

January 25, 2019

Via Electronic Filing

Public Utility Commission of Oregon
Filing Center
201 High Street SE, Suite 100
Salem, Oregon 97301-3398

Re: UM 1931 - Portland General Electric Company v. Alfalfa Solar I LLC, et al.

Attention Filing Center:

Enclosed for filing in the above-named docket is Portland General Electric Company's Statement of Additional Undisputed Facts.

Thank you for your assistance.

Very truly yours,


Jeffrey S. Lovinger

Enclosure

ALFA-PUC\ 829923

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1931

PORTLAND GENERAL ELECTRIC COMPANY,)	
)	
Complainant,)	PORTLAND GENERAL ELECTRIC COMPANY'S STATEMENT OF ADDITIONAL UNDISPUTED FACTS
)	
v.)	
)	
ALFALFA SOLAR I LLC, et al.)	
)	
Defendants.)	

Complainant Portland General Electric Company (“PGE”) respectfully submits its Statement of Additional Undisputed Facts to the Public Utility Commission of Oregon (“Commission”).

This filing is being made concurrently with Complainant’s, Defendants’, and Intervenors’ Joint Statement of Undisputed Facts filed on this date.

PGE’s Statement of Additional Undisputed Facts is attached hereto as Attachment 1.

PGE’s Statement of Additional Undisputed Facts does not necessarily discuss all Commission orders, all provisions of the power purchase agreements at issue, or provisions of all contract forms that may be relevant to the arguments raised by the parties as they brief their cross-motions for summary judgment. PGE reserves the right to discuss Commission orders, provisions of the NewSun PPAs, or provisions of all contract forms, to the extent PGE believes they are relevant in briefing. PGE also reserves the right to supplement the record with additional documents or declarations that may be necessary to support summary judgment

briefing and to refer to other evidence in the record, as allowed by ORCP 47, the Commission rules, and/or the Commission's precedent regarding motions for summary judgment.

DATED this 25th day of January, 2019.

Respectfully submitted,



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ATTACHMENT 1

UM 1931

PGE's Statement of Additional Undisputed Facts

This list provides the facts that are relevant to the claims and legal issues raised by the Complaint.

A. Alleged and admitted facts.

1. PGE is an investor-owned public utility regulated by the Commission under ORS Chapter 757. PGE is headquartered at 121 Southwest Salmon Street, Portland, Oregon 97204. Complaint ¶ 2.
2. On January 25, 2016, PGE entered into a standard renewable in-system variable power purchase agreement with Dayton Solar I LLC. Complaint ¶ 16 and Ex. 2.
3. On January 25, 2016, PGE entered into a standard renewable off-system variable power purchase agreement with Starvation Solar I LLC. Complaint ¶ 16 and Ex. 8 at 1.
4. On January 25, 2016, PGE entered into a standard renewable off-system variable power purchase agreement with Tygh Valley Solar I LLC. Complaint ¶ 16 and Ex. 9 at 1.
5. On January 25, 2016, PGE entered into a standard renewable off-system variable power purchase agreement with Wasco Solar I LLC. Complaint ¶ 16 and Ex. 10 at 1.
6. On April 27, 2016, PGE entered into a standard renewable off-system variable power purchase agreement with Fort Rock Solar I LLC. Complaint ¶ 16 and Ex. 3 at 1.
7. On April 27, 2016, PGE entered into a standard renewable off-system variable power purchase agreement with Fort Rock Solar II LLC. Complaint ¶ 16 and Ex. 4 at 1.
8. On June 26, 2016, PGE entered into a standard renewable off-system variable power purchase agreement with Alfalfa Solar I LLC. Complaint ¶ 16 and Ex. 1 at 1.
9. On June 26, 2016, PGE entered into a standard renewable off-system variable power purchase agreement with Fort Rock Solar IV LLC. Complaint ¶ 16 and Ex. 5 at 1.

10. On June 27, 2016, PGE entered into a standard renewable off-system variable power purchase agreement with Harney Solar I LLC. Complaint ¶¶ 16 and Ex. 6 at 1.
11. On June 27, 2016, PGE entered into a standard renewable off-system variable power purchase agreement with Riley Solar I LLC. Complaint ¶¶ 16 and Ex. 7 at 1.

B. UM 1129 – Phase I

12. On January 20, 2004, the Commission opened Docket No. UM 1129 as “an investigation related to electric utility purchases from qualifying facilities (QFs).” Order No. 05-584 at 4.

Order No. 05-584 in Phase I of UM 1129

13. On May 13, 2005, the Commission issued Order No. 05-584, the Commission’s Phase I order in Docket No. UM 1129.
14. In Order No. 05-584, the Commission established requirements regarding eligibility for and term of standard contracts. Order No. 05-584 at 1.
15. In Order No. 05-584, the Commission established “a maximum standard contract term of twenty years.” Order No. 05-584 at 1.
16. In Order No. 05-584, the Commission allowed “a QF to select fixed pricing for the first fifteen years of the standard contract, but require[ed] the selection of a market pricing option for the last five years.” Order No. 05-584 at 1-2.
17. In Order No. 05-584, the Commission’s discussion and resolution of the issue of standard contract length and a 15 year period for fixed prices is contained on pages 17 to 20 in the section entitled *Standard Contract Length*. Order No. 05-584 at 17-20.
18. Order No. 05-584 ordered PGE to file “standard contract forms that set forth standard rates, terms and conditions that are consistent with the policy decisions made in this order.” Order No. 05-584 at 59, ordering paragraph 1.

PGE Advice No. 05-10 Compliance Filing in Phase I of UM 1129

19. On July 12, 2005, PGE complied with ordering paragraph 1 of Order No. 05-584 by filing: (i) proposed revisions to PGE’s Schedule 201 tariff entitled *Qualifying Facility Power Purchase Information* (2005 Schedule 201); and (ii) a single proposed standard contract entitled *Standard Contract Power Purchase*

Agreement (2005 Standard Contract). PGE/100, Macfarlane/13; PGE/102, Macfarlane/1 (PGE Advice No. 05-10, Compliance Filing).

