems will be arranged in generally uniform rows on the facility site.
5. Additional interconnection, transformation, switching, storage, metering, communications, tie-line, and meteorological observations facilities as may be required, subject to final interconnection, permitting, and design requirements.



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**EXHIBIT B  
REQUIRED FACILITY DOCUMENTS**

**[Seller list all permits and authorizations required for this project]**

1. Seller's Generation Interconnection Agreement
2. Yamhill County CUP & Building Permits
3. EFSC Site Certificate (if final project footprint > 100 acres)
4. Additional as may be determined by Seller to be required for facility permitting, construction, and interconnection.

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EXHIBIT C  
START-UP TESTING

**Seller-identified start-up tests**

As part of the start-up of Facility, Seller will perform the following tests, in addition to any further tests deemed required in coordination with EPC contractor (the Facility's manufacturer) and primary supply vendors (PV modules, inverters, transformers) and interconnecting utility. This will include required factory checks and tests necessary to determine that the equipment systems and subsystems have been properly manufactured and installed, function properly, and are in a condition to permit safe and efficient start-up of the Facility, which may include but are not limited to (as applicable). This will include required start-up tests and checks which necessary to determine that all features and equipment, systems, and subsystems have been properly designed, manufactured, installed and adjusted, function properly, and are capable of operating simultaneously in such condition that the Facility is capable of continuous delivery into PGE's electrical system, which may include but are not limited to (as applicable):

1. Validation of mechanical assembly completion for sign-off on EPC vendor warranty of mechanical completion and workmanship, including racking system, wiring (module connections, DC collection, string terminations, inverter connections to collected strings, AC delivery to switchboard and step-up/collection transformers, and AC collection system deliver to interconnection facilities), inverter mounting, and module installation.
2. Electrical performance validation by facility PV string and sub-generator, per insolation input, including:
  - a) DC wiring inputs to inverters
  - b) AC wiring delivery to transformers
3. Inverter Commissioning, per manufacturer specifications, including commissioning report;
4. Facility daily start-up and shut-down automation confirmed;
5. Energization of transformers;
6. Full system performance test;
7. Interconnection facilities: Commissioning of on-site, tie-line, and off-site interconnection facilities (as applicable), including switchyard, substation, breakers, and metering equipment (as applicable), in coordination with interconnecting utility and performing electrical contractor;
8. Cataloguing of installed equipment on-site, including primary equipment serial numbers and manufacturer information for O&M documentation;
9. Complete pre-parallel checks with PGE;
10. Test energy delivery and metering checks.
11. Excitation and voltage regulation operation tests per insolation inputs.
12. Meteorological station commissioning and report;
13. Facility communications equipment commissioning and report; and
14. Other tests as may be required by equipment manufacturers.

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EXHIBIT D  
SCHEDULE

**[Attach currently in-effect Schedule 201]**

**UM 1931 NewSun Parties Exhibit 129**

December 18, 2015, Email from  
Jake Stephens to Bruce True

Message

**From:** Jake Stephens [jake@jakestephens.com]  
**Sent:** 12/18/2015 4:58:31 PM  
**To:** Bruce True [bruce.true@pgn.com]  
**Subject:** QF - Fort Rock Solar I and Fort Rock Solar II - SIGNED SUBMISSION  
**Attachments:** Schedule 201 RENEWABLE Off System Variable PPA\_Effective\_09.23.15 - FORT ROCK SOLAR II v0 CLEAN (submitted to PGE 2015.12.18) SIGNED BY SELLER.pdf; Schedule 201 RENEWABLE Off System Variable PPA\_Effective\_12.18.15 - FORT ROCK SOLAR II.docx; Schedule 201 Renewable Off-System PPA FORT ROCK SOLAR II effective December 18, 2015 redline against Blank Standard PPA Form.docx; Schedule 201 Renewable Off-System PPA FORT ROCK SOLAR II effective December 18, 2015 redline against Starvation v1.docx; Form 556 - Fort Rock Solar II 2015.12.18.pdf; Form 556 - Fort Rock Solar I 2015.12.18.pdf; Schedule 201 RENEWABLE Off System Variable PPA\_Effective\_09.23.15 - FORT ROCK SOLAR I v0 CLEAN (submitted to PGE 2015.12.18) SIGNED BY SELLER.pdf; Schedule 201 RENEWABLE Off System Variable PPA\_Effective\_12.18.15 - FORT ROCK SOLAR I - CLEAN.docx; Schedule 201 Renewable Off-System PPA FORT ROCK SOLAR I effective December 18, 2015 redline against Blank Standard PPA Form.docx; Schedule 201 Renewable Off-System PPA FORT ROCK SOLAR I effective December 18, 2015 redline against Starvation v1.docx

Dear Bruce,

SUBMISSION: As regards the planned 10 MW Qualified Facility "Fort Rock Solar I", on behalf of its owner Fort Rock Solar I LLC, and "Fort Rock Solar II", on behalf of its owner Fort Rock Solar I LLC, each planned for construction in Lake County, OR, please find attached:

1a) Form 556, per filing with FERC

2) SIGNED COPY of the PGE Schedule 201 Standard Renewable Off-System Variable Power Purchase Agreement for the Starvation Solar I and which agreement Starvation Solar I LLC considers to be complete and acceptable as presented.

Based on my prior correspondence with you on other projects, I expect no issues from PGE as to the content of this PPA, as it is identical in form to the submission of the Starvation Solar I PPA which PGE has confirmed is acceptable. While we disagree on the OPUC requirements as relates term length and fixed pricing period, this submission provides for a term ending 16 years after the Effective Date and a COD 3 years after the Effective Date.

The only other changes for these submissions vs Starvation Solar I are for ownership, project name, project location, and scaling the energy production for the Starvation Solar I site. GIA is with BPA, Thus it is executed and final for Seller per Seller's commitment to sell on under the PGE 9/23/2015 standard form Schedule 201 contract for off-system renewables in effect at the time of submission under the applicable solar pricing.

3) Redline from PGE 9/23/2015 form, the effective Schedule 201 at the time of submission and Effective Date, as here signed.

I appreciate your assistance and look forward to the formal execution of this agreement by PGE. I presume that if the document is signed earlier or later by PGE that the Effective Date will be updated accordingly.

I'll try to follow up on Thursday or Friday.

Best regards,

Jake Stephens  
Principal  
NewSun Energy Holdings Oregon LLC  
520-981-7303

**UM 1931 NewSun Parties Exhibit 130**

Attachment #1 to Email in Exhibit 129:  
Fort Rock Solar II LLC PPA

## STANDARD RENEWABLE OFF-SYSTEM VARIABLE POWER PURCHASE AGREEMENT

THIS AGREEMENT, entered into this 18th day, December 2015, is between FORT ROCK SOLAR II LLC ("Seller") and Portland General Electric Company ("PGE") (hereinafter each a "Party" or collectively, "Parties").

### RECITALS

Seller intends to construct, own, operate and maintain a photovoltaics-based solar generation facility for the generation of electric power located in Lake County, Oregon with a Nameplate Capacity Rating of 10,000 kilowatt-AC ("kW"), as further described in Exhibit A ("Facility"); and

Seller intends to operate the Facility as a "Qualifying Facility," as such term is defined in Section 3.1.3, below.

Seller shall sell and PGE shall purchase the entire Net Output, as such term is defined in Section 1.21, below, from the Facility in accordance with the terms and conditions of this Agreement.

### AGREEMENT

NOW, THEREFORE, the Parties mutually agree as follows:

#### SECTION 1: DEFINITIONS

When used in this Agreement, the following terms shall have the following meanings:

1.1. "As-built Supplement" means the supplement to Exhibit A provided by Seller in accordance with Section 4.3 following completion of construction of the Facility, describing the Facility as actually built.

1.2. "Base Hours" is defined as the total number of hours in each Contract Year (8,760 or 8,784 for leap year)

1.3. "Billing Period" means from the start of the first day of each calendar month to the end of the last day of each calendar month.

1.4. "Cash Escrow" means an agreement by two parties to place money into the custody of a third party for delivery to a grantee only after the fulfillment of the conditions specified.

1.5. "Commercial Operation Date" means the date that the Facility is deemed by PGE to be fully operational and reliable. PGE may, at its discretion require, among other things, that all of the following events have occurred:

1.5.1. (facilities with nameplate under 500 kW exempt from following requirement) PGE has received a certificate addressed to PGE from a Licensed Professional Engineer ("LPE") acceptable to PGE in its reasonable judgment stating that the Facility is able to generate electric power reliably in accordance with the terms

and conditions of this Agreement (certifications required under this Section 1.5 can be provided by one or more LPEs);

1.5.2. Start-Up Testing of the Facility has been completed in accordance with Section 1.36;

1.5.3. (facilities with nameplate under 500 kW exempt from following requirement) After PGE has received notice of completion of Start-Up Testing, PGE has received a certificate addressed to PGE from an LPE stating that the Facility has operated for testing purposes under this Agreement and was continuously mechanically available for operation for a minimum of 120 hours. The Facility must provide ten (10) working days written notice to PGE prior to the start of the initial testing period. If the mechanical availability of the Facility is interrupted during this initial testing period or any subsequent testing period, the Facility shall promptly start a new Test Period and provide PGE forty-eight (48) hours written notice prior to the start of such testing period;

1.5.4. (facilities with nameplate under 500 kW exempt from following requirement) PGE has received a certificate addressed to PGE from an LPE stating that all required interconnection facilities have been constructed and all required interconnection tests have been completed;

1.5.5. (facilities with nameplate under 500 kW exempt from following requirement) PGE has received a certificate addressed to PGE from an LPE stating that Seller has obtained all Required Facility Documents and, if requested by PGE in writing, has provided copies of any or all such requested Required Facility Documents;

1.5.6. PGE has received a copy of the executed Generation Interconnection and Transmission Agreements.

1.6. "Contract Price" means the applicable price, including on-peak and off-peak prices, as specified in the Schedule.

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.

1.9. "Environmental Attributes" shall mean any and all claims, credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, resulting from the avoidance of the emission of any gas, chemical or other substance to the air, soil or water. Environmental Attributes include but are not limited to: (1) any avoided emissions of pollutants to the air, soil or water such as (subject to the foregoing) sulfur oxides (SO<sub>x</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO), and other pollutants; and (2) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), and other greenhouse gasses (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere.

1.10. "Facility" has the meaning set forth in the Recitals.



1.11. "Generation Interconnection Agreement" means an agreement governing the interconnection of the Facility with Bonneville Power Administration's electric system.

1.12. "Generation Unit" means each separate electrical generator that contributes toward Nameplate Capacity Rating included in Exhibit A. For solar facilities, a generating unit is a complete solar electrical generation system within the Facility that is able to generate and deliver energy to the Point of Delivery independent of other Generation Units within the same Facility.

1.13. "Letter of Credit" means an engagement by a bank or other person made at the request of a customer that the issuer will honor drafts or other demands for payment upon compliance with the conditions specified in the letter of credit.

1.14. "Licensed Professional Engineer" or "LPE" means a person who is licensed to practice engineering in the state where the Facility is located, who has no economic relationship, association, or nexus with the Seller, and who is not a representative of a consulting engineer, contractor, designer or other individual involved in the development of the Facility, or of a manufacturer or supplier of any equipment installed in the Facility. Such Licensed Professional Engineer shall be licensed in an appropriate engineering discipline for the required certification being made and be acceptable to PGE in its reasonable judgment.

1.15. "Lost Energy" means "Lost Energy" means ((the Guarantee of Mechanical Availability as set forth in 3.1.10 / MAP) X Net Output for a Calendar Year) – Net Output for the Calendar Year. Lost Energy shall be zero unless the result of the calculation in this subsection results in a positive number.

1.16. "Lost Energy Value" means Lost Energy X the excess of the annual time-weighted average Mid-C Index Price for On Peak Hours and Off Peak Hours over the time weighted average Contract Price for On Peak and Off Peak Hours for the corresponding time period (provided that such excess shall not exceed the Contract Price and further provided that Lost Energy is deemed to be zero prior to reaching the Commercial Operation Date) plus any reasonable costs incurred by PGE to purchase replacement power and/or transmission to deliver the replacement power to the Point of Delivery (For Start-Up Lost Energy Value See 1.35).

1.17. "Mechanical Availability Percentage" or "MAP" shall mean that percentage for any Contract Year for the Facility calculated in accordance with the following formula:

$$\text{MAP} = 100 \times (\text{Operational Hours}) / (\text{Base Hours} \times \text{Number of Units})$$

1.18. "Mid-C Index Price" means the Day Ahead Intercontinental Exchange ("ICE") index price for the bilateral OTC market for energy at the Mid-C Physical for Average On Peak Power and Average Off Peak Power found on the following website: <https://www.theice.com/products/OTC/Physical-Energy/Electricity>. In the event ICE no longer publishes this index, PGE and the Seller agree to select an alternative successor index representative of the Mid-C trading hub.

1.19. "Nameplate Capacity Rating" means the maximum capacity of the Facility as stated by the manufacturer, expressed in kW, which shall not exceed 10,000 kW.

1.20. "Net Dependable Capacity" means the maximum capacity the Facility can sustain over a specified period modified for seasonal limitations, if any, and reduced by the capacity required for station service or auxiliaries.

1.21. "Net Output" means all energy expressed in kWhs produced by the Facility, less station and other onsite use and less transformation and transmission losses.

1.22. "Number of Units" means the number of Generation Units in the Facility as specified in Exhibit A.

1.23. "Off-Peak Hours" has the meaning provided in the Schedule.

1.24. "On-Peak Hours" has the meaning provided in the Schedule.

1.25. "Operational Hours" for the Facility means the total across all Generation Units of the number of hours each of the Facility's Generation Units are potentially capable of producing power at its Nameplate Capacity Rating regardless of actual weather conditions, season and the time of day or night, without any mechanical operating constraint or restriction, and potentially capable of delivering such power to the Point of Delivery in a Contract Year. During up to, but not more than, two hundred (200) hours of Planned Maintenance during a Contract Year for each Generation Unit and hours during which an event of Force Majeure exists, a Generation Unit shall be considered potentially capable of delivering such power to the Point of Delivery. For example, in the absence of any Planned Maintenance beyond 200 hours on any Generation Unit or Event of Force Majeure, the Operational Hours for a wind farm with five (5) separate two (2) MW turbines would be 43,800 for a Contract Year.

