

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

Docket No. _____

MADRAS PV1, LLC,

Complainant,

v.

PORTLAND GENERAL ELECTRIC
COMPANY,

Respondent.

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

April 22, 2019

1 **I. INTRODUCTION**

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

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

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

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

15 **Q. Please describe the purpose of your testimony.**

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

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

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

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

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

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

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

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

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

10 II. OVERVIEW OF NEGOTIATIONS PROCESS

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

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

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

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

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

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

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

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

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

9 **A.** Over five months.

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

11 **A.** Yes.

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

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

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

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

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

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

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

9 **A.** PGE and Madras Solar had a series of meetings, and exchanges for information. After
10 significant “back and forth,” Madras Solar has expressed a willingness to execute a
11 number of different PPAs; however, we have been unable to reach agreement with PGE
12 on a PPA. This amount of time seemed unreasonable, and Madras Solar determined that
13 it should file a demand letter with PGE, as a final effort to get to resolution. That demand
14 letter was provided to PGE on April 19, 2019, and is attached to this testimony as Exhibit
15 101.

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

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

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

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

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

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

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

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

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

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

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

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

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

13 **A.** Yes. Those provisions include:

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

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

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

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

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

12 **III. MADRAS SOLAR’S REQUESTED RELIEF**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 **Q. Specifically, what relief is Madras Solar requesting?**

7 **A.** Madras Solar is requesting the Commission direct PGE to execute a contract with
8 reasonable terms, conditions, and prices. This means requiring PGE to execute the May
9 2018 partially executed PPA and the relevant rates, or, in the alternative, the April 2019
10 partially executed PPA and the relevant rates. We also ask the Commission to explicitly
11 find that PGE unreasonably delayed the PPA negotiations process, did not consider
12 Madras Solar's proposed additions or modification in good faith, and insisted on
13 unreasonable terms in the PPA. Finally, we ask that the Commission Madras Solar's
14 commercial operation date should be extended by one day for each day that occurs from
15 the time this complaint was filed, until the Commission issues a final dispositive order on
16 the issues raised in this complaint that resolves the terms of the PPA.

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

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

1 **Q. Would Madras Solar sell power to PGE under the PPA that it signed on May 4,**
2 **2018?**

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

4 **Q. Would Madras Solar sell power to PGE under the PPA that it signed on April 22,**
5 **2019?**

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

7 **IV. CONCLUSION**

8 **Q. Is there anything else on which you would like to provide testimony?**

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

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Docket No. _____

MADRAS PV1, LLC,

Complainant,

v.

PORTLAND GENERAL ELECTRIC
COMPANY,

Respondent.

**EXHIBIT MADRAS SOLAR/101
DEMAND LETTER AND PPA**

April 22, 2019

Sanger Thompson PC

1041 SE 58th Place, Portland, OR 97215

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

April 19, 2019

Via Email

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

RE: Ecoplexus Power Purchase Agreement

Dear Ms. Lindquist and Mr. Light:

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

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

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

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

PGE-Ecoplexus PPA
April 19, 2019
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this basic information, PGE also repeatedly delayed responding to Ecoplexus' questions and failed to timely return documents, including PPA redlines.

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

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

B. Remaining Disputed Provisions

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

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

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

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

2. Project Commercial Operation Date Milestones

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

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

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

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

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

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

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

3. Project Test Energy

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

4. Metering

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

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

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

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

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

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

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

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

PGE should remove Section 6.10.

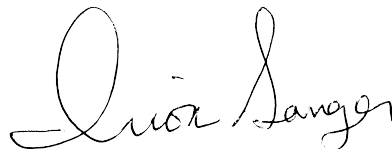
6. Exhibit I Examples

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

C. Conclusion

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

Sincerely,



Irion A. Sanger

cc: Paul Esformes
Erik Stuebe
Nathan Rogers

****DRAFT** POWER PURCHASE AND SALE AGREEMENT
FOR SOLAR QUALIFYING FACILITY GREATER THAN 10 MW**

Commented [NR1]: Note to PGE: please also see comments to Exhibit I.