20. PGE's July 12, 2005, filing was docketed as PGE Advice No. 05-10. PGE/100, Macfarlane/13; PGE/102, Macfarlane/1 (PGE Advice No. 05-10, Compliance Filing).
21. PacifiCorp's July 12, 2005 filing was docketed as PAC Advice No. 05-006. PGE/100, Macfarlane/13; PGE/103, Macfarlane/1 (PAC Advice No. 05-006, Compliance Filing).
22. Idaho Power's July 12, 2005 filing was docketed as IPC Advice No. 05-06. PGE/100, Macfarlane/14; PGE/104, Macfarlane/1 (IPC Advice No. 05-06, Compliance Filing).
23. PGE's 2005 Schedule 201 included a single fixed price option, a table of forecasted on-peak fixed prices for the period 2005 to 2025 (Table 1), and a table of forecasted off-peak fixed prices for the period 2005 to 2025 (Table 2). PGE/102, Macfarlane/7-9 (PGE Advice No. 05-10, Schedule 201, Original Sheet-4 through Original Sheet-6).
24. With regard to the period during which fixed prices were available, the 2005 Schedule 201 stated:

The Fixed Price Option ... is available for a maximum of 15 years. Sellers with contracts exceeding 15 years will make a one time election at execution to select a market-based option for all years up to five in excess of the initial 15. Under the Fixed Price Option, prices will be as established at the time the Standard Contract is executed and shall be equal to the Avoided Costs in Tables 1 and 2 effective at execution for a term of up to 15 years.

PGE/102, Macfarlane/7 (PGE Advice No. 05-10, Schedule 201, Original Sheet No. 201-4).

25. PGE's 2005 Schedule 201 included three market based price options: (i) Deadband Index Gas Price; (ii) Index Gas Price; and (iii) Dow Jones Mid-Columbia Daily on- and Off-Peak Electricity Firm Price Index (Mid-C Firm Index). PGE/102, Macfarlane/10 (PGE Advice No. 05-10, Schedule 201, Original Sheet No. 201-7).
26. The 2005 Schedule 201 stated that the term of a power purchase agreement entered into pursuant to Schedule 201 would be: "Not less than one year and not to exceed 20 years." PGE/102, Macfarlane/19 (PGE Advice No. 05-10, Schedule 201, Original Sheet 201-16).

27. The 2005 Standard Contract defined “Term” as “the period beginning on the Effective Date and ending on the Termination Date.” PGE/102, Macfarlane/23 (PGE Advice No. 05-10, Standard Contract Power Purchase Agreement, Section 1.24).
28. The 2005 Standard Contract defined “Effective Date” as “... upon execution [of the Agreement] by both Parties.” PGE/102, Macfarlane/24 (PGE Advice No. 05-10, Standard Contract Power Purchase Agreement, Section 2.1).
29. The 2005 Standard Contract defined “Termination Date” as “This Agreement shall terminate on _____, _____ [date to be chosen by Seller], 20 years from the Effective Date, or the date the Agreement is terminated in accordance with Section 10 or 12.2, whichever is earlier (“Termination Date”).” PGE/102, Macfarlane/24 (PGE Advice No. 05-10, Standard Contract Power Purchase Agreement, Section 2.3).
30. The 2005 Standard Contract had a maximum Term of 20 years from the date the contract was executed by both parties. PGE/102, Macfarlane/23-24 (PGE Advice No. 05-10, Standard Contract Power Purchase Agreement, Sections 1.24, 2.1 and 2.3).

31. Regarding Contract Price, the 2005 Standard Contract stated:

PGE shall pay Seller for the price options 5.1, 5.2, 5.3 or 5.4, as selected below, pursuant to the Tariff. Seller shall indicate which price option it chooses by marking it choice below with an X. If the 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.
- 5.2 _____ Deadband Index Gas Price.
- 5.3 _____ Index Gas Price.
- 5.4 _____ Mid-C Index Rate Price.

PGE/102, Macfarlane/26 (PGE Advice No. 05-10, Standard Contract Power Purchase Agreement, Section 5).

32. As used in the 2005 Standard Contract, “Contract Year” means “each twelve (12)- month period commencing at 00:00 hours on January 1 and ending on 20:00 hours on December 31 falling at least partially in the Term of this Agreement.” PGE/102, Macfarlane/21 (PGE Advice No. 05-10, Standard Contract Power Purchase Agreement, Section 1.6).

The Commission's Compliance Investigation in Phase I of UM 1129

33. On August 9, 2005, the Commission issued Order No. 05-899 in Docket No. UM 1129, which stated that "Portland General Electric Company's Advice No. 05-10 [is] allowed to go into effect on August 11, 2005, subject to investigation and possible refund pursuant to ORS 757.215(4)" Order No. 05-899 at 3, ordering paragraph 1.
34. On September 20, 2006, the Commission issued Order No. 06-538 in Docket No. UM 1129.
35. Order No. 06-538 provided the results of the Commission's investigation of the compliance filings made by the utilities in response to Order 05-584. Order No. 06-538 considered 30 general issues and over 80 separate questions of compliance raised by the parties in UM 1129.
36. No party to UM 1129 filed any objections to the manner in which PGE Advice No. 05-10 implemented the 20-year maximum term of a standard contract.
37. No party to UM 1129 filed any objections to the manner in which PGE Advice No. 05-10 implemented the 15-year fixed price period established on page 20 of Order No. 05-584.
38. Order No. 06-538 identified a number of changes required in the compliance filings made by the utilities, including changes required to PGE Advice No. 05-10.
39. Order No. 06-538 did not require PGE to change the 20-year maximum term of a standard contract established in the 2005 Schedule 201 and the 2005 Standard Contract as described in paragraphs 26 through 30 above.
40. Order No. 06-538 did not require PGE to change the language governing the 15-year fixed price period in the 2005 Schedule 201 and the 2005 Standard Contract as described in paragraphs 23, 24, 30, 31, and 32.
41. Order No. 06-538 ordered PGE to file "one or more revised standard contract forms that set forth standard rates, terms and conditions that are consistent with the policy decisions made in this order." Order No. 06-538 at 67, ordering paragraph 1.