1.26. "Planned Maintenance" means outages scheduled ninety (90) days in advance, with PGE's prior written consent, which shall not be unreasonably withheld.

1.27. "Point of Delivery" means the PGE system.

1.28. "Pre-Commercial Operation Date Minimum Net Output" shall mean, unless such MWh is specifically set forth by Seller in Exhibit A, an amount in MWh equal to seventy-five percent (75%) of Nameplate Capacity Rating X thirty percent (30%) for a wind or other renewable QF or fifty percent (50%) for a solar QF X (whole months since the date selected in Section 2.2.1 / 12) X (8760 hours – 200 hours (assumed Planned Maintenance)) for each month. If Seller has provided specific expected monthly Net Output amounts for the Facility in Exhibit A, "Pre-Commercial Operation Date Minimum Net Output" shall mean seventy-five percent (75%) X expected net output set forth in Exhibit A for each month.

1.29. "Prime Rate" means the publicly announced prime rate or reference rate for commercial loans to large businesses with the highest credit rating in the United States in effect from time to time quoted by Citibank, N.A. If a Citibank, N.A. prime rate is not available, the applicable Prime Rate shall be the announced prime rate or reference rate for commercial loans in effect from time to time quoted by a bank with \$10 billion or more in assets in New York City, N.Y., selected by the Party to whom interest based on the prime rate is being paid.

1.30. "Prudent Electrical Practices" means those practices, methods, standards and acts engaged in or approved by a significant portion of the electric power industry in the Western Electricity Coordinating Council that at the relevant time period, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with good business practices, reliability, economy, safety and expedition, and which practices, methods, standards and acts reflect due regard for operation and maintenance standards recommended by applicable equipment suppliers and manufacturers, operational limits, and all applicable laws and regulations. Prudent Electrical Practices are not intended to be limited to the optimum practice, method, standard or act to the exclusion of all others, but rather to those practices, methods and acts generally acceptable or approved by a significant portion of the electric power generation industry in the relevant region, during the relevant period, as described in the immediate preceding sentence.

1.31. "Required Facility Documents" means all licenses, permits, authorizations, and agreements necessary for construction, operation, interconnection, and maintenance of the Facility including without limitation those set forth in Exhibit B.

1.32. "RPS Attributes" means all attributes related to the Net Output generated by the Facility that are required in order to provide PGE with "qualifying electricity," as that term is defined in Oregon's Renewable Portfolio Standard Act, Ore. Rev. Stat. 469A.010, in effect at the time of execution of this Agreement. RPS Attributes do not include Environmental Attributes that are greenhouse gas offsets from methane capture not associated with the generation of electricity and not needed to ensure that there are zero net emissions associated with the generation of electricity.

1.33. "Schedule" shall mean PGE Schedule 201 filed with the Oregon Public Utilities Commission ("Commission") in effect on the Effective Date of this Agreement and attached hereto as Exhibit D, the terms of which are hereby incorporated by reference.

1.34. "Senior Lien" means a prior lien which has precedence as to the property under the lien over another lien or encumbrance

1.35. "Start-Up Lost Energy Value" means for the period after the date specified in Section 2.2.2 but prior to achievement of the Commercial Operation Date: zero, unless the Net Output is less than the pro-rated Pre-Commercial Operation Date Minimum Net Output for the applicable delay period, and the time-weighted average of the delay period's Mid-C Index Price for On-Peak Hours and Off-Peak Hours is greater than the time-weighted average of the delay period's Contract Price for On-Peak Hours and Off-Peak Hours, in which case Startup Lost Energy Value equals: (pro-rated Pre-Commercial Operation Date Minimum Net Output for the applicable period - Net Output for the applicable period) X (the lower of: the time-weighted average of the Contract Price for On-Peak hours and Off-Peak Hours during the applicable period; or (the time-weighted average of the Mid-C Index Price for On-Peak Hours and Off-Peak Hours during the applicable period - the time-weighted average of the Contract Price for On-Peak Hours and Off-Peak Hours during the applicable period)). The time-weighted

average in this section will reflect the relative proportions of On-Peak Hours and Off-Peak Hours in each day.

1.36. "Start-Up Testing" means the completion of applicable required factory and start-up tests as set forth in Exhibit C.

1.37. "Step-in Rights" means the right of one party to assume an intervening position to satisfy all terms of an agreement in the event the other party fails to perform its obligations under the agreement.

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

1.39. "Test Period" shall mean a period of sixty (60) days or a commercially reasonable period determined by the Seller.

1.40. "Transmission Agreement" means an agreement executed by the Seller and the Transmission Provider(s) for Transmission Services.

1.41. "Transmission Curtailment" means a limitation on Seller's ability to deliver any portion of the scheduled energy to PGE due to the unavailability of transmission to the Point of Delivery (for any reason other than Force Majeure).

1.42. "Transmission Curtailment Replacement Energy Cost" means the greater of zero or the amount calculated as: ((Mid-C Index Price – Contract Price) X curtailed energy) for periods of Transmission Curtailment.

1.43. "Transmission Provider(s)" means the signatory (other than the Seller) to the Transmission Agreement.

1.44. "Transmission Services" means any and all services (including but not limited to ancillary services and control area services) required for the firm transmission and delivery of Energy from the Facility to the Point of Delivery for a term not less than the Term of this Agreement.

References to Recitals, Sections, and Exhibits are to be the recitals, sections and exhibits of this Agreement.

## SECTION 2: TERM; COMMERCIAL OPERATION DATE

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

2.2. Time is of the essence of this Agreement, and Seller's ability to meet certain requirements prior to the Commercial Operation Date and to complete all requirements to establish the Commercial Operation Date is critically important. Therefore,

2.2.1. By thirty-five (35) months after the Effective Date Seller shall begin initial deliveries of Net Output; and

2.2.2. By the thirty-six (36) month anniversary of the Effective Date, *subject to Section 2.2.3 below*, Seller shall have completed all requirements under Section 1.5 and shall have established the Commercial Operation Date.

2.2.3. Unless the Parties agree in writing that a later Commercial Operation Date is reasonable and necessary, the Commercial Operation Date shall be no more than three (3) years from the Effective Date. PGE will not unreasonably withhold agreement to a Commercial Operation Date that is more than three (3) years from the Effective date if the Seller has demonstrated that a later Commercial Operation Date is reasonable and necessary.

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

### SECTION 3: REPRESENTATIONS AND WARRANTIES

3.1. Seller and PGE represent, covenant, and warrant as follows:

3.1.1. Seller warrants it is a Limited Liability Corporation duly organized under the laws of Delaware.

3.1.2. Seller warrants that the execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on Seller or any valid order of any court, or any regulatory agency or other body having authority to which Seller is subject.

3.1.3. Seller warrants that the Facility is and shall for the Term of this Agreement continue to be a "Qualifying Facility" ("QF") as that term is defined in the version of 18 C.F.R. Part 292 in effect on the Effective Date. Seller has provided the appropriate QF certification, which may include a Federal Energy Regulatory Commission ("FERC") self-certification to PGE prior to PGE's execution of this Agreement. At any time during the Term of this Agreement, PGE may require Seller to provide PGE with evidence satisfactory to PGE in its reasonable discretion that the Facility continues to qualify as a QF under all applicable requirements.

3.1.4. Seller warrants that it has not within the past two (2) years been the debtor in any bankruptcy proceeding, and Seller is and will continue to be for the Term of this Agreement current on all of its financial obligations.

3.1.5. Seller warrants that during the Term of this Agreement, all of Seller's right, title and interest in and to the Facility shall be free and clear of all liens and encumbrances other than liens and encumbrances arising from third-party financing of the Facility other than workers', mechanics', suppliers' or similar liens, or tax liens, in each case arising in the ordinary course of business that are either not yet due and payable or that have been released by means of a performance bond acceptable to PGE posted within eight (8) calendar days of the commencement of any proceeding to foreclose the lien.

3.1.6. Seller warrants that it will design and operate the Facility consistent with Prudent Electrical Practices.

3.1.7. Seller warrants that the Facility has a Nameplate Capacity Rating not greater than 10,000 kW.

3.1.8. Seller warrants that Net Dependable Capacity of the Facility is 9,920 kW.

3.1.9. Seller estimates that the average annual Net Output to be delivered by the Facility to PGE is 19,200,000 kilowatt-hours ("kWh"), which amount PGE will include in its resource planning.

3.1.10. Seller represents and warrants that the Facility shall achieve the following Mechanical Availability Percentages ("Guarantee of Mechanical Availability"):

3.1.10.1. Ninety percent (90%) beginning in the first Contract Year and extending through the Term for the Facility, if the Facility was operational and sold electricity to PGE or another buyer prior to the Effective Date of this Agreement; or

3.1.10.2. Ninety percent (90%) beginning in Contract Year three and extending throughout the remainder of the Term.

3.1.10.3. Annually, within 90 days of the end of each Contract Year, Seller shall send to PGE a detailed written report demonstrating and providing evidence of the actual MAP for the previous Contract Year.

3.1.10.4. Seller's failure to meet the Guarantee of Mechanical Availability in a Calendar Year shall result in damages payable to PGE by Seller equal to the Lost Energy Value. PGE shall bill Seller for such damages in accordance with Section 7.

3.1.11. Seller will deliver from the Facility to PGE at the Point of Delivery Net Output not to exceed a maximum of 30,000,000 kWh of Net Output during each Contract Year ("Maximum Net Output"). The cost of delivering energy from the Facility to PGE is the sole responsibility of the Seller.

3.1.12. By the Commercial Operation Date, Seller has entered into a Generation Interconnection Agreement for a term not less than the term of this Agreement.

3.1.13. PGE warrants that it has not within the past two (2) years been the debtor in any bankruptcy proceeding, and PGE is and will continue to be for the Term of this Agreement current on all of its financial obligations.

3.1.14. Seller warrants that the Facility satisfies the eligibility requirements specified in the Definition of a Small Cogeneration Facility or Small Power Production Facility Eligible to Receive the Standard Renewable Rates and Standard Renewable PPA in PGE's Schedule and Seller will not make any changes in its ownership, control or management during the term of this Agreement that would cause it to not be in compliance with the Definition of a Small Cogeneration Facility or Small Power Production Facility Eligible to Receive the Standard Renewable Rates and Standard Renewable PPA in PGE's Schedule. Seller will provide, upon request by PGE not more frequently than every 36 months, such documentation and information as may be reasonably required to establish Seller's continued compliance with such Definition. PGE agrees to take reasonable steps to maintain the confidentiality of any portion of the above described documentation and information that the Seller identifies as confidential except PGE will provide all such confidential information to the Commission upon the Commission's request.

3.1.15. Seller warrants that it will comply with all requirements necessary for all Transferred RECs (as defined in Section 4.5) associated with Net Output to be issued, monitored, accounted for, and transferred by and through the Western Renewable

Energy Generation System consistent with the provisions of OAR 330-160-0005 through OAR 330-160-0050. PGE warrants that it will reasonably cooperate in Seller's efforts to meet such requirements, including, for example serving as the qualified reporting entity for the Facility if the Facility is located in PGE's balancing authority.

#### 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.

4.3. Upon completion of construction of the Facility, Seller shall provide PGE an As-built Supplement to specify the actual Facility as built. Seller shall not increase the Nameplate Capacity Rating above that specified in Exhibit A or increase the ability of the Facility to deliver Net Output in quantities in excess of the Net Dependable Capacity, or the Maximum Net Output as described in Section 3.1.11 above, through any means including, but not limited to, replacement, modification, or addition of existing equipment, except with prior written notice to PGE. In the event Seller increases the Nameplate Capacity Rating of the Facility to no more than 10,000 kW pursuant to this section, PGE shall pay the Contract Price for the additional delivered Net Output. In the event Seller increases the Nameplate Capacity Rating to greater than 10,000 kW, then Seller shall be required to enter into a new power purchase agreement for all delivered Net Output proportionally related to the increase of Nameplate Capacity above 10,000 kW.

4.4. Seller shall provide preschedules for all deliveries of energy hereunder, including identification of receiving and generating control areas, by 9:00:00 PPT on the last business day prior to the scheduled date of delivery. All energy shall be scheduled according to the most current North America Energy Reliability Corporation (NERC) and Western Electricity Coordinating Council (WECC) scheduling rules and practices. The Parties' respective representatives shall maintain hourly real-time schedule coordination; provided, however, that in the absence of such coordination, the hourly schedule established by the exchange of preschedules shall be considered final. Seller and PGE shall maintain records of hourly energy schedules for accounting and operating purposes. The final E-Tag shall be the controlling evidence of the Parties' schedule. All energy shall be prescheduled according to customary WECC scheduling practices. Seller shall make commercially reasonable efforts to schedule in any hour an amount equal to its expected Net Output for such hour. Seller shall maintain a minimum of two years records of Net Output and shall agree to allow PGE to have access to such records and to imbalance information kept by the Transmission Provider.

4.5. During the Renewable Resource Deficiency Period, Seller shall provide and PGE shall acquire the RPS Attributes for the Contract Years as specified in the Schedule and Seller shall retain ownership of all other Environmental Attributes (if any). During the Renewable Resource Sufficiency Period, 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. With respect to Environmental Attributes not transferred to PGE under this Agreement ("Seller-Retained Environmental Attributes") Seller may report under §1605(b) of the Energy Policy Act of 1992 or under any applicable program as belonging to Seller any of the Seller-Retained Environmental Attributes, and PGE shall not report under such program that such Seller-Retained Environmental Attributes belong to it. With respect to RPS Attributes transferred to PGE under this Agreement ("Transferred RECs"), PGE may report under §1605(b) of the Energy Policy Act of 1992 or under any applicable program as belonging to it any of the Transferred RECs, and Seller shall not report under such program that such Transferred RECs belong to it.

#### SECTION 5: OPERATION AND CONTROL

5.1. Seller shall operate and maintain the Facility in a safe manner in accordance with the Generation Interconnection Agreement, and Prudent Electrical Practices. PGE shall have no obligation to purchase Net Output from the Facility to the extent the interconnection of the Facility to PGE's electric system is disconnected, suspended or interrupted, in whole or in part, pursuant to the Generation Interconnection Agreement, or to the extent generation curtailment is required as a result of Seller's noncompliance with the Generation Interconnection Agreement. Seller is solely responsible for the operation and maintenance of the Facility. PGE shall not, by reason of its decision to inspect or not to inspect the Facility, or by any action or inaction taken with respect to any such inspection, assume or be held responsible for any liability or occurrence arising from the operation and maintenance by Seller of the Facility.