This Power Purchase and Sale Agreement for Solar Qualifying Facility Greater than 10 MW (“Agreement”) is made as of _____, 2019 (“Effective Date”) by and between Portland General Electric Company, an Oregon corporation (“Buyer”) and Madras PV1, LLC, an Oregon limited liability company (“Seller”). For purposes of this Agreement, Buyer and Seller may each be referred to as a “Party” or collectively as the “Parties.”

WHEREAS, Seller intends to construct, own, operate and maintain a solar facility for generation of electric power located in Jefferson County, Oregon, with a Net Available Capacity of 63 MW_{AC} and a Nameplate Capacity Rating of 65.784 MW_{DC} (the “Project”); and

Commented [CL2]: Please explain the necessity for adjusting the Nameplate Capacity Rating. This appears to be inconsistent with industry standard.

WHEREAS, this Agreement is being entered into pursuant to Buyer’s Tariff Schedule 202 for on-system Qualifying Facilities with a Nameplate Capacity Rating greater than 10 MW and less than 80 MW; and

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WHEREAS, Seller intends to operate the Project as a “Qualifying Facility,” as that term is utilized in the version of 18 C.F.R. Part 292 in effect on the Effective Date.

NOW THEREFORE, for good and valuable consideration, the adequacy of which is hereby acknowledged, the Parties mutually agree to the following:

**ARTICLE 1
GENERAL DEFINITIONS**

1.1 “Affiliate” means, with respect to any person or entity, any other person (other than an individual) or entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person or entity. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

1.2 “Agreement” has the meaning set forth in the preamble and in Section 10.8.

1.3 “Ancillary Services” means any of the services identified by a Transmission Provider in its transmission tariff as “ancillary services” including, but not limited to, energy imbalance services, generation imbalance services, regulation and frequency response services, reactive supply services, voltage control services, inadvertent energy flow services, control area services, system integration services, operating spinning reserve services, and operating supplemental reserve services.

1.4 “Applicable Law” means all legally binding constitutions, treaties, statutes, laws, ordinances, rules, regulations, orders, interpretations, permits, judgments, decrees, injunctions, writs and orders of any Governmental Authority that apply to any one or both of the Parties and the terms hereof, including but not limited to the Public Utility Regulatory Policies Act of 1978 and the Public Utility Holding Company Act of 2005.

1.5 “As-Available Energy” means any Firm Energy, measured in MWh, scheduled and delivered from the Project to the Delivery Point during a month that exceeds the Specified Amounts for such month.

1.6 “Balancing Authority” means Portland General Electric acting in its transmission function as the entity responsible for maintaining the load-interchange-generation balance within the balancing areas in which the Project is located.

1.7 “Bankrupt” means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it and such petition filed or commenced against it is not dismissed within ninety (90) days of such filing or commencement, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

1.8 “Bundled Project REC” means a REC that, subject to the terms and conditions of this Agreement, is generated by the Project and delivered simultaneously and directly to Buyer together with the equivalent quantity of Energy generated by the Project as a single bundled Product, as represented by the Project Meter on an hourly basis.

1.9 “Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. PPT.

1.10 “Buyer” means Portland General Electric Company.

1.11 “Capacity Attributes” means any current or future attribute, as may be currently defined or otherwise defined in the future, including but not limited to a characteristic, certificate, tag, credit, ancillary service or attribute thereof, or accounting construct, associated with the electric generation capability and capacity of the Project or the Project’s capability and ability to produce or curtail energy, including any attribute counted towards any current or future resource adequacy or reserve requirements. Capacity Attributes are measured in MW. Notwithstanding any other provision of this Agreement, “Capacity Attributes” do not include: (i) any PTCs, ITCs, or any other tax credits, deductions, or tax benefits associated with the Project, or (ii) any state, federal, local, or private cash payments, grants, or costs relating in any way to the Project or the electric power output of the Project.