PGE's Advice No. 06-26 Compliance Filing in Phase I of UM 1129

42. On October 20, 2006, PGE complied with Order No. 06-538 by filing: (i) a revised Schedule 201 tariff entitled *Qualifying Facility Power Purchase Information (2006 Schedule 201)*; (ii) a revised single standard contract entitled *Standard Contract*

Power Purchase Agreement (2006 Standard Contract); and (iii) a new *Off System Standard Power Purchase Agreement* (2006 Off System Standard Contract). PGE/105, Macfarlane/1 (PGE Advice No. 06-26, Compliance Filing).

43. PGE's October 20, 2006 filing was docketed as PGE Advice No. 06-26. PGE/105, Macfarlane/ 1 (PGE Advice No. 06-26, Compliance Filing).
44. The 2006 Schedule 201 contained the same language regarding the availability of fixed prices as that contained in the 2005 Schedule 201 and described in paragraphs 23 and 24 above.
45. The 2006 Schedule 201 contained the same language regarding the maximum 20 year term of a standard contract as that contained in the 2005 Schedule 201 and described in paragraph 26 above.
46. The 2006 Standard Contract contained the same language regarding the availability of fixed prices as that contained in the 2005 Standard Contract and described in paragraphs 27 through 32 above.
47. The 2006 Standard Contract contained the same language regarding the maximum 20-year term of a standard contract as that contained in the 2005 Standard Contract and described in paragraphs 30 above.
48. The 2006 Off System Standard Contract contained the same language regarding the availability of fixed prices as that contained in the 2005 Standard Contract and described in paragraphs 27 through 32 above.
49. The 2006 Off System Standard Contract contained the same language regarding the maximum 20-year term of a standard contract as that contained in the 2005 Standard Contract and described in paragraphs 30 above.
50. On November 13, 2006, the Commission issued Order No. 06-629 in Docket No. UM 1129 under which the Commission suspended PGE Advice No. 06-26 and initiated an investigation into whether PGE Advice No. 06-26 complied with Order No. 06-538.
51. On January 23, 2007, PGE filed a revised tariff (the "2007 Schedule 201") and made a supplemental filing to incorporate a limited number of changes to the standard contract form, in response to Order No. 06-538 and comments received from Commission Staff. Complaint ¶ 10.

Order No. 07-065 Approving Compliance in Phase I of UM 1129

52. On February 27, 2007, the Commission issued Order No. 07-065 in Docket No. UM 1129, approving PGE Advice No. 06-26, as supplemented on January 23,

2007, as compliant with Order No. 06-538 (the "2007 Contract Forms"). Order No. 07-065 at 2.

53. Order No. 07-065 found that the 2006 Schedule 201, as supplemented, complied with Order No. 06-538 and therefore complied with all requirements of Order No. 05-584. Order No. 07-065 at 1.
54. Order No. 07-065 found that the 2006 Standard Contract complied with Order No. 06-538 and therefore complied with all requirements of Order No. 05-584. Order No. 07-065 at 1.
55. Order No. 07-065 found that the 2006 Off System Standard Contract complied with Order No. 06-538 and therefore complied with all requirements of Order No. 05-584. Order No. 07-065 at 1.

C. UM 1129 – Phase II

Order No. 07-360 in Phase II of UM 1129

56. On August 20, 2007, the Commission issued Order No. 07-360, the Commission's Phase II order in Docket No. UM 1129.
57. In Order No. 07-360, the Commission decided several issues remaining from the first phase of UM 1129 related to standard contracts. Order No. 07-360 at 1.

PGE's Advice No. 07-27 Compliance Filing in Phase II of UM 1129

58. On November 1, 2007, PGE complied with Order No. 07-360 by filing:
(i) revisions to PGE's Schedule 201 tariff (2007 Schedule 201); (ii) a proposed Schedule 202 tariff addressing negotiation of contracts with large QFs (2007 Schedule 202); (iii) a proposed a standard contract for intermittent resources (2007 Intermittent Standard Contract); and (iv) a proposed standard contract for off system intermittent resources (2007 Intermittent Off-System Standard Contract). PGE Advice No. 07-27.
59. The 2007 Schedule 201 contained the same language regarding the availability of fixed prices as that contained in the 2005 Schedule 201 and described in paragraphs 23 and 24 above. *See* PGE Advice No. 07-27.
60. The 2007 Schedule 201 contained the same language regarding the maximum 20-year term of a standard contract as that contained in the 2005 Schedule 201 and described in paragraph 26 above. *See* PGE Advice No. 07-27.

61. The 2007 Intermittent Standard Contract contained the same language regarding the availability of fixed prices as that contained in the 2005 Standard Contract and described in paragraphs 27 through 32 above. *See* PGE Advice No. 07-27.
62. The 2007 Intermittent Standard Contract contained the same language regarding the maximum 20-year term of a standard contract as that contained in the 2005 Standard Contract and described in paragraph 30 above. *See* PGE Advice No. 07-27.
63. The 2007 Intermittent Off-System Standard Contract contained the same language regarding the availability of fixed prices as that contained in the 2005 Standard Contract and described in paragraphs 27 through 32 above. *See* PGE Advice No. 07-27.
64. The 2007 Intermittent Off-System Standard Contract contained the same language regarding the maximum 20-year term of a standard contract as that contained in the 2005 Standard Contract and described in paragraph 30 above. *See* PGE Advice No. 07-27.