5.2. Seller agrees to provide sixty (60) days advance written notice of any scheduled maintenance that would require shut down of the Facility for any period of time.

5.3. If the Facility ceases operation for unscheduled maintenance, Seller immediately shall notify PGE of the necessity of such unscheduled maintenance, the time when such maintenance has occurred or will occur, and the anticipated duration of such maintenance. Seller shall take all reasonable measures and exercise its best efforts to avoid unscheduled maintenance, to limit the duration of such unscheduled maintenance, and to perform unscheduled maintenance during Off-Peak hours.

#### SECTION 6: CREDITWORTHINESS

In the event Seller: a) is unable to represent or warrant as required by Section 3 that it has not been a debtor in any bankruptcy proceeding within the past two (2) years; b) becomes such a debtor during the Term; or c) is not or will not be current on all its financial obligations, Seller shall immediately notify PGE and shall promptly (and in no less than 10 days after notifying PGE) provide default security in an amount reasonably acceptable to PGE in one of the following forms: Senior Lien, Step-in Rights, a Cash Escrow or Letter of Credit. The amount of such default security that shall be acceptable to PGE shall be equal to: (annual On Peak Hours) X (On Peak Price – Off Peak Price) X (Net Dependable Capacity). Notwithstanding the foregoing, in the event Seller is not current on construction related financial obligations, Seller shall notify PGE of such delinquency and PGE may, in its discretion, grant an exception to the



requirements to provide default security if the QF has negotiated financial arrangements with the construction loan lender that mitigate Seller's financial risk to PGE.

#### SECTION 7: BILLINGS, COMPUTATIONS AND PAYMENTS

7.1. On or before the thirtieth (30<sup>th</sup>) day following the end of each Billing Period, PGE shall send to Seller payment for Seller's deliveries of Net Output to PGE, together with computations supporting such payment. PGE may offset any such payment to reflect amounts owing from Seller to PGE pursuant to this Agreement and any other agreement related to the Facility between the Parties or otherwise. On or before the thirtieth (30<sup>th</sup>) day following the end of each Contract Year, PGE shall bill for any Lost Energy Value accrued pursuant to this Agreement.

7.2. Any amounts owing after the due date thereof shall bear interest at the Prime Rate plus two percent (2%) from the date due until paid; provided, however, that the interest rate shall at no time exceed the maximum rate allowed by applicable law.

#### SECTION 8: DEFAULT, REMEDIES AND TERMINATION

8.1. In addition to any other event that may constitute a default under this Agreement, the following events shall constitute defaults under this Agreement:

8.1.1. Breach by Seller or PGE of a representation or warranty, except for Section 3.1.4, set forth in this Agreement.

8.1.2. Seller's failure to provide default security, if required by Section 6, prior to delivery of any Net Output to PGE or within 10 days of notice.

8.1.3. Seller's failure to meet the Guarantee of Mechanical Availability established in Section 3.1.10 for two consecutive Contract Years or Seller's failure to provide any written report required by that section.

8.1.4. If Seller is no longer a Qualifying Facility.

8.1.5. Failure of PGE to make any required payment pursuant to Section 7.1.

8.1.6. Seller's failure to meet the Commercial Operation Date.

8.2. In the event of a default under Section 8.1.6, PGE may provide Seller with written notice of default. Seller shall have one year in which to cure the default during which time the Seller shall pay PGE damages equal to the Lost Energy Value. If Seller is unable to cure the default, PGE may immediately terminate this Agreement as provided in Section 8.3. PGE's resource sufficiency/deficiency position shall have no bearing on PGE's right to terminate the Agreement under this Section 8.2.

8.3. In the event of a default hereunder, except as otherwise provided in this Agreement, the non-defaulting party may immediately terminate this Agreement at its sole discretion by delivering written notice to the other Party. In addition, the non-defaulting Party may pursue any and all legal or equitable remedies provided by law or pursuant to this Agreement including damages related to the need to procure replacement power. A termination hereunder shall be effective upon the date of delivery of notice, as provided in Section 20. The rights provided in this Section 8 are cumulative such that the exercise of one or more rights shall not constitute a waiver of any other rights.

8.4. If this Agreement is terminated as provided in this Section 8, PGE shall make all payments, within thirty (30) days, that, pursuant to the terms of this Agreement, are owed to Seller as of the time of receipt of notice of default. PGE shall not be required to pay Seller for any Net Output delivered by Seller after such notice of default.

8.5. In the event PGE terminates this Agreement pursuant to this Section 8, and Seller wishes to again sell Net Output to PGE following such termination, PGE in its sole discretion may require that Seller shall do so subject to the terms of this Agreement, including but not limited to the Contract Price until the Term of this Agreement (as set forth in Section 2.3) would have run in due course had the Agreement remained in effect. At such time Seller and PGE agree to execute a written document ratifying the terms of this Agreement.

8.6. Sections 8.1, 8.4, 8.5, 10, and 19.2 shall survive termination of this Agreement.

#### SECTION 9: TRANSMISSION CURTAILMENTS

9.1. Seller shall give PGE notice as soon as reasonably practicable of any Transmission Curtailment that is likely to affect Seller's ability to deliver any portion of energy scheduled pursuant to Section 4.4 of this Agreement.

9.2. If as the result of a Transmission Curtailment, Seller does not deliver any portion of energy (including real-time adjustments), scheduled pursuant to Section 4.4 of this Agreement, Seller shall pay PGE the Transmission Curtailment Replacement Energy Cost for the number of MWh of energy reasonably determined by PGE as the difference between (i) the scheduled energy that would have been delivered to PGE under this Agreement during the period of Transmission Curtailment and (ii) the actual energy, if any, that was delivered to PGE for the period.

#### SECTION 10: INDEMNIFICATION AND LIABILITY

10.1. Seller agrees to defend, indemnify and hold harmless PGE, its directors, officers, agents, and representatives against and from any and all loss, claims, actions or suits, including costs and attorney's fees, both at trial and on appeal, resulting from, or arising out of or in any way connected with Seller's delivery of electric power to PGE or with the facilities at or prior to the Point of Delivery, or otherwise arising out of this Agreement, including without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property belonging to PGE, Seller or others, excepting to the extent such loss, claim, action or suit may be caused by the negligence of PGE, its directors, officers, employees, agents or representatives.

10.2. PGE agrees to defend, indemnify and hold harmless Seller, its directors, officers, agents, and representatives against and from any and all loss, claims, actions or suits, including costs and attorney's fees, both at trial and on appeal, resulting from, or arising out of or in any way connected with PGE's receipt of electric power from Seller or with the facilities at or after the Point of Delivery, or otherwise arising out of this

Agreement, including without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property belonging to PGE, Seller or others, excepting to the extent such loss, claim, action or suit may be caused by the negligence of Seller, its directors, officers, employees, agents or representatives.

10.3. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a Party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or to the public, nor affect the status of PGE as an independent public utility corporation or Seller as an independent individual or entity.

10.4. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR SPECIAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES, WHETHER ARISING FROM CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.

#### SECTION 11: INSURANCE

11.1. Prior to the connection of the Facility to PGE's electric system, provided such Facility has a design capacity of 200 kW or more, Seller shall secure and continuously carry for the Term hereof, with an insurance company or companies rated not lower than "B+" by the A. M. Best Company, insurance policies for bodily injury and property damage liability. Such insurance shall include provisions or endorsements naming PGE, its directors, officers and employees as additional insureds; provisions that such insurance is primary insurance with respect to the interest of PGE and that any insurance or self-insurance maintained by PGE is excess and not contributory insurance with the insurance required hereunder; a cross-liability or severability of insurance interest clause; and provisions that such policies shall not be canceled or their limits of liability reduced without thirty (30) days' prior written notice to PGE. Initial limits of liability for all requirements under this section shall be \$1,000,000 million single limit, which limits may be required to be increased or decreased by PGE as PGE determines in its reasonable judgment economic conditions or claims experience may warrant.

11.2. Prior to the connection of the Facility to PGE's electric system, provided such facility has a design capacity of 200 kW or more, Seller shall secure and continuously carry for the Term hereof, in an insurance company or companies rated not lower than "B+" by the A. M. Best Company, insurance acceptable to PGE against property damage or destruction in an amount not less than the cost of replacement of the Facility. Seller promptly shall notify PGE of any loss or damage to the Facility. Unless the Parties agree otherwise, Seller shall repair or replace the damaged or destroyed Facility, or if the facility is destroyed or substantially destroyed, it may terminate this Agreement. Such termination shall be effective upon receipt by PGE of written notice from Seller. Seller shall waive its insurers' rights of subrogation against PGE regarding Facility property losses.

11.3. Prior to the connection of the Facility to PGE's electric system and at all other times such insurance policies are renewed or changed, Seller shall provide PGE with a copy of each insurance policy required under this Section, certified as a true copy by an authorized representative of the issuing insurance company or, at the discretion of PGE, in lieu thereof, a certificate in a form satisfactory to PGE certifying the issuance of such insurance. If Seller fails to provide PGE with copies of such currently effective insurance policies or certificates of insurance, PGE at its sole discretion and without limitation of other remedies, may upon ten (10) days advance written notice by certified or registered mail to Seller either withhold payments due Seller until PGE has received such documents, or purchase the satisfactory insurance and offset the cost of obtaining such insurance from subsequent power purchase payments under this Agreement.

## SECTION 12: FORCE MAJEURE

12.1. As used in this Agreement, "Force Majeure" or "an event of Force Majeure" means any cause beyond the reasonable control of the Seller or of PGE which, despite the exercise of due diligence, such Party is unable to prevent or overcome. By way of example, Force Majeure may include but is not limited to acts of God, fire, flood, storms, wars, hostilities, civil strife, strikes, and other labor disturbances, earthquakes, fires, lightning, epidemics, sabotage, restraint by court order or other delay or failure in the performance as a result of any action or inaction on behalf of a public authority which by the exercise of reasonable foresight such Party could not reasonably have been expected to avoid and by the exercise of due diligence, it shall be unable to overcome, subject, in each case, to the requirements of the first sentence of this paragraph. Force Majeure, however, specifically excludes the cost or availability of resources to operate the Facility, changes in market conditions that affect the price of energy or transmission, wind or water droughts, and obligations for the payment of money when due.

12.2. If either Party is rendered wholly or in part unable to perform its obligation under this Agreement because of an event of Force Majeure, that Party shall be excused from whatever performance is affected by the event of Force Majeure to the extent and for the duration of the Force Majeure, after which such Party shall recommence performance of such obligation, provided that:

12.2.1. the non-performing Party, shall, promptly, but in any case within one (1) week after the occurrence of the Force Majeure, give the other Party written notice describing the particulars of the occurrence; and

12.2.2. the suspension of performance shall be of no greater scope and of no longer duration than is required by the Force Majeure; and

12.2.3. the non-performing Party uses its best efforts to remedy its inability to perform its obligations under this Agreement.

12.3. No obligations of either Party which arose before the Force Majeure causing the suspension of performance shall be excused as a result of the Force Majeure.

12.4. Neither Party shall be required to settle any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to the Party's best interests.

#### SECTION 13: SEVERAL OBLIGATIONS

Nothing contained in this Agreement shall ever be construed to create an association, trust, partnership or joint venture or to impose a trust or partnership duty, obligation or liability between the Parties. If Seller includes two or more parties, each such party shall be jointly and severally liable for Seller's obligations under this Agreement.

#### SECTION 14: CHOICE OF LAW

This Agreement shall be interpreted and enforced in accordance with the laws of the state of Oregon, excluding any choice of law rules which may direct the application of the laws of another jurisdiction.

#### SECTION 15: PARTIAL INVALIDITY AND PURPA REPEAL

It is not the intention of the Parties to violate any laws governing the subject matter of this Agreement. If any of the terms of the Agreement are finally held or determined to be invalid, illegal or void as being contrary to any applicable law or public policy, all other terms of the Agreement shall remain in effect. If any terms are finally held or determined to be invalid, illegal or void, the Parties shall enter into negotiations concerning the terms affected by such decision for the purpose of achieving conformity with requirements of any applicable law and the intent of the Parties to this Agreement.

In the event the Public Utility Regulatory Policies Act (PURPA) is repealed, this Agreement shall not terminate prior to the Termination Date, unless such termination is mandated by state or federal law.

#### SECTION 16: WAIVER

Any waiver at any time by either Party of its rights with respect to a default under this Agreement or with respect to any other matters arising in connection with this Agreement must be in writing, and such waiver shall not be deemed a waiver with respect to any subsequent default or other matter.

#### SECTION 17: GOVERNMENTAL JURISDICTION AND AUTHORIZATIONS

This Agreement is subject to the jurisdiction of those governmental agencies having control over either Party or this Agreement. Seller shall at all times maintain in effect all local, state and federal licenses, permits and other approvals as then may be required by law for the construction, operation and maintenance of the Facility, and shall provide upon request copies of the same to PGE.

#### SECTION 18: SUCCESSORS AND ASSIGNS

This Agreement and all of the terms hereof shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties. No assignment hereof by either Party shall become effective without the written consent of the other Party being first obtained and such consent shall not be unreasonably withheld.

Notwithstanding the foregoing, either Party may assign this Agreement without the other Party's consent as part of (a) a sale of all or substantially all of the assigning Party's assets, or (b) a merger, consolidation or other reorganization of the assigning Party.

#### SECTION 19: ENTIRE AGREEMENT

19.1. This Agreement supersedes all prior agreements, proposals, representations, negotiations, discussions or letters, whether oral or in writing, regarding PGE's purchase of Net Output from the Facility. No modification of this Agreement shall be effective unless it is in writing and signed by both Parties.

19.2. By executing this Agreement, Seller releases PGE from any third party claims related to the Facility, known or unknown, which may have arisen prior to the Effective Date.