1.12 “Claiming Party” has the meaning set forth in Section 10.15.

1.13 “Claims” means all third party claims or actions, threatened or filed, and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, reasonable expenses, attorneys’ fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.

1.14 “Commercial Operation Date” means the date that the Project is deemed by Buyer to be fully operational, consistent with Section 2.4.

1.15 “Costs” means any brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by a Party in entering into new arrangements to either purchase (in the case of the Buyer) or to sell (in the case of the Seller) Energy or RECs that would have otherwise been purchased and sold pursuant to this Agreement but for the material non-performance of the other Party; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with the termination of this Agreement. Costs shall not include any expenses incurred by such Party in either entering into or terminating any arrangement pursuant to which it has hedged its obligations.

1.16 “Credit Rating” means (i) with respect to any entity other than a financial institution, the (a) current ratings issued or maintained by S&P or Moody’s with respect to such entity’s long-term senior, unsecured, unsubordinated debt obligations (not supported by third party credit enhancements) or (b) corporate credit rating or long-term issuer rating issued or maintained with respect to such entity by S&P or Moody’s, or (ii) if such entity is a financial institution, the ratings issued or maintained by S&P or Moody’s with respect to such entity’s long-term, unsecured, unsubordinated deposits.

1.17 “DBRS” means DBRS, Inc. or its successor.

1.18 “Defaulting Party” has the meaning set forth in Section 5.1.

1.19 “Deficiency Period” means the Renewable Resource Deficiency Period as defined in Buyer’s Schedule 201, Qualifying Facility 10 MW or Less Avoided Cost Power Purchase Information, approved by the Public Utility Commission of Oregon for service on and after the Effective Date.

1.20 “Delivered Energy Quantity” means the sum of the Specified Energy and As-Available Energy delivered to Buyer by or on behalf of Seller to the Delivery Point each hour as represented on the Project Meter. The Delivered Energy Quantity shall not exceed Net Available Capacity in any hour.

1.21 “Delivery Period” shall begin on the Commercial Operation Date and end on the last day and hour of the Term of this Agreement.

1.22 “Delivery Point” means the high side of the generation step-up transformer(s) located at the point of interconnection between the Facility and the Transmission Provider’s transmission system as identified in the Interconnection Agreement and shown on the one-line diagram in the project description contained in Exhibit F.

1.23 “Early Termination Date” has the meaning set forth in Section 5.2.

1.24 “Effective Date” has the meaning set forth in the preamble.

1.25 “EIM” means the western Energy Imbalance Market, of which Buyer is a participating entity.

1.26 “Energy” means three-phase, 60-cycle alternating current electric energy, expressed in MWh, generated by the Project and delivered to Buyer at the Delivery Point as required by this Agreement.

1.27 “Energy Shortfall” is defined in Section 4.1.

1.28 “Equitable Defenses” means any bankruptcy, insolvency, reorganization and other laws affecting creditors’ rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.

1.29 “Event of Default” has the meaning set forth in Section 5.1.

1.30 “FERC” means the Federal Energy Regulatory Commission or any successor government agency.

1.31 “Firm Energy” means carbon free Energy that is to be scheduled, delivered, sold, received and purchased on an uninterruptible basis. Firm Energy shall be scheduled in hourly increments and delivered from the Project to the Delivery Point, in accordance with the provisions in Article 3 (Obligations and Deliveries). Neither Party shall be relieved without liability of its obligations to sell and deliver or to receive and purchase Firm Energy except for any period during which such performance is prevented or delayed by Force Majeure or as otherwise expressly allowed herein.

1.32 “Fixed Price” means the respective monthly On-Peak and Off-Peak prices per MWh to be paid by Buyer to Seller for Specified Energy scheduled and delivered during each month of the Delivery Period as set forth in the price schedule attached to this Agreement as Exhibit C.