Approval of Compliance in Phase II of UM 1129

65. On June 3, 2008, the Commission accepted PGE Advice No. 07-27 with an effective date of November 2, 2007.

D. UM 1396

66. On October 23, 2008, pursuant to Order No. 06-538, the Commission opened Docket No. UM 1396 to further investigate when a utility is resource sufficient or resource deficient. *See* Order No. 06-538; PGE/100, Macfarlane/20.
67. On December 22, 2010, the Commission issued Order 10-488, designating the Integrated Resource Plan as the appropriate venue for the resource sufficiency/deficiency determination. Order No. 10-488 at 3; PGE/100, Macfarlane/20-21.
68. On December 13, 2011, the Commission issued Order No. 11-505, which required PGE and PacifiCorp to purchase renewable QF power at renewable avoided cost rates. Order No. 11-505 at 1; PGE/100, Macfarlane/20.
69. No new standard contract forms were ultimately approved by the Commission in Docket No. UM 1396 as a result of Order No. 10-488 or Order No. 11-505. PGE/100, Macfarlane/21.

E. UM 1610 – Phase I

70. On June 29, 2012, the Commission opened Docket No. UM 1610 to continue its “evaluation of policies and procedures to implement the Public Utility Regulatory Policies Act (PURPA) ... and consider specific proposals raised by Staff and the parties to revise the rates, terms, and conditions for Qualifying Facility (QF) standard contracts in Oregon.” Order No. 14-058 at 1.
71. This investigation involved participation by a large group of stakeholders, the development of an extensive issue list, pre-filed testimony, a hearing, and post-hearing briefs. Order No. 10-488 at 8-9; PGE/100, Macfarlane/21.

February 19, 2014 Contract Between PGE and OneEnergy Oregon Solar, LLC

72. Under the February 19, 2014, contract between PGE and OneEnergy Oregon Solar, LLC (2014 OneEnergy Contract), Seller OneEnergy Oregon Solar LLC added language to Sections 5.1 and 5.2 that is not part of the standard contract form and did not fill in a blank in the standard contract form.
73. PGE did not enter into the 2014 OneEnergy Contract in the belief that Order No. 05-584, PGE Schedule 201, or PGE’s standard contract forms authorize or allow PGE to offer fixed prices for 15 years measured from the date a QF achieves commercial operation.
74. By email dated November 4, 2015, PGE indicated that the adjustment to the 2014 OneEnergy Contract was an error and not consistent with PGE’s standard contract forms, Schedule 201, or Commission Order No. 05-584. *See* PGE/200, True/7; PGE/210, True/1 (November 20, 2015, email from Bruce True to Jake Stephens, including several prior emails between them).
75. Of the approximately 90 standard QF power purchase agreements filed by PGE in RE 143 before 2017, the 2014 OneEnergy Contract is the only instance in which PGE has signed a contract in which the language has been modified in a manner that suggests PGE may be required to offer fixed prices for 15 years measured from commercial operation. *See* PGE/200, True/7; PGE/210, True/1 (November 20, 2015, email from Bruce True to Jake Stephens).

Order No. 14-058 in Phase I of UM 1610

76. On February 24, 2014, the Commission issued Order No 14-058, the Commission’s Phase I decision in UM 1610.
77. Among other things, Order No. 14-058 modified the Commission’s “methodology for calculating standard avoided cost prices and standard renewable avoided cost prices to account for the capacity contribution of different QF resources and wind integration costs.” Order No. 14-058 at 2, and *see id. at* 8-15.

78. Order No. 14-058 also eliminated the Commission's requirement that PGE maintain multiple market-based price options for its standard contracts. Order No. 14-058 at 23.
79. In Order No. 14-058, the Commission did not alter its determination in Order No. 05-584 that a utility must offer eligible QFs as standard contract with "a maximum standard contract term of twenty years" that "[a]llow[s] a QF to select fixed pricing for the first fifteen years of the standard contract, but require[s] the selection of a market pricing option for the last five years." Order No. 05-584 at 1-2, and *see* 19-20.
80. In Order No. 14-058, the Commission ordered PGE to file "revised standard contract forms that set forth standard rates, terms and conditions that are consistent with the resolutions made in this order." Order No. 14-058 at 32, ordering paragraph 2.
81. In Order No. 14-058, the Commission also ordered PGE to file "revised tariffs that implement the resolutions made in this order." Order No. 14-058 at 32, ordering paragraph 4.
82. Neither Order No. 14-058 nor Order No. 11-505 made any changes addressing the 20-year maximum term and 15-year fixed price period established by Order No. 05-584. Order No. 14-058; Order No. 11-505; PGE/100, Macfarlane/21-22.

Changes to Standard Form PPAs

83. On May 30, 2014, PGE made a compliance filing in response to Order No. 14-058 and Order No. 11-505. Docket No. UM 1610, PGE Application to Update Schedule 201 Qualifying Facility Information (May 30, 2014); PGE/100, Macfarlane/22.
84. PGE revised its standard contract forms and rate schedule to eliminate unused market price options as required by Order No. 14-058 and to provide for renewable avoided cost prices and standard renewable contracts as required by Order No. 11-505. Docket No. UM 1610, PGE Application to Update Schedule 201 Qualifying Facility Information (May 30, 2014); PGE/100, Macfarlane/22.

PGE's November 25, 2014 Compliance Filing in Phase I of UM 1610

85. On November 25, 2014, PGE filed in Docket No. UM 1610 a supplemental filing to modify PGE's Schedule 201 tariff and PGE's standard contracts to comply with the requirements of Order No. 14-058. PGE/100, Macfarlane/22; PGE/106, Macfarlane/1 (Excerpt of PGE Supplemental Compliance Filing).