#### SECTION 20: NOTICES

20.1. All notices except as otherwise provided in this Agreement shall be in writing, shall be directed as follows and shall be considered delivered if delivered in person or when deposited in the U.S. Mail, postage prepaid by certified or registered mail and return receipt requested:

To Seller: Fort Rock Solar II LLC  
3500 South DuPont Highway  
Dover, DE 19901  
jstephens@newsunenergy.net

with a copy to: Stephane Nguyen  
c/o Reed Smith  
1901 Avenue of the Stars #700  
Los Angeles, CA 90067-6078  
snguyen@reedsmith.com

and a copy to: Greg Adams  
c/o Richardson Adams, PLLC  
515 N. 27th Street, 83702  
P.O. Box 7218, 83707  
Boise, Idaho  
greg@richardsonadams.com

To PGE: Contracts Manager  
QF Contracts, 3WTC0306  
PGE - 121 SW Salmon St.  
Portland, Oregon 97204

20.2 The Parties may change the person to whom such notices are addressed, or their addresses, by providing written notices thereof in accordance with this Section 20.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in their respective names as of the Effective Date.

PGE

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

FORT ROCK SOLAR II LLC  
(Name Seller)

By: \_\_\_\_\_  
Name: Jacob Stephens  
Title: Authorized Representative  
Date: \_\_\_\_\_



## EXHIBIT A DESCRIPTION OF SELLER'S FACILITY

Fort Rock Solar II is a photovoltaics-based solar generating facility which upon reaching full commercial operations have nameplate capacity of 10 MW-AC net output at the point of interconnection subject to available solar energy input. Firming capabilities may be added as described below. The facility will consist of the following primary equipment:

1. PV Modules - Commercially-available photovoltaic modules for utility-scale DC energy production. Nominal per module DC production rating of 350W +/-50W-DC. Qty <= [14MM/(module rating)].
2. Inverter AC Generator Units: Commercially-available string inverter (90kW-AC, nominal) convert DC to AC power, collected by AC wiring to switchboard. Each such collected aggregation of inverters shall constitute a single sub-generator for the facility, which once all aggregated shall constitute the entire generator for the facility.
3. Pad-mounted transformers: for each sub-generator shall transform inverter output voltage to plant AC collection voltage (12.47 KV, nominally)
4. Racking systems, commercially-available, will mount the PV Modules and direct them and control their angle to receive light from the sun. Racking systems will be arranged in generally uniform rows on the facility site.5. Additional interconnection, transformation, switching, storage, metering, communications, tie-line, and meteorological observations facilities as may be required, subject to final interconnection, permitting, and design requirements.
5. Firming and dispatchability capabilities by batteries and/or biodiesel genset. Under no circumstance will generation exceed 10 MW at point of interconnection.

**EXHIBIT B  
REQUIRED FACILITY DOCUMENTS**

1. Seller's Generation Interconnection Agreement
2. Lake County CUP & Building Permits
3. BPA: Transmission Service Agreement
4. Additional items as may be determined by Seller to be required for facility permitting, construction, and interconnection.

## EXHIBIT C START-UP TESTING

### **Seller-identified start-up tests**

As part of the start-up of Facility, Seller will perform the following tests, in addition to any further tests deemed required in coordination with EPC contractor (the Facility's manufacturer) and primary supply vendors (PV modules, inverters, transformers) and interconnecting utility. This will include required factory checks and tests necessary to determine that the equipment systems and subsystems have been properly manufactured and installed, function properly, and are in a condition to permit safe and efficient start-up of the Facility, which may include but are not limited to (as applicable). This will include required start-up tests and checks which necessary to determine that all features and equipment, systems, and subsystems have been properly designed, manufactured, installed and adjusted, function properly, and are capable of operating simultaneously in such condition that the Facility is capable of continuous delivery into PGE's electrical system, which may include but are not limited to (as applicable):

1. Validation of mechanical assembly completion for sign-off on EPC vendor warranty of mechanical completion and workmanship, including racking system, wiring (module connections, DC collection, string terminations, inverter connections to collected strings, AC delivery to switchboard and step-up/collection transformers, and AC collection system deliver to interconnection facilities), inverter mounting, and module installation.
2. Electrical performance validation by facility PV string and sub-generator, per insolation input, including:
  - a) DC wiring inputs to inverters
  - b) AC wiring delivery to transformers
3. Inverter Commissioning, per manufacturer specifications, including commissioning report;
4. Facility daily start-up and shut-down automation confirmed;
5. Energization of transformers;
6. Full system performance test;
7. Interconnection facilities: Commissioning of on-site, tie-line, and off-site interconnection facilities (as applicable), including switchyard, substation, breakers, and metering equipment (as applicable), in coordination with interconnecting utility and performing electrical contractor;
8. Cataloguing of installed equipment on-site, including primary equipment serial numbers and manufacturer information for O&M documentation;
9. Complete pre-parallel checks with PGE;
10. Test energy delivery and metering checks.
11. Excitation and voltage regulation operation tests per insolation inputs.
12. Meteorological station commissioning and report;
13. Facility communications equipment commissioning and report; and
14. Other tests as may be required by equipment manufacturers.

EXHIBIT D  
SCHEDULE

**[Attach currently in-effect Schedule 201]**

**SCHEDULE 201 (Continued)**

PRICING OPTIONS FOR STANDARD PPA (Continued)  
 Renewable Fixed Price Option (Continued)

TABLE 6a												
Renewable Avoided Costs												
Renewable Fixed Price Option for Solar QF												
On-Peak Forecast (\$/MWH)												
Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2015	31.13	25.13	26.13	21.66	22.66	25.13	33.13	34.73	29.63	27.38	29.68	33.13
2016	31.43	30.01	28.93	25.51	24.81	23.06	31.90	36.26	32.22	30.97	31.97	34.43
2017	34.12	32.56	29.20	28.13	27.35	25.40	34.51	39.28	34.86	33.83	34.92	37.63
2018	36.46	34.80	31.19	29.53	28.71	26.67	37.01	42.11	37.38	35.92	37.09	39.97
2019	38.14	36.40	32.63	30.89	30.03	27.89	38.72	44.06	39.11	37.58	38.80	41.81
2020	90.01	90.80	89.99	91.31	104.33	109.84	91.65	94.79	91.02	90.75	91.10	90.77
2021	91.63	92.46	91.84	93.60	105.26	110.91	93.15	96.99	93.38	93.37	92.70	92.70
2022	93.66	93.76	93.13	94.96	109.63	114.13	92.07	97.80	94.14	95.42	94.37	94.02
2023	95.65	95.40	94.17	96.50	111.28	116.40	95.15	98.68	95.95	97.21	95.93	96.48
2024	97.23	97.75	96.73	97.65	106.30	117.33	97.35	101.95	98.68	98.48	97.92	98.07
2025	99.10	99.12	98.31	100.06	110.92	119.16	99.24	105.55	100.78	100.27	99.79	100.25
2026	100.57	101.09	99.35	101.04	112.20	119.15	102.18	106.55	102.12	101.05	101.43	101.63
2027	102.25	102.59	100.63	103.03	115.03	120.12	102.66	109.14	103.72	103.12	102.13	102.82
2028	103.68	103.34	101.96	104.33	112.95	122.67	104.44	109.68	104.55	105.12	103.60	104.56
2029	105.79	105.38	103.96	105.98	114.07	124.22	106.94	112.24	108.46	106.07	105.40	105.83
2030	107.13	106.53	106.06	107.76	114.95	127.70	108.39	113.63	109.08	107.05	106.85	107.79
2031	108.69	107.80	107.47	109.33	116.28	128.44	109.64	116.52	110.47	109.12	108.50	110.22
2032	110.36	110.11	108.39	111.18	118.61	128.41	111.91	118.67	111.94	110.49	110.33	111.16
2033	112.90	111.08	110.05	112.92	120.45	128.96	113.31	119.67	113.39	111.85	112.52	112.91
2034	114.73	112.87	111.66	115.44	121.12	132.66	115.56	121.34	115.09	114.26	114.22	115.22
2035	117.24	114.47	113.77	117.41	122.07	132.79	118.17	124.75	117.70	115.81	116.14	117.31
2036	119.22	115.79	115.97	119.90	124.14	134.40	120.45	129.78	119.82	118.92	117.61	118.60
2037	119.91	116.45	117.83	122.26	126.19	135.53	123.87	131.76	123.11	118.70	120.69	120.39
2038	122.36	120.87	119.99	124.68	129.66	137.52	125.74	134.93	123.85	121.13	122.49	122.34
2039	124.04	122.45	121.73	126.00	132.47	140.16	126.54	133.23	124.63	123.29	124.46	124.08
2040	125.85	124.33	123.44	128.77	133.66	142.06	129.44	135.37	126.71	125.04	126.71	126.61

Effective for service  
 on and after September 23, 2015

**SCHEDULE 201 (Continued)**

PRICING OPTIONS FOR STANDARD PPA (Continued)  
Renewable Fixed Price Option (Continued)

TABLE 6b												
Renewable Avoided Costs												
Renewable Fixed Price Option for Solar QF												
Off-Peak Forecast (\$/MWH)												
Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2015	26.98	20.38	20.88	15.88	17.88	19.13	23.98	26.13	25.63	23.13	25.38	28.38
2016	27.06	25.99	23.32	18.54	16.65	13.43	23.13	27.74	25.51	27.30	27.97	30.11
2017	30.27	29.06	26.04	21.47	19.23	15.43	25.37	30.49	28.02	29.93	30.97	33.03
2018	32.90	31.29	28.03	22.20	19.89	15.98	27.80	33.43	30.71	32.89	33.71	36.32
2019	34.42	33.04	29.59	23.42	20.98	16.82	29.35	35.30	32.42	34.73	35.60	38.36
2020	68.58	67.81	70.03	66.95	51.47	41.59	66.31	63.57	67.34	67.56	68.43	67.52
2021	71.70	70.03	70.67	68.13	54.41	44.45	68.58	64.91	68.43	69.50	69.36	69.20
2022	72.93	72.10	72.50	70.14	52.58	43.90	73.59	66.03	71.26	70.61	70.94	71.27
2023	74.08	73.80	75.03	73.19	51.34	44.74	74.72	68.53	72.72	72.11	72.75	73.03
2024	74.27	73.88	76.02	73.85	53.94	50.44	74.10	67.73	72.49	72.53	73.47	74.32
2025	78.37	78.84	78.49	75.22	60.00	52.58	78.18	69.30	74.23	74.75	78.80	74.78
2026	78.55	78.33	81.13	78.05	64.87	53.26	79.32	71.90	76.57	77.89	79.72	77.07
2027	81.57	80.52	82.48	79.59	65.38	56.20	79.64	72.83	78.65	80.47	80.82	79.73
2028	83.33	83.05	84.80	82.68	63.45	56.44	82.37	73.98	81.24	81.50	82.54	82.21
2029	84.45	85.45	86.98	85.41	72.98	59.37	84.03	75.52	82.32	84.06	85.12	85.43
2030	87.14	88.37	89.47	88.42	76.31	62.58	85.40	78.15	85.83	87.25	87.66	87.28
2031	89.62	91.21	92.09	88.87	79.11	66.01	89.30	81.28	87.31	89.03	90.93	87.50
2032	91.36	92.90	94.09	90.37	81.89	66.80	89.22	81.75	89.34	92.12	91.54	90.26
2033	94.30	96.19	97.29	93.45	84.73	71.50	93.78	83.69	92.61	95.63	94.00	93.33
2034	96.65	98.62	99.97	95.91	86.88	71.32	95.58	86.58	95.37	97.26	96.55	96.04
2035	97.26	101.30	102.07	98.18	90.58	76.12	97.06	86.87	97.82	99.24	98.90	98.15
2036	100.30	103.84	104.15	98.13	92.11	81.09	97.21	87.79	98.23	102.10	102.08	99.77
2037	103.90	106.19	107.32	100.80	96.72	82.63	98.42	89.65	98.63	105.58	103.83	103.24
2038	108.63	108.17	109.11	102.78	97.37	85.19	101.14	90.89	103.90	109.20	105.75	105.85
2039	109.65	111.37	112.13	106.34	98.97	86.98	106.48	96.20	108.22	110.80	108.44	108.86
2040	112.13	113.43	114.50	109.34	100.07	89.08	107.33	97.98	110.92	112.29	110.09	110.91

Effective for service  
on and after September 23, 2015

**UM 1931 NewSun Parties Exhibit 131**

Attachment #2 to Email in Exhibit 129:  
Fort Rock Solar I LLC PPA

## STANDARD RENEWABLE OFF-SYSTEM VARIABLE POWER PURCHASE AGREEMENT

THIS AGREEMENT, entered into this 18th day, December 2015, is between FORT ROCK SOLAR I LLC ("Seller") and Portland General Electric Company ("PGE") (hereinafter each a "Party" or collectively, "Parties").

### RECITALS

Seller intends to construct, own, operate and maintain a photovoltaics-based solar generation facility for the generation of electric power located in Lake County, Oregon with a Nameplate Capacity Rating of 10,000 kilowatt-AC ("kW"), as further described in Exhibit A ("Facility"); and

Seller intends to operate the Facility as a "Qualifying Facility," as such term is defined in Section 3.1.3, below.

Seller shall sell and PGE shall purchase the entire Net Output, as such term is defined in Section 1.21, below, from the Facility in accordance with the terms and conditions of this Agreement.

### AGREEMENT

NOW, THEREFORE, the Parties mutually agree as follows:

#### SECTION 1: DEFINITIONS

When used in this Agreement, the following terms shall have the following meanings:

1.1. "As-built Supplement" means the supplement to Exhibit A provided by Seller in accordance with Section 4.3 following completion of construction of the Facility, describing the Facility as actually built.

1.2. "Base Hours" is defined as the total number of hours in each Contract Year (8,760 or 8,784 for leap year)

1.3. "Billing Period" means from the start of the first day of each calendar month to the end of the last day of each calendar month.

1.4. "Cash Escrow" means an agreement by two parties to place money into the custody of a third party for delivery to a grantee only after the fulfillment of the conditions specified.

1.5. "Commercial Operation Date" means the date that the Facility is deemed by PGE to be fully operational and reliable. PGE may, at its discretion require, among other things, that all of the following events have occurred:

1.5.1. (facilities with nameplate under 500 kW exempt from following requirement) PGE has received a certificate addressed to PGE from a Licensed Professional Engineer ("LPE") acceptable to PGE in its reasonable judgment stating that the Facility is able to generate electric power reliably in accordance with the terms



and conditions of this Agreement (certifications required under this Section 1.5 can be provided by one or more LPEs);

1.5.2. Start-Up Testing of the Facility has been completed in accordance with Section 1.36;

1.5.3. (facilities with nameplate under 500 kW exempt from following requirement) After PGE has received notice of completion of Start-Up Testing, PGE has received a certificate addressed to PGE from an LPE stating that the Facility has operated for testing purposes under this Agreement and was continuously mechanically available for operation for a minimum of 120 hours. The Facility must provide ten (10) working days written notice to PGE prior to the start of the initial testing period. If the mechanical availability of the Facility is interrupted during this initial testing period or any subsequent testing period, the Facility shall promptly start a new Test Period and provide PGE forty-eight (48) hours written notice prior to the start of such testing period;

1.5.4. (facilities with nameplate under 500 kW exempt from following requirement) PGE has received a certificate addressed to PGE from an LPE stating that all required interconnection facilities have been constructed and all required interconnection tests have been completed;

1.5.5. (facilities with nameplate under 500 kW exempt from following requirement) PGE has received a certificate addressed to PGE from an LPE stating that Seller has obtained all Required Facility Documents and, if requested by PGE in writing, has provided copies of any or all such requested Required Facility Documents;

1.5.6. PGE has received a copy of the executed Generation Interconnection and Transmission Agreements.

1.6. "Contract Price" means the applicable price, including on-peak and off-peak prices, as specified in the Schedule.

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.

1.9. "Environmental Attributes" shall mean any and all claims, credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, resulting from the avoidance of the emission of any gas, chemical or other substance to the air, soil or water. Environmental Attributes include but are not limited to: (1) any avoided emissions of pollutants to the air, soil or water such as (subject to the foregoing) sulfur oxides (SO<sub>x</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO), and other pollutants; and (2) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), and other greenhouse gasses (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere.

1.10. "Facility" has the meaning set forth in the Recitals.

1.11. "Generation Interconnection Agreement" means an agreement governing the interconnection of the Facility with Bonneville Power Administration's electric system.

1.12. "Generation Unit" means each separate electrical generator that contributes toward Nameplate Capacity Rating included in Exhibit A. For solar facilities, a generating unit is a complete solar electrical generation system within the Facility that is able to generate and deliver energy to the Point of Delivery independent of other Generation Units within the same Facility.

1.13. "Letter of Credit" means an engagement by a bank or other person made at the request of a customer that the issuer will honor drafts or other demands for payment upon compliance with the conditions specified in the letter of credit.

1.14. "Licensed Professional Engineer" or "LPE" means a person who is licensed to practice engineering in the state where the Facility is located, who has no economic relationship, association, or nexus with the Seller, and who is not a representative of a consulting engineer, contractor, designer or other individual involved in the development of the Facility, or of a manufacturer or supplier of any equipment installed in the Facility. Such Licensed Professional Engineer shall be licensed in an appropriate engineering discipline for the required certification being made and be acceptable to PGE in its reasonable judgment.

1.15. "Lost Energy" means "Lost Energy" means ((the Guarantee of Mechanical Availability as set forth in 3.1.10 / MAP) X Net Output for a Calendar Year) – Net Output for the Calendar Year. Lost Energy shall be zero unless the result of the calculation in this subsection results in a positive number.

1.16. "Lost Energy Value" means Lost Energy X the excess of the annual time-weighted average Mid-C Index Price for On Peak Hours and Off Peak Hours over the time weighted average Contract Price for On Peak and Off Peak Hours for the corresponding time period (provided that such excess shall not exceed the Contract Price and further provided that Lost Energy is deemed to be zero prior to reaching the Commercial Operation Date) plus any reasonable costs incurred by PGE to purchase replacement power and/or transmission to deliver the replacement power to the Point of Delivery (For Start-Up Lost Energy Value See 1.35).

1.17. "Mechanical Availability Percentage" or "MAP" shall mean that percentage for any Contract Year for the Facility calculated in accordance with the following formula:

$$\text{MAP} = 100 \times (\text{Operational Hours}) / (\text{Base Hours} \times \text{Number of Units})$$

1.18. "Mid-C Index Price" means the Day Ahead Intercontinental Exchange ("ICE") index price for the bilateral OTC market for energy at the Mid-C Physical for Average On Peak Power and Average Off Peak Power found on the following website: <https://www.theice.com/products/OTC/Physical-Energy/Electricity>. In the event ICE no longer publishes this index, PGE and the Seller agree to select an alternative successor index representative of the Mid-C trading hub.

1.19. "Nameplate Capacity Rating" means the maximum capacity of the Facility as stated by the manufacturer, expressed in kW, which shall not exceed 10,000 kW.

1.20. "Net Dependable Capacity" means the maximum capacity the Facility can sustain over a specified period modified for seasonal limitations, if any, and reduced by the capacity required for station service or auxiliaries.

1.21. "Net Output" means all energy expressed in kWhs produced by the Facility, less station and other onsite use and less transformation and transmission losses.

1.22. "Number of Units" means the number of Generation Units in the Facility as specified in Exhibit A.

1.23. "Off-Peak Hours" has the meaning provided in the Schedule.

1.24. "On-Peak Hours" has the meaning provided in the Schedule.

1.25. "Operational Hours" for the Facility means the total across all Generation Units of the number of hours each of the Facility's Generation Units are potentially capable of producing power at its Nameplate Capacity Rating regardless of actual weather conditions, season and the time of day or night, without any mechanical operating constraint or restriction, and potentially capable of delivering such power to the Point of Delivery in a Contract Year. During up to, but not more than, two hundred (200) hours of Planned Maintenance during a Contract Year for each Generation Unit and hours during which an event of Force Majeure exists, a Generation Unit shall be considered potentially capable of delivering such power to the Point of Delivery. For example, in the absence of any Planned Maintenance beyond 200 hours on any Generation Unit or Event of Force Majeure, the Operational Hours for a wind farm with five (5) separate two (2) MW turbines would be 43,800 for a Contract Year.

1.26. "Planned Maintenance" means outages scheduled ninety (90) days in advance, with PGE's prior written consent, which shall not be unreasonably withheld.

1.27. "Point of Delivery" means the PGE system.

1.28. "Pre-Commercial Operation Date Minimum Net Output" shall mean, unless such MWh is specifically set forth by Seller in Exhibit A, an amount in MWh equal to seventy-five percent (75%) of Nameplate Capacity Rating X thirty percent (30%) for a wind or other renewable QF or fifty percent (50%) for a solar QF X (whole months since the date selected in Section 2.2.1 / 12) X (8760 hours – 200 hours (assumed Planned Maintenance)) for each month. If Seller has provided specific expected monthly Net Output amounts for the Facility in Exhibit A, "Pre-Commercial Operation Date Minimum Net Output" shall mean seventy-five percent (75%) X expected net output set forth in Exhibit A for each month.

1.29. "Prime Rate" means the publicly announced prime rate or reference rate for commercial loans to large businesses with the highest credit rating in the United States in effect from time to time quoted by Citibank, N.A. If a Citibank, N.A. prime rate is not available, the applicable Prime Rate shall be the announced prime rate or reference rate for commercial loans in effect from time to time quoted by a bank with \$10 billion or more in assets in New York City, N.Y., selected by the Party to whom interest based on the prime rate is being paid.

1.30. "Prudent Electrical Practices" means those practices, methods, standards and acts engaged in or approved by a significant portion of the electric power industry in the Western Electricity Coordinating Council that at the relevant time period, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with good business practices, reliability, economy, safety and expedition, and which practices, methods, standards and acts reflect due regard for operation and maintenance standards recommended by applicable equipment suppliers and manufacturers, operational limits, and all applicable laws and regulations. Prudent Electrical Practices are not intended to be limited to the optimum practice, method, standard or act to the exclusion of all others, but rather to those practices, methods and acts generally acceptable or approved by a significant portion of the electric power generation industry in the relevant region, during the relevant period, as described in the immediate preceding sentence.

1.31. "Required Facility Documents" means all licenses, permits, authorizations, and agreements necessary for construction, operation, interconnection, and maintenance of the Facility including without limitation those set forth in Exhibit B.

1.32. "RPS Attributes" means all attributes related to the Net Output generated by the Facility that are required in order to provide PGE with "qualifying electricity," as that term is defined in Oregon's Renewable Portfolio Standard Act, Ore. Rev. Stat. 469A.010, in effect at the time of execution of this Agreement. RPS Attributes do not include Environmental Attributes that are greenhouse gas offsets from methane capture not associated with the generation of electricity and not needed to ensure that there are zero net emissions associated with the generation of electricity.

1.33. "Schedule" shall mean PGE Schedule 201 filed with the Oregon Public Utilities Commission ("Commission") in effect on the Effective Date of this Agreement and attached hereto as Exhibit D, the terms of which are hereby incorporated by reference.

1.34. "Senior Lien" means a prior lien which has precedence as to the property under the lien over another lien or encumbrance

1.35. "Start-Up Lost Energy Value" means for the period after the date specified in Section 2.2.2 but prior to achievement of the Commercial Operation Date: zero, unless the Net Output is less than the pro-rated Pre-Commercial Operation Date Minimum Net Output for the applicable delay period, and the time-weighted average of the delay period's Mid-C Index Price for On-Peak Hours and Off-Peak Hours is greater than the time-weighted average of the delay period's Contract Price for On-Peak Hours and Off-Peak Hours, in which case Startup Lost Energy Value equals: (pro-rated Pre-Commercial Operation Date Minimum Net Output for the applicable period - Net Output for the applicable period) X (the lower of: the time-weighted average of the Contract Price for On-Peak hours and Off-Peak Hours during the applicable period; or (the time-weighted average of the Mid-C Index Price for On-Peak Hours and Off-Peak Hours during the applicable period - the time-weighted average of the Contract Price for On-Peak Hours and Off-Peak Hours during the applicable period)). The time-weighted

average in this section will reflect the relative proportions of On-Peak Hours and Off-Peak Hours in each day.

1.36. "Start-Up Testing" means the completion of applicable required factory and start-up tests as set forth in Exhibit C.

1.37. "Step-in Rights" means the right of one party to assume an intervening position to satisfy all terms of an agreement in the event the other party fails to perform its obligations under the agreement.

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

1.39. "Test Period" shall mean a period of sixty (60) days or a commercially reasonable period determined by the Seller.

1.40. "Transmission Agreement" means an agreement executed by the Seller and the Transmission Provider(s) for Transmission Services.

1.41. "Transmission Curtailment" means a limitation on Seller's ability to deliver any portion of the scheduled energy to PGE due to the unavailability of transmission to the Point of Delivery (for any reason other than Force Majeure).

1.42. "Transmission Curtailment Replacement Energy Cost" means the greater of zero or the amount calculated as: ((Mid-C Index Price – Contract Price) X curtailed energy) for periods of Transmission Curtailment.

1.43. "Transmission Provider(s)" means the signatory (other than the Seller) to the Transmission Agreement.

1.44. "Transmission Services" means any and all services (including but not limited to ancillary services and control area services) required for the firm transmission and delivery of Energy from the Facility to the Point of Delivery for a term not less than the Term of this Agreement.

References to Recitals, Sections, and Exhibits are to be the recitals, sections and exhibits of this Agreement.

## SECTION 2: TERM; COMMERCIAL OPERATION DATE

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

2.2. Time is of the essence of this Agreement, and Seller's ability to meet certain requirements prior to the Commercial Operation Date and to complete all requirements to establish the Commercial Operation Date is critically important. Therefore,

2.2.1. By thirty-five (35) months after the Effective Date Seller shall begin initial deliveries of Net Output; and

2.2.2. By the thirty-six (36) month anniversary of the Effective Date, *subject to Section 2.2.3 below*, Seller shall have completed all requirements under Section 1.5 and shall have established the Commercial Operation Date.

2.2.3. Unless the Parties agree in writing that a later Commercial Operation Date is reasonable and necessary, the Commercial Operation Date shall be no more than three (3) years from the Effective Date. PGE will not unreasonably withhold agreement to a Commercial Operation Date that is more than three (3) years from the Effective date if the Seller has demonstrated that a later Commercial Operation Date is reasonable and necessary.

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

### SECTION 3: REPRESENTATIONS AND WARRANTIES

3.1. Seller and PGE represent, covenant, and warrant as follows:

3.1.1. Seller warrants it is a Limited Liability Corporation duly organized under the laws of Delaware.

3.1.2. Seller warrants that the execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on Seller or any valid order of any court, or any regulatory agency or other body having authority to which Seller is subject.

3.1.3. Seller warrants that the Facility is and shall for the Term of this Agreement continue to be a "Qualifying Facility" ("QF") as that term is defined in the version of 18 C.F.R. Part 292 in effect on the Effective Date. Seller has provided the appropriate QF certification, which may include a Federal Energy Regulatory Commission ("FERC") self-certification to PGE prior to PGE's execution of this Agreement. At any time during the Term of this Agreement, PGE may require Seller to provide PGE with evidence satisfactory to PGE in its reasonable discretion that the Facility continues to qualify as a QF under all applicable requirements.

3.1.4. Seller warrants that it has not within the past two (2) years been the debtor in any bankruptcy proceeding, and Seller is and will continue to be for the Term of this Agreement current on all of its financial obligations.

3.1.5. Seller warrants that during the Term of this Agreement, all of Seller's right, title and interest in and to the Facility shall be free and clear of all liens and encumbrances other than liens and encumbrances arising from third-party financing of the Facility other than workers', mechanics', suppliers' or similar liens, or tax liens, in each case arising in the ordinary course of business that are either not yet due and payable or that have been released by means of a performance bond acceptable to PGE posted within eight (8) calendar days of the commencement of any proceeding to foreclose the lien.

3.1.6. Seller warrants that it will design and operate the Facility consistent with Prudent Electrical Practices.

3.1.7. Seller warrants that the Facility has a Nameplate Capacity Rating not greater than 10,000 kW.

3.1.8. Seller warrants that Net Dependable Capacity of the Facility is 9,920 kW.

3.1.9. Seller estimates that the average annual Net Output to be delivered by the Facility to PGE is 19,200,000 kilowatt-hours ("kWh"), which amount PGE will include in its resource planning.