86. PGE's November 25, 2014 application in UM 1610: (i) contained a revised Schedule 201 tariff entitled *Qualifying Facility 10 MW or Less Avoided Cost Power Purchase Information* (2014 Schedule 201); (ii) contained eight proposed standard contracts (collectively the 2014 Form Contracts); and (iii) requested an effective date of December 17, 2014. PGE/106, Macfarlane/1 (Excerpt of PGE Supplemental Compliance Filing).
87. PGE's November 25, 2014 application in UM 1610 contained four standard contracts—the Standard Off-System Variable Power Purchase Agreement, the Standard Off-System Non-Variable Power Purchase Agreement, the Standard In-System Variable Power Purchase Agreement, and the Standard In-System Non-Variable Power Purchase Agreement (collectively the 2014 Standard Contracts). PGE/100, Macfarlane/22; PGE/106, Macfarlane/1 (Excerpt of PGE Supplemental Compliance Filing).
88. PGE's November 25, 2014 application in UM 1610 contained four standard renewable contracts—the Standard Renewable Off-System Variable Power Purchase Agreement, the Standard Renewable Off-System Non-Variable Power Purchase Agreement, the Standard Renewable In-System Variable Power Purchase Agreement; and the Standard In-System Non-Variable Power Purchase Agreement (collectively the 2014 Standard Renewable Contracts). PGE/100, Macfarlane/22; PGE/106, Macfarlane/1 (Excerpt of PGE Supplemental Compliance Filing).
89. Under PGE's standard contracts pre-dating the 2014 Form Contracts, the Contract Price as defined in the Form Contracts was addressed through the Seller selecting fixed prices and one of several market-based price options under Section 5 of the standard contract forms. *See* paragraph 40 above. Order 14-058 eliminated the requirement for PGE to maintain multiple market-based price options. Order No. 14-058 at 23. As a result, in the 2014 Form Contracts, PGE eliminated the previous Section 5 provision providing for selection of one of three market prices for the last five years of the 20-year term. PGE/100, Macfarlane/23.
90. Under the various 2014 Form Contracts, contract price was addressed through Section 4.1 or Section 4.2 which stated: "PGE shall pay Seller the Contract Price for all delivered Net Output." PGE/100, Macfarlane/23; *e.g.*, PGE/106, Macfarlane/33 (PGE Schedule 201 effective on and after December 17, 2014, Standard Off-System Variable Power Purchase Agreement at Section 4.2).
91. Under the 2014 Form Contracts, "Contract Price" means "the applicable price, including on-peak and off-peak prices, as specified in the Schedule." *E.g.* PGE/100, Macfarlane/23; PGE/106, Macfarlane/27 (PGE Schedule 201 effective on and after December 17, 2014, Standard Off-System Non-Variable Power Purchase Agreement, Section 1.6).

92. Under the 2014 Form Contracts, “Schedule” means “PGE Schedule 201 filed with the Oregon Public Utilities Commission ... in effect on the Effective Date of this Agreement and attached hereto as Exhibit E, the terms of which are hereby incorporated by reference.” PGE/106, Macfarlane/30 (PGE Schedule 201 effective on and after December 17, 2014, Standard Off-System Non-Variable Power Purchase Agreement at Section 1.32).
93. The 2014 Schedule 201 included two fixed price options: the Standard Fixed Price Option and the Renewable Fixed Price Option. PGE/106, Macfarlane/6-7 and 14 (PGE Schedule 201 effective on and after December 17, 2014, Sheet No. 201-4, Sheet No. 201-5, and Sheet No. 201-12).
94. The 2014 Schedule 201 includes six tables of forecasted standard fixed prices for the period from 2014 to 2034. These tables are designated as Tables 1a and 1b, 2a and 2b, and 3a and 3b. PGE/106, Macfarlane/8-13 (PGE Schedule 201 effective on and after December 17, 2014, Sheet No. 201-6 through Sheet No. 201-11).
95. Under the 2014 Schedule 201, the Standard Fixed Price Option “is available for a maximum term of 15 years.” Under the Standard Fixed Price Option, “[p]rices 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 3b, depending on the type of QF, effective at execution.” In addition, under the Standard Fixed Price Option, “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.” PGE/106, Macfarlane/6-7 (PGE Schedule 201 effective on and after December 17, 2014, Sheet No. 201-4 and Sheet No. 201-5).
96. The 2014 Schedule 201 included six tables of forecasted renewable fixed prices for the period from 2014 to 2034. These tables are designated as Tables 4a and 4b, 5a and 5b, and 6a and 6b. PGE/106, Macfarlane/15-20 (PGE Schedule 201 effective on and after December 17, 2014, Sheet No. 201-13 through Sheet No. 201-18).
97. Under the 2014 Schedule 201, the Renewable Fixed Price Option “is available for a maximum term of 15 years.” Under the Renewable Fixed Price Option, “[p]rices 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.” In addition, under the Renewable Fixed Price Option, “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.” PGE/106, Macfarlane/14 (PGE Schedule 201 effective on and after December 17, 2014, Sheet No. 201-12).

98. The 2014 Schedule 201 stated that the term of a power purchase agreement entered into pursuant to Schedule 201 would be: "Not less than one year and not to exceed 20 years." PGE/106, Macfarlane/25 (PGE Schedule 201 effective on and after December 17, 2014, Sheet No. 201-23).

Order No. 14-435 Approving PGE Compliance in Phase I of UM 1610

99. On December 16, 2014, the Commission issued Order No. 14-435 in Docket No. UM 1610.

100. In Order No. 14-435 the Commission approved the 2014 Schedule 201 and the 2014 Form Contracts as compliant with Order No. 14-058. The 2014 Schedule 201 and 2014 Form Contracts became effective December 17, 2014. Order No. 14-435 at 1, and Appendix A at 1.

F. UM 1610 – Party Stipulation

101. On April 16, 2015, the Commission issued Order No. 15-130 in Docket No. UM 1610 adopting a stipulation by key parties to UM 1610.

102. On May 27, 2015, PGE filed a revised Schedule 201 (2015 Schedule 201) and revised versions of all eight of PGE's standard contract forms (2015 Form Contracts) to comply with Order No. 15-130. PGE/100, Macfarlane/25; PGE/107, Macfarlane/1 (Excerpt of PGE Compliance Filing).

103. The revisions in the 2015 Schedule 201 and in the 2015 Form Contracts did not involve the maximum 20-year term of PGE's QF standard contracts and did not involve the 15-year fixed price period.

104. PGE's 2015 Schedule 201 addressed fixed prices with the same language used in PGE's 2014 Schedule 201 detailed in paragraphs 93 through 97 above.