3.1.10. Seller represents and warrants that the Facility shall achieve the following Mechanical Availability Percentages ("Guarantee of Mechanical Availability"):

3.1.10.1. Ninety percent (90%) beginning in the first Contract Year and extending through the Term for the Facility, if the Facility was operational and sold electricity to PGE or another buyer prior to the Effective Date of this Agreement; or

3.1.10.2. Ninety percent (90%) beginning in Contract Year three and extending throughout the remainder of the Term.

3.1.10.3. Annually, within 90 days of the end of each Contract Year, Seller shall send to PGE a detailed written report demonstrating and providing evidence of the actual MAP for the previous Contract Year.

3.1.10.4. Seller's failure to meet the Guarantee of Mechanical Availability in a Calendar Year shall result in damages payable to PGE by Seller equal to the Lost Energy Value. PGE shall bill Seller for such damages in accordance with Section 7.

3.1.11. Seller will deliver from the Facility to PGE at the Point of Delivery Net Output not to exceed a maximum of 30,000,000 kWh of Net Output during each Contract Year ("Maximum Net Output"). The cost of delivering energy from the Facility to PGE is the sole responsibility of the Seller.

3.1.12. By the Commercial Operation Date, Seller has entered into a Generation Interconnection Agreement for a term not less than the term of this Agreement.

3.1.13. PGE warrants that it has not within the past two (2) years been the debtor in any bankruptcy proceeding, and PGE is and will continue to be for the Term of this Agreement current on all of its financial obligations.

3.1.14. Seller warrants that the Facility satisfies the eligibility requirements specified in the Definition of a Small Cogeneration Facility or Small Power Production Facility Eligible to Receive the Standard Renewable Rates and Standard Renewable PPA in PGE's Schedule and Seller will not make any changes in its ownership, control or management during the term of this Agreement that would cause it to not be in compliance with the Definition of a Small Cogeneration Facility or Small Power Production Facility Eligible to Receive the Standard Renewable Rates and Standard Renewable PPA in PGE's Schedule. Seller will provide, upon request by PGE not more frequently than every 36 months, such documentation and information as may be reasonably required to establish Seller's continued compliance with such Definition. PGE agrees to take reasonable steps to maintain the confidentiality of any portion of the above described documentation and information that the Seller identifies as confidential except PGE will provide all such confidential information to the Commission upon the Commission's request.

3.1.15. Seller warrants that it will comply with all requirements necessary for all Transferred RECs (as defined in Section 4.5) associated with Net Output to be issued, monitored, accounted for, and transferred by and through the Western Renewable

Energy Generation System consistent with the provisions of OAR 330-160-0005 through OAR 330-160-0050. PGE warrants that it will reasonably cooperate in Seller's efforts to meet such requirements, including, for example serving as the qualified reporting entity for the Facility if the Facility is located in PGE's balancing authority.

#### 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.

4.3. Upon completion of construction of the Facility, Seller shall provide PGE an As-built Supplement to specify the actual Facility as built. Seller shall not increase the Nameplate Capacity Rating above that specified in Exhibit A or increase the ability of the Facility to deliver Net Output in quantities in excess of the Net Dependable Capacity, or the Maximum Net Output as described in Section 3.1.11 above, through any means including, but not limited to, replacement, modification, or addition of existing equipment, except with prior written notice to PGE. In the event Seller increases the Nameplate Capacity Rating of the Facility to no more than 10,000 kW pursuant to this section, PGE shall pay the Contract Price for the additional delivered Net Output. In the event Seller increases the Nameplate Capacity Rating to greater than 10,000 kW, then Seller shall be required to enter into a new power purchase agreement for all delivered Net Output proportionally related to the increase of Nameplate Capacity above 10,000 kW.

4.4. Seller shall provide preschedules for all deliveries of energy hereunder, including identification of receiving and generating control areas, by 9:00:00 PPT on the last business day prior to the scheduled date of delivery. All energy shall be scheduled according to the most current North America Energy Reliability Corporation (NERC) and Western Electricity Coordinating Council (WECC) scheduling rules and practices. The Parties' respective representatives shall maintain hourly real-time schedule coordination; provided, however, that in the absence of such coordination, the hourly schedule established by the exchange of preschedules shall be considered final. Seller and PGE shall maintain records of hourly energy schedules for accounting and operating purposes. The final E-Tag shall be the controlling evidence of the Parties' schedule. All energy shall be prescheduled according to customary WECC scheduling practices. Seller shall make commercially reasonable efforts to schedule in any hour an amount equal to its expected Net Output for such hour. Seller shall maintain a minimum of two years records of Net Output and shall agree to allow PGE to have access to such records and to imbalance information kept by the Transmission Provider.

4.5. During the Renewable Resource Deficiency Period, Seller shall provide and PGE shall acquire the RPS Attributes for the Contract Years as specified in the Schedule and Seller shall retain ownership of all other Environmental Attributes (if any). During the Renewable Resource Sufficiency Period, 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. With respect to Environmental Attributes not transferred to PGE under this Agreement ("Seller-Retained Environmental Attributes") Seller may report under §1605(b) of the Energy Policy Act of 1992 or under any applicable program as belonging to Seller any of the Seller-Retained Environmental Attributes, and PGE shall not report under such program that such Seller-Retained Environmental Attributes belong to it. With respect to RPS Attributes transferred to PGE under this Agreement ("Transferred RECs"), PGE may report under §1605(b) of the Energy Policy Act of 1992 or under any applicable program as belonging to it any of the Transferred RECs, and Seller shall not report under such program that such Transferred RECs belong to it.

#### SECTION 5: OPERATION AND CONTROL

5.1. Seller shall operate and maintain the Facility in a safe manner in accordance with the Generation Interconnection Agreement, and Prudent Electrical Practices. PGE shall have no obligation to purchase Net Output from the Facility to the extent the interconnection of the Facility to PGE's electric system is disconnected, suspended or interrupted, in whole or in part, pursuant to the Generation Interconnection Agreement, or to the extent generation curtailment is required as a result of Seller's noncompliance with the Generation Interconnection Agreement. Seller is solely responsible for the operation and maintenance of the Facility. PGE shall not, by reason of its decision to inspect or not to inspect the Facility, or by any action or inaction taken with respect to any such inspection, assume or be held responsible for any liability or occurrence arising from the operation and maintenance by Seller of the Facility.

5.2. Seller agrees to provide sixty (60) days advance written notice of any scheduled maintenance that would require shut down of the Facility for any period of time.

5.3. If the Facility ceases operation for unscheduled maintenance, Seller immediately shall notify PGE of the necessity of such unscheduled maintenance, the time when such maintenance has occurred or will occur, and the anticipated duration of such maintenance. Seller shall take all reasonable measures and exercise its best efforts to avoid unscheduled maintenance, to limit the duration of such unscheduled maintenance, and to perform unscheduled maintenance during Off-Peak hours.

#### SECTION 6: CREDITWORTHINESS

In the event Seller: a) is unable to represent or warrant as required by Section 3 that it has not been a debtor in any bankruptcy proceeding within the past two (2) years; b) becomes such a debtor during the Term; or c) is not or will not be current on all its financial obligations, Seller shall immediately notify PGE and shall promptly (and in no less than 10 days after notifying PGE) provide default security in an amount reasonably acceptable to PGE in one of the following forms: Senior Lien, Step-in Rights, a Cash Escrow or Letter of Credit. The amount of such default security that shall be acceptable to PGE shall be equal to: (annual On Peak Hours) X (On Peak Price – Off Peak Price) X (Net Dependable Capacity). Notwithstanding the foregoing, in the event Seller is not current on construction related financial obligations, Seller shall notify PGE of such delinquency and PGE may, in its discretion, grant an exception to the

requirements to provide default security if the QF has negotiated financial arrangements with the construction loan lender that mitigate Seller's financial risk to PGE.

#### SECTION 7: BILLINGS, COMPUTATIONS AND PAYMENTS

7.1. On or before the thirtieth (30<sup>th</sup>) day following the end of each Billing Period, PGE shall send to Seller payment for Seller's deliveries of Net Output to PGE, together with computations supporting such payment. PGE may offset any such payment to reflect amounts owing from Seller to PGE pursuant to this Agreement and any other agreement related to the Facility between the Parties or otherwise. On or before the thirtieth (30<sup>th</sup>) day following the end of each Contract Year, PGE shall bill for any Lost Energy Value accrued pursuant to this Agreement.

7.2. Any amounts owing after the due date thereof shall bear interest at the Prime Rate plus two percent (2%) from the date due until paid; provided, however, that the interest rate shall at no time exceed the maximum rate allowed by applicable law.

#### SECTION 8: DEFAULT, REMEDIES AND TERMINATION

8.1. In addition to any other event that may constitute a default under this Agreement, the following events shall constitute defaults under this Agreement:

8.1.1. Breach by Seller or PGE of a representation or warranty, except for Section 3.1.4, set forth in this Agreement.

8.1.2. Seller's failure to provide default security, if required by Section 6, prior to delivery of any Net Output to PGE or within 10 days of notice.

8.1.3. Seller's failure to meet the Guarantee of Mechanical Availability established in Section 3.1.10 for two consecutive Contract Years or Seller's failure to provide any written report required by that section.

8.1.4. If Seller is no longer a Qualifying Facility.

8.1.5. Failure of PGE to make any required payment pursuant to Section 7.1.

8.1.6. Seller's failure to meet the Commercial Operation Date.

8.2. In the event of a default under Section 8.1.6, PGE may provide Seller with written notice of default. Seller shall have one year in which to cure the default during which time the Seller shall pay PGE damages equal to the Lost Energy Value. If Seller is unable to cure the default, PGE may immediately terminate this Agreement as provided in Section 8.3. PGE's resource sufficiency/deficiency position shall have no bearing on PGE's right to terminate the Agreement under this Section 8.2.

8.3. In the event of a default hereunder, except as otherwise provided in this Agreement, the non-defaulting party may immediately terminate this Agreement at its sole discretion by delivering written notice to the other Party. In addition, the non-defaulting Party may pursue any and all legal or equitable remedies provided by law or pursuant to this Agreement including damages related to the need to procure replacement power. A termination hereunder shall be effective upon the date of delivery of notice, as provided in Section 20. The rights provided in this Section 8 are cumulative such that the exercise of one or more rights shall not constitute a waiver of any other rights.

8.4. If this Agreement is terminated as provided in this Section 8, PGE shall make all payments, within thirty (30) days, that, pursuant to the terms of this Agreement, are owed to Seller as of the time of receipt of notice of default. PGE shall not be required to pay Seller for any Net Output delivered by Seller after such notice of default.

8.5. In the event PGE terminates this Agreement pursuant to this Section 8, and Seller wishes to again sell Net Output to PGE following such termination, PGE in its sole discretion may require that Seller shall do so subject to the terms of this Agreement, including but not limited to the Contract Price until the Term of this Agreement (as set forth in Section 2.3) would have run in due course had the Agreement remained in effect. At such time Seller and PGE agree to execute a written document ratifying the terms of this Agreement.

8.6. Sections 8.1, 8.4, 8.5, 10, and 19.2 shall survive termination of this Agreement.

#### SECTION 9: TRANSMISSION CURTAILMENTS

9.1. Seller shall give PGE notice as soon as reasonably practicable of any Transmission Curtailment that is likely to affect Seller's ability to deliver any portion of energy scheduled pursuant to Section 4.4 of this Agreement.

9.2. If as the result of a Transmission Curtailment, Seller does not deliver any portion of energy (including real-time adjustments), scheduled pursuant to Section 4.4 of this Agreement, Seller shall pay PGE the Transmission Curtailment Replacement Energy Cost for the number of MWh of energy reasonably determined by PGE as the difference between (i) the scheduled energy that would have been delivered to PGE under this Agreement during the period of Transmission Curtailment and (ii) the actual energy, if any, that was delivered to PGE for the period.

#### SECTION 10: INDEMNIFICATION AND LIABILITY

10.1. Seller agrees to defend, indemnify and hold harmless PGE, its directors, officers, agents, and representatives against and from any and all loss, claims, actions or suits, including costs and attorney's fees, both at trial and on appeal, resulting from, or arising out of or in any way connected with Seller's delivery of electric power to PGE or with the facilities at or prior to the Point of Delivery, or otherwise arising out of this Agreement, including without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property belonging to PGE, Seller or others, excepting to the extent such loss, claim, action or suit may be caused by the negligence of PGE, its directors, officers, employees, agents or representatives.

10.2. PGE agrees to defend, indemnify and hold harmless Seller, its directors, officers, agents, and representatives against and from any and all loss, claims, actions or suits, including costs and attorney's fees, both at trial and on appeal, resulting from, or arising out of or in any way connected with PGE's receipt of electric power from Seller or with the facilities at or after the Point of Delivery, or otherwise arising out of this

Agreement, including without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property belonging to PGE, Seller or others, excepting to the extent such loss, claim, action or suit may be caused by the negligence of Seller, its directors, officers, employees, agents or representatives.

10.3. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a Party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or to the public, nor affect the status of PGE as an independent public utility corporation or Seller as an independent individual or entity.

10.4. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR SPECIAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES, WHETHER ARISING FROM CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.

#### SECTION 11: INSURANCE

11.1. Prior to the connection of the Facility to PGE's electric system, provided such Facility has a design capacity of 200 kW or more, Seller shall secure and continuously carry for the Term hereof, with an insurance company or companies rated not lower than "B+" by the A. M. Best Company, insurance policies for bodily injury and property damage liability. Such insurance shall include provisions or endorsements naming PGE, its directors, officers and employees as additional insureds; provisions that such insurance is primary insurance with respect to the interest of PGE and that any insurance or self-insurance maintained by PGE is excess and not contributory insurance with the insurance required hereunder; a cross-liability or severability of insurance interest clause; and provisions that such policies shall not be canceled or their limits of liability reduced without thirty (30) days' prior written notice to PGE. Initial limits of liability for all requirements under this section shall be \$1,000,000 million single limit, which limits may be required to be increased or decreased by PGE as PGE determines in its reasonable judgment economic conditions or claims experience may warrant.

11.2. Prior to the connection of the Facility to PGE's electric system, provided such facility has a design capacity of 200 kW or more, Seller shall secure and continuously carry for the Term hereof, in an insurance company or companies rated not lower than "B+" by the A. M. Best Company, insurance acceptable to PGE against property damage or destruction in an amount not less than the cost of replacement of the Facility. Seller promptly shall notify PGE of any loss or damage to the Facility. Unless the Parties agree otherwise, Seller shall repair or replace the damaged or destroyed Facility, or if the facility is destroyed or substantially destroyed, it may terminate this Agreement. Such termination shall be effective upon receipt by PGE of written notice from Seller. Seller shall waive its insurers' rights of subrogation against PGE regarding Facility property losses.

11.3. Prior to the connection of the Facility to PGE's electric system and at all other times such insurance policies are renewed or changed, Seller shall provide PGE with a copy of each insurance policy required under this Section, certified as a true copy by an authorized representative of the issuing insurance company or, at the discretion of PGE, in lieu thereof, a certificate in a form satisfactory to PGE certifying the issuance of such insurance. If Seller fails to provide PGE with copies of such currently effective insurance policies or certificates of insurance, PGE at its sole discretion and without limitation of other remedies, may upon ten (10) days advance written notice by certified or registered mail to Seller either withhold payments due Seller until PGE has received such documents, or purchase the satisfactory insurance and offset the cost of obtaining such insurance from subsequent power purchase payments under this Agreement.

## SECTION 12: FORCE MAJEURE

12.1. As used in this Agreement, "Force Majeure" or "an event of Force Majeure" means any cause beyond the reasonable control of the Seller or of PGE which, despite the exercise of due diligence, such Party is unable to prevent or overcome. By way of example, Force Majeure may include but is not limited to acts of God, fire, flood, storms, wars, hostilities, civil strife, strikes, and other labor disturbances, earthquakes, fires, lightning, epidemics, sabotage, restraint by court order or other delay or failure in the performance as a result of any action or inaction on behalf of a public authority which by the exercise of reasonable foresight such Party could not reasonably have been expected to avoid and by the exercise of due diligence, it shall be unable to overcome, subject, in each case, to the requirements of the first sentence of this paragraph. Force Majeure, however, specifically excludes the cost or availability of resources to operate the Facility, changes in market conditions that affect the price of energy or transmission, wind or water droughts, and obligations for the payment of money when due.

12.2. If either Party is rendered wholly or in part unable to perform its obligation under this Agreement because of an event of Force Majeure, that Party shall be excused from whatever performance is affected by the event of Force Majeure to the extent and for the duration of the Force Majeure, after which such Party shall recommence performance of such obligation, provided that:

12.2.1. the non-performing Party, shall, promptly, but in any case within one (1) week after the occurrence of the Force Majeure, give the other Party written notice describing the particulars of the occurrence; and

12.2.2. the suspension of performance shall be of no greater scope and of no longer duration than is required by the Force Majeure; and

12.2.3. the non-performing Party uses its best efforts to remedy its inability to perform its obligations under this Agreement.

12.3. No obligations of either Party which arose before the Force Majeure causing the suspension of performance shall be excused as a result of the Force Majeure.

12.4. Neither Party shall be required to settle any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to the Party's best interests.

#### SECTION 13: SEVERAL OBLIGATIONS

Nothing contained in this Agreement shall ever be construed to create an association, trust, partnership or joint venture or to impose a trust or partnership duty, obligation or liability between the Parties. If Seller includes two or more parties, each such party shall be jointly and severally liable for Seller's obligations under this Agreement.

#### SECTION 14: CHOICE OF LAW

This Agreement shall be interpreted and enforced in accordance with the laws of the state of Oregon, excluding any choice of law rules which may direct the application of the laws of another jurisdiction.

#### SECTION 15: PARTIAL INVALIDITY AND PURPA REPEAL

It is not the intention of the Parties to violate any laws governing the subject matter of this Agreement. If any of the terms of the Agreement are finally held or determined to be invalid, illegal or void as being contrary to any applicable law or public policy, all other terms of the Agreement shall remain in effect. If any terms are finally held or determined to be invalid, illegal or void, the Parties shall enter into negotiations concerning the terms affected by such decision for the purpose of achieving conformity with requirements of any applicable law and the intent of the Parties to this Agreement.

In the event the Public Utility Regulatory Policies Act (PURPA) is repealed, this Agreement shall not terminate prior to the Termination Date, unless such termination is mandated by state or federal law.

#### SECTION 16: WAIVER

Any waiver at any time by either Party of its rights with respect to a default under this Agreement or with respect to any other matters arising in connection with this Agreement must be in writing, and such waiver shall not be deemed a waiver with respect to any subsequent default or other matter.

#### SECTION 17: GOVERNMENTAL JURISDICTION AND AUTHORIZATIONS

This Agreement is subject to the jurisdiction of those governmental agencies having control over either Party or this Agreement. Seller shall at all times maintain in effect all local, state and federal licenses, permits and other approvals as then may be required by law for the construction, operation and maintenance of the Facility, and shall provide upon request copies of the same to PGE.

#### SECTION 18: SUCCESSORS AND ASSIGNS

This Agreement and all of the terms hereof shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties. No assignment hereof by either Party shall become effective without the written consent of the other Party being first obtained and such consent shall not be unreasonably withheld.

Notwithstanding the foregoing, either Party may assign this Agreement without the other Party's consent as part of (a) a sale of all or substantially all of the assigning Party's assets, or (b) a merger, consolidation or other reorganization of the assigning Party.

#### SECTION 19: ENTIRE AGREEMENT

19.1. This Agreement supersedes all prior agreements, proposals, representations, negotiations, discussions or letters, whether oral or in writing, regarding PGE's purchase of Net Output from the Facility. No modification of this Agreement shall be effective unless it is in writing and signed by both Parties.

19.2. By executing this Agreement, Seller releases PGE from any third party claims related to the Facility, known or unknown, which may have arisen prior to the Effective Date.

#### SECTION 20: NOTICES

20.1. All notices except as otherwise provided in this Agreement shall be in writing, shall be directed as follows and shall be considered delivered if delivered in person or when deposited in the U.S. Mail, postage prepaid by certified or registered mail and return receipt requested:

To Seller: Fort Rock Solar I LLC  
3500 South DuPont Highway  
Dover, DE 19901  
jstephens@newsunenergy.net

with a copy to: Stephane Nguyen  
c/o Reed Smith  
1901 Avenue of the Stars #700  
Los Angeles, CA 90067-6078  
snguyen@reedsmith.com

and a copy to: Greg Adams  
c/o Richardson Adams, PLLC  
515 N. 27th Street, 83702  
P.O. Box 7218, 83707  
Boise, Idaho  
greg@richardsonadams.com

To PGE: Contracts Manager  
QF Contracts, 3WTC0306  
PGE - 121 SW Salmon St.  
Portland, Oregon 97204

20.2 The Parties may change the person to whom such notices are addressed, or their addresses, by providing written notices thereof in accordance with this Section 20.



IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in their respective names as of the Effective Date.

PGE

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

FORT ROCK SOLAR I LLC  
(Name Seller)

By: \_\_\_\_\_  
Name: Jacob Stephens  
Title: Authorized Representative  
Date: \_\_\_\_\_

## EXHIBIT A DESCRIPTION OF SELLER'S FACILITY

Fort Rock Solar I is a photovoltaics-based solar generating facility which upon reaching full commercial operations have nameplate capacity of 10 MW-AC net output at the point of interconnection subject to available solar energy input. Firming capabilities may be added as described below. The facility will consist of the following primary equipment:

1. PV Modules - Commercially-available photovoltaic modules for utility-scale DC energy production. Nominal per module DC production rating of 350W +/-50W-DC. Qty <= [14MM/(module rating)].
2. Inverter AC Generator Units: Commercially-available string inverter (90kW-AC, nominal) convert DC to AC power, collected by AC wiring to switchboard. Each such collected aggregation of inverters shall constitute a single sub-generator for the facility, which once all aggregated shall constitute the entire generator for the facility.
3. Pad-mounted transformers: for each sub-generator shall transform inverter output voltage to plant AC collection voltage (12.47 KV, nominally)
4. Racking systems, commercially-available, will mount the PV Modules and direct them and control their angle to receive light from the sun. Racking systems will be arranged in generally uniform rows on the facility site.5. Additional interconnection, transformation, switching, storage, metering, communications, tie-line, and meteorological observations facilities as may be required, subject to final interconnection, permitting, and design requirements.
5. Firming capabilities by batteries and/or biodiesel genset up to a maximum capacity of 3 MW. Under no circumstance will generation exceed 10 MW at point of interconnection.

**EXHIBIT B  
REQUIRED FACILITY DOCUMENTS**

1. Seller's Generation Interconnection Agreement
2. Lake County CUP & Building Permits
3. BPA: Transmission Service Agreement
4. Additional items as may be determined by Seller to be required for facility permitting, construction, and interconnection.

## EXHIBIT C START-UP TESTING

### **Seller-identified start-up tests**

As part of the start-up of Facility, Seller will perform the following tests, in addition to any further tests deemed required in coordination with EPC contractor (the Facility's manufacturer) and primary supply vendors (PV modules, inverters, transformers) and interconnecting utility. This will include required factory checks and tests necessary to determine that the equipment systems and subsystems have been properly manufactured and installed, function properly, and are in a condition to permit safe and efficient start-up of the Facility, which may include but are not limited to (as applicable). This will include required start-up tests and checks which necessary to determine that all features and equipment, systems, and subsystems have been properly designed, manufactured, installed and adjusted, function properly, and are capable of operating simultaneously in such condition that the Facility is capable of continuous delivery into PGE's electrical system, which may include but are not limited to (as applicable):

1. Validation of mechanical assembly completion for sign-off on EPC vendor warranty of mechanical completion and workmanship, including racking system, wiring (module connections, DC collection, string terminations, inverter connections to collected strings, AC delivery to switchboard and step-up/collection transformers, and AC collection system deliver to interconnection facilities), inverter mounting, and module installation.
2. Electrical performance validation by facility PV string and sub-generator, per insolation input, including:
  - a) DC wiring inputs to inverters
  - b) AC wiring delivery to transformers
3. Inverter Commissioning, per manufacturer specifications, including commissioning report;
4. Facility daily start-up and shut-down automation confirmed;
5. Energization of transformers;
6. Full system performance test;
7. Interconnection facilities: Commissioning of on-site, tie-line, and off-site interconnection facilities (as applicable), including switchyard, substation, breakers, and metering equipment (as applicable), in coordination with interconnecting utility and performing electrical contractor;
8. Cataloguing of installed equipment on-site, including primary equipment serial numbers and manufacturer information for O&M documentation;
9. Complete pre-parallel checks with PGE;
10. Test energy delivery and metering checks.
11. Excitation and voltage regulation operation tests per insolation inputs.
12. Meteorological station commissioning and report;
13. Facility communications equipment commissioning and report; and
14. Other tests as may be required by equipment manufacturers.

EXHIBIT D  
SCHEDULE

**[Attach currently in-effect Schedule 201]**

**SCHEDULE 201 (Continued)**

PRICING OPTIONS FOR STANDARD PPA (Continued)  
 Renewable Fixed Price Option (Continued)

TABLE 6a												
Renewable Avoided Costs												
Renewable Fixed Price Option for Solar QF												
On-Peak Forecast (\$/MWH)												
Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2015	31.13	25.13	26.13	21.66	22.66	25.13	33.13	34.73	29.63	27.38	29.68	33.13
2016	31.43	30.01	28.93	25.51	24.81	23.06	31.90	36.26	32.22	30.97	31.97	34.43
2017	34.12	32.56	29.20	28.13	27.35	25.40	34.51	39.28	34.86	33.83	34.92	37.63
2018	36.46	34.80	31.19	29.53	28.71	26.67	37.01	42.11	37.38	35.92	37.09	39.97
2019	38.14	36.40	32.63	30.89	30.03	27.89	38.72	44.06	39.11	37.58	38.80	41.81
2020	90.01	90.80	89.99	91.31	104.33	109.84	91.65	94.79	91.02	90.75	91.10	90.77
2021	91.63	92.46	91.84	93.60	105.26	110.91	93.15	96.99	93.38	93.37	92.70	92.70
2022	93.66	93.76	93.13	94.96	109.63	114.13	92.07	97.80	94.14	95.42	94.37	94.02
2023	95.65	95.40	94.17	96.50	111.28	116.40	95.15	98.68	95.95	97.21	95.93	96.48
2024	97.23	97.75	96.73	97.65	106.30	117.33	97.35	101.95	98.68	98.48	97.92	98.07
2025	99.10	99.12	98.31	100.06	110.92	119.16	99.24	105.55	100.78	100.27	99.79	100.25
2026	100.57	101.09	99.35	101.04	112.20	119.15	102.18	106.55	102.12	101.05	101.43	101.63
2027	102.25	102.59	100.63	103.03	115.03	120.12	102.66	109.14	103.72	103.12	102.13	102.82
2028	103.68	103.34	101.96	104.33	112.95	122.67	104.44	109.68	104.55	105.12	103.60	104.56
2029	105.79	105.38	103.96	105.98	114.07	124.22	106.94	112.24	108.46	106.07	105.40	105.83
2030	107.13	106.53	106.06	107.76	114.95	127.70	108.39	113.63	109.08	107.05	106.85	107.79
2031	108.69	107.80	107.47	109.33	116.28	128.44	109.64	116.52	110.47	109.12	108.50	110.22
2032	110.36	110.11	108.39	111.18	118.61	128.41	111.91	118.67	111.94	110.49	110.33	111.16
2033	112.90	111.08	110.05	112.92	120.45	128.96	113.31	119.67	113.39	111.85	112.52	112.91
2034	114.73	112.87	111.66	115.44	121.12	132.66	115.56	121.34	115.09	114.26	114.22	115.22
2035	117.24	114.47	113.77	117.41	122.07	132.79	118.17	124.75	117.70	115.81	116.14	117.31
2036	119.22	115.79	115.97	119.90	124.14	134.40	120.45	129.78	119.82	118.92	117.61	118.60
2037	119.91	116.45	117.83	122.26	126.19	135.53	123.87	131.76	123.11	118.70	120.69	120.39
2038	122.36	120.87	119.99	124.68	129.66	137.52	125.74	134.93	123.85	121.13	122.49	122.34
2039	124.04	122.45	121.73	126.00	132.47	140.16	126.54	133.23	124.63	123.29	124.46	124.08
2040	125.85	124.33	123.44	128.77	133.86	142.06	129.44	135.37	126.71	125.04	126.71	126.61