105. PGE's 2015 Schedule 201 addressed the 20-year maximum term of PGE's QF standard contracts with the same language used in PGE's 2014 Schedule 201 detailed in paragraph 98 above.

106. PGE's 2015 Form Contracts addressed contract prices using the same language as used in PGE's 2014 Form Contracts detailed in paragraphs 89 through 92 above.

107. On September 22, 2015, the Commission issued Order No. 15-289 in Docket No. UM 1610 approving PGE's May 27, 2015 revisions to Schedule 201 and to PGE's standard contract forms as compliant with Order No. 05-150. The 2015

Schedule 201 and the 2015 Form Contracts became effective September 23, 2015. Order 15-289 at 1.

G. UM 1610 – Phase II

Order No. 16-174 in Phase II of UM 1610

108. On May 13, 2016, the Commission issued Order No. 16-174 the Commission's Phase II order in Docket No. UM 1610.
109. In Order No. 16-174, the Commission did not alter its determination in Order No. 05-584 that a utility must offer eligible QFs as standard contract with "a maximum standard contract term of twenty years" that "[a]llow[s] a QF to select fixed pricing for the first fifteen years of the standard contract, but require[s] the selection of a market pricing option for the last five years." Order No. 05-584 at 1-2 and 19-20.
110. In Order No. 16-174, the Commission made a determination regarding the ownership of renewable energy credits (RECs).
111. In Order No. 16-174, the Commission noted the REC issue concerns who owns a QF's RECs "during the last five years of a 20-year fixed power purchase agreement (PPA)—a period when the QF is paid rates that are based on market prices rather than avoided costs." Order No. 16-174 at 4.
112. In Order No. 16-174, the Commission noted that the REC issue "arises from a perceived conflict between two directives: (1) the directive in Order No. 05-584 that QFs be paid market rates during the last five years of a 20-year fixed-price contract; and (2) the directive in Order No. 11-505 that when a utility is renewable resource deficient, a QF is paid standard renewable avoided cost prices based on the cost of the next avoidable renewable resource but must transfer its RECs to the utility." Order No. 16-174 at 4.
113. The Commission found no conflict between Order Nos. 05-584 and 11-505. In Order No. 16-174 the Commission concluded:

In Order No. 05-584, we established a 20-year maximum term for a standard contract to facilitate QF financing, fixing prices for only the first 15 years to minimize forecasting error. In Order No. 11-505, we determined that a utility, once it becomes renewable resource deficient, receives a renewable QF's RECs for the remainder of the standard contract. Thus, Order No. 11-505 ties REC ownership to utilities sufficiency or deficiency position. Order No. 05-584 dictates the maximum term of any standard contract and that market prices replace avoided cost prices during the last five years of a 20-year

standard contract. RECs continue to transfer to a utility at the beginning of the utility's resource deficiency period.

Order No. 16-174 at 5. The Commission stated that the utility receives the RECs even when the QF receives market prices. Order No. 16-174 at 1 ("Once a utility is resource-deficient, then Renewable Energy Certificates (RECs) transfer to the utility for the remaining term of a standard contract[.]").

114. In Order No. 16-174, the Commission ordered PGE to file "revised standard contract forms that set forth standard rates, terms and conditions that are consistent with the resolutions made in this order." Order No. 16-174 at 31, ordering paragraph 1.

115. In Order No. 16-174, the Commission further ordered PGE to "file revised avoided cost schedules that implement the resolutions made in this order." Order No. 16-174 at 31, ordering paragraph 3.

PGE's Application to Revise Schedule 201 in Compliance with Order No. 16-174 in Phase II of UM 1610

116. On July 12, 2016, PGE complied with Order No. 16-174 by filing in UM 1610: (i) a revised Schedule 201 (2016 Schedule 201); (ii) a revised Schedule 202; and (iii) revisions to all eight of PGE's standard contract forms (2016 Form Contracts). Docket No. UM 1610, PGE Application to Update Schedule 201 Qualifying Facility Information (July 12, 2016).

117. PGE's July 12, 2016 submission proposed revisions in the 2016 Schedule 201 and the 2016 Form Contracts to address the Commission decision in Order No. 16-174 regarding ownership of RECs. Docket No. UM 1610, PGE Application to Update Schedule 201 Qualifying Facility Information (July 12, 2016).

118. PGE's July 12, 2016 revisions found in the 2016 Form Contracts provide that from the start of the renewable resource deficiency period through the remainder of contract term, Seller will provide and PGE will acquire RECs even during the last five years of a 20-year contract when PGE is paying market prices instead of fixed renewable prices. Docket No. UM 1610, PGE Application to Update Schedule 201 Qualifying Facility Information (July 12, 2016).

119. PGE's July 12, 2016 compliance filing also included price changes in the 2016 Schedule 201 to address the Commission's decision in Order No. 16-174 regarding capacity contributions for standard avoided costs and standard renewable avoided costs. Docket No. UM 1610, PGE Application to Update Schedule 201 Qualifying Facility Information (July 12, 2016).

120. The revisions in the 2016 Schedule 201 and in the 2016 Form Contracts did not involve the maximum 20-year term of PGE's QF standard contracts and did not involve the 15-year fixed price period.
121. PGE' 2016 Schedule 201 addressed fixed prices with the same language used in PGE's 2014 Schedule 201 detailed in paragraphs 93 through 97 above.
122. PGE' 2016 Schedule 201 addressed the 20-year maximum term of PGE's QF standard contracts with the same language used in PGE's 2014 Schedule 201 detailed in paragraph 98 above.
123. PGE's 2016 Form Contracts addressed contract prices using the same language as used in PGE's 2014 Form Contracts detailed in paragraphs 89 to 92 above.

Order No. 16-377 Approving PGE Compliance in Phase II of UM 1610

124. On October 11, 2016, the Commission issued Order No. 16-377 in UM 1610 approving PGE's July 12, 2016 avoided cost prices and other changes made in PGE's 2016 Schedule 201 and PGE's 2016 Form Contracts submitted in compliance with Order No. 16-174. The revised documents became effective October 11, 2016. Order No. 16-377 at 1 and Appendix A at 4.