Effective for service  
 on and after September 23, 2015

**SCHEDULE 201 (Continued)**

PRICING OPTIONS FOR STANDARD PPA (Continued)  
Renewable Fixed Price Option (Continued)

TABLE 6b												
Renewable Avoided Costs												
Renewable Fixed Price Option for Solar QF												
Off-Peak Forecast (\$/MWH)												
Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2015	26.98	20.38	20.88	15.88	17.88	19.13	23.98	26.13	25.63	23.13	25.38	28.38
2016	27.06	25.99	23.32	18.54	16.65	13.43	23.13	27.74	25.51	27.30	27.97	30.11
2017	30.27	26.06	26.04	21.47	19.23	15.43	25.37	30.49	28.02	29.93	30.97	33.03
2018	32.90	31.29	28.03	22.20	19.89	15.98	27.80	33.43	30.71	32.89	33.71	36.32
2019	34.42	33.04	29.59	23.42	20.98	16.82	29.35	35.30	32.42	34.73	35.60	38.36
2020	68.58	67.81	70.03	66.95	51.47	41.59	66.31	63.57	67.34	67.56	68.43	67.52
2021	71.70	70.03	70.67	68.13	54.41	44.45	68.58	64.91	68.43	69.50	69.36	69.20
2022	72.93	72.10	72.50	70.14	52.58	43.90	73.59	66.03	71.26	70.61	70.94	71.27
2023	74.08	73.80	75.03	73.19	51.34	44.74	74.72	68.53	72.72	72.11	72.75	73.03
2024	74.27	73.88	76.02	73.85	53.94	50.44	74.10	67.73	72.49	72.53	73.47	74.32
2025	78.37	78.84	78.49	75.22	60.00	52.58	78.18	69.30	74.23	74.75	78.80	74.78
2026	78.55	78.33	81.13	78.05	64.87	53.26	79.32	71.90	76.57	77.89	79.72	77.07
2027	81.57	80.52	82.48	79.59	65.38	56.20	79.64	72.83	78.65	80.47	80.82	79.73
2028	83.33	83.05	84.80	82.68	63.45	56.44	82.37	73.98	81.24	81.50	82.54	82.21
2029	84.45	85.45	86.98	85.41	72.98	59.37	84.03	75.52	82.32	84.06	85.12	85.43
2030	87.14	88.37	89.47	88.42	76.31	62.58	85.40	78.15	85.83	87.25	87.66	87.28
2031	89.62	91.21	92.09	88.87	79.11	66.01	89.30	81.28	87.31	89.03	90.93	87.50
2032	91.36	92.90	94.09	90.37	81.89	68.80	89.22	81.75	89.34	92.12	91.54	90.26
2033	94.30	96.19	97.29	93.45	84.73	71.50	93.78	83.69	92.61	95.63	94.00	93.33
2034	96.65	98.62	99.97	95.91	86.88	73.32	95.58	86.58	95.37	97.26	96.55	96.04
2035	97.26	101.30	102.07	98.18	90.58	76.12	97.06	86.87	97.82	99.24	98.90	98.15
2036	100.30	103.84	104.15	98.13	92.11	81.09	97.21	87.79	98.23	102.10	102.08	99.77
2037	103.90	106.19	107.32	100.80	96.72	82.63	98.42	89.65	98.63	105.58	103.83	103.24
2038	108.63	108.17	109.11	102.78	97.37	85.19	101.14	90.89	103.90	109.20	105.75	105.85
2039	109.65	111.37	112.13	106.34	98.97	86.98	106.48	96.20	108.22	110.80	108.44	108.86
2040	112.13	113.43	114.50	109.34	100.07	89.08	107.33	97.98	110.92	112.29	110.09	110.91

Effective for service  
on and after September 23, 2015

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UM 1931**

PORTLAND GENERAL ELECTRIC	)
COMPANY,	)
	)
Complainant,	)
	)
v.	)
	)
ALFALFA SOLAR I LLC, et al.	)
	)
Defendants.	)
_____	)

**Response Testimony of Thomas Harnsberger  
on behalf of  
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  
(collectively, the “NewSun Parties”)**

**December 28, 2018**



1 **Q. Mr. Harnsberger, please state your name and business address.**

2 **A.** My name is Thomas Harnsberger. I am an attorney in private practice in  
3 California. My business address is 670 Alma Real Drive, Pacific Palisades,  
4 California 90272.

5 **Q. Please describe your education and professional experience.**

6 **A.** I graduated from the University of California San Diego in 1971 with honors and  
7 attended University of Michigan Law School where I graduated magna cum laude  
8 in 1974. I was admitted to the practice of law in California in 1974. My legal  
9 practice has focused on corporate real estate with a specialization in independent  
10 electric power projects.

11 I first worked as a lawyer at Latham & Watkins in Los Angeles where I  
12 became a partner in 1982. After several years as a real estate investor, I became a  
13 partner at Milbank Tweed in Los Angeles in 1987 where I began working on  
14 independent energy projects utilizing geothermal, solar, wind, biomass, natural  
15 gas and coal resources on behalf of project developers (both independents and  
16 utility affiliates) and financiers. I moved my practice to Riordan & McKinzie in  
17 1993 and then to Reed Smith in 2003 and my practice has continued to revolve  
18 around independent energy. For the past 10 years I have been a solo practitioner.  
19 I have worked on projects located throughout the United States as well as Canada  
20 and Indonesia, ranging from huge utility scale projects to QFs, from a few  
21 megawatts or smaller to over 1,000. I have reviewed and/or drafted dozens of  
22 power purchase agreements in my career and negotiated financing documents on  
23 behalf of both providers and recipients of financing in numerous independent

1 power projects.

2 **Q. On whose behalf are you appearing in this proceeding?**

3 **A.** I am testifying on behalf of the Defendants in this proceeding, Alfalfa Solar I  
4 LLC, Dayton Solar I LLC, Fort Rock Solar I LLC, Fort Rock Solar II LLC, Fort  
5 Rock Solar IV LLC, Harney Solar I LLC, Riley Solar I LLC, Starvation Solar I  
6 LLC, Tygh Valley Solar I LLC, and Wasco Solar I LLC (collectively referred to  
7 as the “NewSun Parties”).

8 **Q. Please summarize your testimony.**

9 **A.** My testimony will discuss the context of a power purchase agreement (“PPA”)  
10 and how and why it is common in the industry to use the word “term” and  
11 “contract length” and similar phrases to describe the period during which the  
12 facility is operating and expected to be delivering and selling power under the  
13 PPA even though the PPA itself would be effective before that time. Next, I will  
14 review the terminology used in Portland General Electric Company’s (“PGE”)  
15 Schedule 201 contained in the PPAs at issue in this proceeding. I will testify that,  
16 based on my 30 years of experience of working with developers, investors and  
17 lenders in energy generation facilities and terminology used in the industry, the  
18 ordinary understanding of the words used in PGE’s Schedule 201 is that PGE will  
19 pay the fixed prices for 15 years after operation of the facility; the position that  
20 PGE will only pay fixed prices for 15 years immediately following execution of  
21 the PPA would be very surprising to most industry participants from the words  
22 PGE used in the Schedule 201.

1 **Q. Could you please provide some context on your understanding of the typical**  
2 **power purchase agreement transaction for a new energy generation facility**  
3 **that will be paid for energy delivered to the utility?**

4 **A.** There are two periods of time under a typical power purchase agreement (PPA):  
5 1) an initial period (pre-operation) where the PPA is in effect and the project  
6 developer in reliance thereon is designing the project and obtaining necessary  
7 entitlements to construct, obtaining transmission rights of way and  
8 interconnection approvals as may be required, and financing and constructing the  
9 facility so that it can be tested and shown to be operational and that it meets  
10 applicable performance standards; and 2) actually commencing operations and  
11 selling electricity delivered to the power grid.

12 In my experience the amount of time in period 2 (operations) is the  
13 important time period referred to by industry participants as “term” or “contract  
14 length”—because that is when pricing is typically measured and applicable.  
15 Economic feasibility of a new energy generating facility is determined by its  
16 ability to attract sufficient financing based on expected project revenues during  
17 the period of operations, not by how long it may take to entitle and build the  
18 project before it can generate revenues from electricity sales which is not  
19 pertinent to debt financing sources. Financiers underwrite a floor level of energy  
20 revenues for a definite period of time to be paid by the purchasing utility in order  
21 to provide low market rate debt financing. If the selling price of electricity has no  
22 floor and no assured time frame for payments, then the financial markets are less  
23 willing to underwrite the development risks.

1 Over the past 30 years as the independent power industry has evolved,  
2 state agencies have developed price incentives in the nature of *fixed rate pricing*  
3 *to be paid over to the facility for electrical production to be delivered during a*  
4 *specified period of operation* (which is commonly understood as the term of the  
5 contract). It is the product of the stated price times the amount of expected  
6 production times the number of years of production that will generate the  
7 revenues to repay debt financing and provide an equity return. The time period of  
8 payments is widely understood as the term or contract length.

9 **Q. Have you reviewed PGE’s Schedule 201 contained in the PPA between PGE**  
10 **and Alfalfa Solar I LLC contained in PGE Exhibit 101, including Schedule**  
11 **201’s descriptions of the contract term and the fixed-price term?**

12 **A.** Yes. With respect to the renewable fixed-price period, Schedule 201 provides at  
13 page 12:

14 This option is available for a *maximum term of 15 years*. Prices  
15 will be as established at the time the Standard PPA is executed  
16 and will be equal to the Renewable Avoided Costs in Tables 4a  
17 and 4b, 5a and 5b, or 6a and 6b, depending on the type of QF,  
18 effective at execution.

19 \* \* \* \*

20  
21  
22 Sellers with *PPAs exceeding 15 years* will receive pricing equal  
23 to the Mid-C Index Price and will retain all Environmental  
24 Attributes generated by the facility for *all years up to five in*  
25 *excess of the initial 15*.<sup>1</sup>

26  
27 With respect to the overall contract length, it states:

28  
29 The agreement will have a *term of up to 20 years* as selected by  
30 the QF.<sup>2</sup>  
31

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<sup>1</sup> PGE/101, Macfarlane/30 (emphasis added).

<sup>2</sup> PGE/101, Macfarlane/25 (emphasis added).

1 And:  
2

3 **TERM OF AGREEMENT**  
4

5 Not less than one year and *not to exceed 20 years*.<sup>3</sup>  
6

7 **Q. Based on your experience in the industry what would a developer of an**  
8 **energy generation facility understand this language to mean?**

9 **A.** Based on my experience, a developer would understand that it can elect up to a  
10 maximum of 15 years of operations for the fixed price sales of electricity per the  
11 relevant schedule of pricing, with any additional time period past 15 years of  
12 operations to be at a floating rate for a maximum of 5 additional years.  
13 It would be illogical in my opinion for the fixed price term to begin upon contract  
14 execution in that there are *no sales or operations to be paid for* right after contract  
15 execution and until after the development period has progressed to the point  
16 where the completed project can be tested and accepted. I believe the language  
17 means there will be an up to 15-year period selected by the developer for fixed  
18 price sales to occur, which only begins after development and testing. Indeed,  
19 during period 1 referred to above before operations commence, no price is paid at  
20 all for electricity not delivered.

21 **Q. PGE has argued that because the PPA itself defines the word “Term” as the**  
22 **period beginning on the day the PPA is executed that the Schedule 201’s**  
23 **description of the fixed-price period must necessarily end 15 years after the**  
24 **date of execution. Without providing a legal interpretation of the PPA, do**  
25 **you have any response with regard to the ordinary understanding in the**

---

<sup>3</sup> PGE/101, Macfarlane/36 (emphasis added).

1 **industry of the construct of a power purchase agreement?**

2 **A.** I would agree that it is normal in the context of a power purchase agreement that  
3 the contract is in effect upon execution and therefore the term has commenced  
4 technically. This enables both parties to rely on the binding arrangement in order  
5 to go forward with processing planning documents, transmission issues can be  
6 resolved, and financing put in place to be able to construct. However, an industry  
7 participant would ordinarily understand that the fixed price term of 15 years  
8 applicable to paying for electricity referenced in the Schedule 201 should be  
9 measured from operation date (when any payments are actually to be made), as I  
10 have outlined above.

11 **Q. Does this conclude your testimony?**

12 **A** Yes.

13

14

15

16

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22

23

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UM 1931**

PORTLAND GENERAL ELECTRIC )  
COMPANY, )  
 )  
Complainant, )  
 )  
v. )  
 )  
ALFALFA SOLAR I LLC, et al. )  
 )  
Defendants. )  
\_\_\_\_\_ )

**CERTIFICATE OF SERVICE**

I hereby certify that I caused to be served two copies of the following:

1. RESPONSE TESTIMONY OF JAKE STEPHENS ON BEHALF OF NEWSUN PARTIES;
2. RESPONSE TESTIMONY OF THOMAS HARNSBERGER ON BEHALF OF NEWSUN PARTIES; and
3. CERTIFICATE OF SERVICE

on the following named person(s) on the date and manner indicated below, addressed to said person(s) at the address of each shown below.

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

- by Hand Delivery
- by Overnight Delivery
- by Facsimile Transmission
- by Email
- by U.S. Priority Mail with postage prepaid
- by Electronic Mailing through the Filing Center

I further certify that all other parties have waived physical service of this filing pursuant to OAR 860-001-0180(3)(b) and will be served by electronic mail through the Filing Center.

DATED this 28th day of December, 2018.

By: s/Keil M. Mueller

**Robert A. Shlachter**, OSB No. 911718

**Keil M. Mueller**, OSB No. 085535

Stoll Stoll Berne Lokting & Shlachter P.C.

209 SW Oak Street, Suite 500

Portland, OR 97204

Telephone: (503) 227-1600

Facsimile: (503) 227-6840

Email: rshlachter@stollberne.com  
kmueller@stollberne.com

-and-

**Gregory M. Adams**, OSB No. 101779

Richardson Adams, PLLC

515 North 27th Street

Boise, ID 83702

Telephone: (208) 938-2236

Facsimile: (208) 939-7904

Email: greg@richardsonadams.com

Attorneys for Defendants