H. UM 1805 – Fixed Price Period

125. On July 13, 2017, in Order No. 17-256 in Docket No. UM 1805, the Commission determined "When we concluded that QFs should receive 15 years of fixed prices under standard contracts in Order No. 05-584, we did not specify the date on which that 15-year term begins." The Commission also stated "Oregon utilities have filed, and we have approved, standard QF contracts that have used, as the triggering event, both the date of contract execution and the date of power delivery." Order No. 17-256 at 3.
126. In Order No. 17-256, the Commission determined that, on a going-forward basis, standard contracts must provide for 15 years of fixed prices commencing when a QF transmits power, not at contract execution. PGE's past standard contracts did not violate the Commission's prior orders, and were enforceable. Complaint ¶ 13.
127. In Order No. 17-256, the Commission ordered PGE to file a revised Schedule 201 and revised standard contract forms that complied with the Commission's newly articulated policy that, on a going-forward basis, standard contracts must provide for 15 years of fixed prices commencing when a QF transmits power, not at contract execution. Complaint ¶ 14.

128. On July 20, 2017, PGE filed a revised Schedule 201 and revised standard contract forms in Docket No. UM 1805 in compliance with Order No. 17-256. Complaint ¶ 14; PGE/100, Macfarlane/2, 27; PGE/108, Macfarlane/1 (Excerpt of PGE Compliance filing dated July 20, 2017).
129. On September 14, 2017, in Order No. 17-346, in Docket No. UM 1805, the Commission memorialized its decision made during its September 12, 2017 regular public meeting to approve PGE's revised Schedule 201 and revised standard contract forms effective September 17, 2017. PGE's revised Schedule 201 and revised standard contract forms provide for 15-years of fixed prices measured from the scheduled Commercial Operation Date agreed to by the parties in Section 2.2.2 of the standard contract. Complaint ¶ 14.
130. On September 28, 2017, the Commission issued Order No. 17-373, confirming that measuring the 15-year fixed price period from the scheduled Commercial Operation Date complies with the Commission's newly articulated policy that, on a going-forward basis, standard contracts must provide for 15 years of fixed prices commencing when a QF transmits power, not at contract execution. Complaint ¶ 14.
131. On November 13, 2017, in Order No. 17-465, the Commission confirmed its previous decision that PGE's standard contracts approved by the Commission and executed prior to Order No. 17-256 as amended by Order No. 17-495 did not violate any Commission order. Complaint ¶ 14.

I. NewSun Negotiations

132. The NewSun PPAs were based on contract forms filed with the Commission on May 27, 2015, and approved by the Commission on September 22, 2015, in Order No. 15-289. Order No. 15-289 at 1; *see* PGE/100, Macfarlane/25; PGE/107, Macfarlane (Excerpt of PGE Compliance Filing).
133. The 2015 Contract Forms were submitted in compliance with Order No. 15-130, an order in which the Commission adopted a stipulation by the stakeholders in docket UM 1610 which clarified that a QF could delay completing the requirements that are the conditions for a scheduled commercial operation date for up to three years after the contract execution date. PGE/100, Macfarlane/25.
134. In order to implement this Commission-approved stipulation, PGE revised its standard contract forms to include new Section 2.2.3, which stated:

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.
Buyer 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.

PGE/100, Macfarlane/26-27; PGE/107, Macfarlane/34 (Schedule 201 effective July 23, 2015 at Section 2.2.3).

135. When it filed the 2015 Contract Form and the 2015 Schedule 201, PGE provided redline documents and a table noting all changes from the 2014 Contract Form and the 2014 Schedule 201. PGE/100, Macfarlane/26-27; PGE/107, Macfarlane/1 (Excerpt of PGE Compliance Filing).
136. None of the changes proposed in the 2015 documents modified the 15-year fixed-price period established in the 2014 Contract Form and 2014 Schedule 201. PGE/100, Macfarlane/26-27; *see* PGE/107, Macfarlane (Excerpt of PGE Compliance Filing).
137. In response to Order No. 17-256, effective September 19, 2017, PGE's contract forms and Schedule 201 began to offer fixed prices for 15 years measured from the scheduled Commercial Operation Date rather than from the contract execution date. PGE/100, Macfarlane/29.
138. The NewSun PPAs are not based on these new 2017 contract forms, as the agreements were executed in the first half of 2016 before the forms became effective. Instead, the NewSun PPAs are based on a set of contract forms that became effective on September 23, 2015. PGE/100, Macfarlane/29.
139. On October 14, 2015, Bruce True received an email from Jake Stephens, the representative of the NewSun Parties. They had previously spoken on the telephone. Mr. Stephens requested a copy of PGE's standard variable PPA. PGE/200, True/3; PGE/201, True/1 (Email from Jake Stephens to Bruce True dated Oct. 14, 2015).
140. On October 15, 2015, Bruce True responded to Jake Stephens' email, and attached copies of the contract forms that the Commission approved on September 22, 2015. PGE/200, True/3; PGE/202, True/1 (Email from Bruce True to Jake Stephens dated Oct. 15, 2015); PGE/203 (Blank Standard Renewable Variable Off-System PPA, attached to PGE/202).
141. Those forms were approved by the Commission on September 22, 2015. PGE/200, True/4.

142. On October 19, 2015, Jake Stephens sent an email to Bruce True, attaching (1) PGE's Standard Renewable Variable Off-System Power Purchase Agreement completed for Wasco Solar I, and (2) PGE's Schedule 201 Avoided Cost Power Purchase Information, Sheet No. 201-1 to 201-24, which is Exhibit D to the PPA. PGE/200, True/3-4; PGE/204 (Email from Jake Stephens to Bruce True dated Oct. 19, 2015); PGE/205 (NewSun's proposed Wasco Solar I PPA, attached to PGE/204); PGE/206 (Schedule 201 Avoided Cost Power Purchase Information, Sheet No. 201-201-24, which is Exhibit D to the PPA, attached to PGE/204).
143. On October 21, 2015, Jake Stephens emailed Bruce True and attached revisions to the standard renewable off-system variable power purchase agreement for Wasco Solar I and Tygh Valley Solar I. PGE/200, True/6; PGE/207 (Email from Jake Stephens to Bruce True dated Oct. 21, 2015); PGE/208 (Proposed Tygh Valley Solar I PPA, attached to PGE/207); PGE/209 (Schedule 201 Avoided Cost Power Purchase Information, Sheet No. 201-201-24, which is Exhibit D to the PPA, attached to PGE/207).
144. On October 28, 2015, Bruce True emailed Jake Stephens to let him know several of the proposed changes were not acceptable. PGE/200, True/6; PGE/210, True/3 (Email from Bruce True to Jake Stephens dated Nov. 20, 2015, including previous emails between them).
145. For example, the NewSun Parties revised the term of the Tygh Valley Solar I PPA such that it ran for 20 years from the commercial operation date. PGE/200, True/6; PGE/208, True/7 (Proposed Tygh Valley Solar PPA at Section 2.3).
146. They also revised it such that the commercial operation date could be up to 47 months after execution. PGE/200, True/6; PGE/208, True/6 (Proposed Tygh Valley Solar PPA at Section 2.2.1).
147. Bruce True and Jake Stephens spoke by phone, and then on November 12, 2015, Mr. Stephens responded to Mr. True's email by stating that he had found one example from among all the PPAs that PGE had ever signed where PGE had agreed to pay the fixed prices for 15 years from the commercial operation date, with a QF named OneEnergy Solar. PGE/200, True/6-7; PGE/210, True/2-3 (Email from Jake Stephens to Bruce True dated Nov. 20, 2015, including previous emails between them).
148. On November 19, 2015, Jake Stephens emailed Bruce True, saying he that he had read "the original OPUC decision on contract length" and that it was "pretty clear" to him "that the whole logic was to provide 15 year term of fixed pricing operations for financing purposes[.]" He didn't point to any specific text from any specific Commission decision. PGE/200, True/7; PGE/210, True/2-3 (Email from Jake Stephens to Bruce True dated Nov. 20, 2015, including previous emails between them).

149. The next day, on November 20, 2015, Bruce True wrote back to Jake Stephens, quoting Commission Order No. 05-584 stating “standard contract prices should be fixed for only the first 15 years of the 20-year term.” He also stated that “under the current contract form”—the Standard PPA that was then in effect—“PGE provides a 15 year fixed price term starting on the Effective Date.” Mr. True also told Mr. Stephens that if QFs wanted to take advantage of the 15 years of fixed prices, they could do so by bringing the project on-line as soon as possible. PGE/200, True/8; PGE/210, True/1 (Email from Jake Stephens to Bruce True dated Nov. 20, 2015, including previous emails between them).
150. On December 3, 2015, Jake Stephens’s attorney, Greg Adams, sent a letter to a lawyer in PGE’s legal department, Denise Saunders, requesting edits to the Standard PPA identical to those in the OneEnergy PPA to provide that the 15 years of fixed prices begins to run at the commercial operation date. PGE/200, True/8; PGE/212, True/1 (Letter from Greg Adams to Denise Saunders dated Dec. 3, 2015).
151. On December 4, 2015, Jake Stephens emailed Bruce True and submitted a draft PPA for Starvation Solar I. That draft did not include the revisions that NewSun had requested the prior day. PGE/200, True/8; PGE/211, True/1 (Email from Jake Stephens to Bruce True dated Dec. 4, 2015).
152. On December 14, 2015, Denise Saunders wrote back to Greg Adams and rejected NewSun’s request to change the text of the PPAs. She also quoted Order No.05-584 and concluded by stating that order and the words of the PPA are unambiguous that the 15-year fixed price term “starts at execution. PGE/200, True/10; PGE/214, True/1-2 (Letter from Denise Saunders to Greg Adams dated Dec. 14, 2015).
153. On December 18, 2015, Jake Stephens sent an email to Bruce True, attaching proposed PPAs for three more NewSun Parties. In the email Mr. Stephens stated that these were substantively the same as the earlier fourth PPA. PGE/200, True/11; PGE/215, True/1 (Email from Jake Stephens to Bruce True dated Dec. 18, 2015).
154. Mr. Stephens stated in the email that the NewSun Parties disagreed with PGE’s interpretation of (1) when the 15-year fixed price period began, (2) whether the NewSun Parties were entitled to commercial operation dates more than four years after execution, and (3) whether the total PPA term was capped at 20 years. But, none of the PPAs that Mr. Stephens sent by email had any changes that reflected the changes that Mr. Adams requested in his letter to Ms. Saunders, and nor do the final signed versions of any of the NewSun PPAs reflect any changes that Mr. Adams requested. PGE/200, True/11; PGE/215, True/1

(Email from Jake Stephens to Bruce True dated Dec. 18, 2015); *see also*, Complaint at Exs. 1-10.

155. On January 7, 2016, Jake Stephens emailed Bruce True to submit documents regarding Wasco Solar. PGE/500, True/4-5; PGE/501, True/1 (Email from Jake Stephens to Bruce True dated Jan. 7, 2016).
156. On January 7, 2016, Bruce True responded to Jake Stephens to let him know PGE's "view is that we reached agreement on terms and you've locked in the pricing in our 8/26/15 tariff filing, even if our new prices go into effect on January 1." PGE/500, True 4-5; PGE/501, True/1 (Email from Jake Stephens to Bruce True dated Jan. 7, 2016).
157. On January 8, 2016, Jake Stephens emailed Bruce True expressing thanks that Wasco and five other projects would receive the 2015 rate schedule even if PGE did not sign the final version of the PPAs until a few days after the rates changed. PGE/500, True/5; PGE/502, True/1 (Email from Jake Stephens to Bruce True dated Jan. 8, 2016).
158. After other unrelated changes were made, NewSun PPAs were signed during the first half of 2016. PGE/200, True/12; *see also* Complaint ¶ 16 and Exs. 1-10.