1.33 “Fixed Price Term” means March 1, 2022 through and including February 28, 2037.

1.34 “Fitch” means Fitch Ratings, Inc. or its successor.

1.35 “Force Majeure” means an event or circumstance that prevents one Party from performing its obligations under the Agreement, which event or circumstance was not foreseeable, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (i) the loss of Buyer’s markets; (ii) Buyer’s inability economically to use or resell the Product purchased hereunder; (iii) Buyer’s ability to purchase Energy or RECs at a price lower than the price set forth in Article 6 (Price, Payment and Netting); (iv) either Party’s inability to pay when due any amounts owed under this Agreement; (v) Seller’s ability to sell the Product at a price greater than the price set forth in Article 6 (Price, Payment and Netting); or (vi) a Reliability Entity Curtailment Event. Seller may not raise a claim of Force Majeure with respect to the unavailability of Energy or RECs from the Project based on any of the following: (i) routine or scheduled maintenance of the Project; (ii) any unscheduled outage undertaken to address normal wear and tear of the Project during the Term; (iii) any outage caused by Seller’s failure to design, construct, operate or maintain the Project consistent with Prudent Electrical Practices;

(iv) normal climactic conditions (e.g. cloud cover); (v) smoke, haze or other obstruction of sunlight caused by events or circumstances that may impact the Project's generation output but without causing a Project outage (e.g., forest fire located outside of the Project site); (vi) financial inability to perform; (vii) changes in cost or availability of materials, equipment, or services; or (viii) strikes or labor disturbances involving the employees of Seller or any of its subcontractors.

1.36 "Forecasting Agent" shall have the meaning set forth in Section 3.13.

1.37 "Gains" means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (net of Costs), resulting from the termination of this Agreement, determined in a commercially reasonable manner.

1.38 "Generation Forecast" has the meaning set forth in Section 3.2(a).

1.39 "Governmental Authority" means any and all foreign, national, federal, state, county, city, municipal, local or regional authorities, departments, bodies, commissions, corporations, branches, directorates, agencies, ministries, courts, tribunals, judicial authorities, legislative bodies, administrative bodies, regulatory bodies, autonomous or quasi-autonomous entities taxing authorities or any department, municipality or other political subdivision thereof; provided, however, that "Governmental Authority" shall not in any event include either Party.

1.40 "Governmental Charges" has the meaning set forth in Section 9.2.

1.41 "Green Attributes" means any and all claims, credits, benefits, emissions reductions, offsets and allowances, however named, resulting from the avoidance of the emission of any gas, chemical, or other substance to the air, soil or water or otherwise attributable to the Project regardless of whether or not (i) such environmental attributes have been verified or certified, (ii) such environmental attributes are creditable under any applicable legislative or regulatory program, or (iii) such environmental attributes are recognized as of the Effective Date or at any time during the Term. Environmental Attributes include but are not limited to: (a) 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; (b) all Emissions Reduction Credits; (c) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and (d) the reporting rights to these avoided emissions, such as the carbon content of the Energy generated by the Project and REC Reporting Rights. Environmental Attributes do not include production tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the Project that are applicable to a state or federal income taxation obligation.

1.42 "Interconnection Agreement" means the generator interconnection agreement to be executed between Seller and Portland General Electric Company acting in its Transmission function. Seller shall provide the fully executed Interconnection Agreement to Buyer, and at

such time the Interconnection Agreement shall be included as an addendum to Exhibit D of this Agreement.

1.43 “Interest Rate” means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under “Money Rates” on such day (or if not published on such day on the most recent preceding day on which published), or (b) the maximum rate permitted by Applicable Law. Notwithstanding the foregoing, in no case shall the Interest Rate be less than zero (0).

1.44 “Initial Specified Amounts” means Seller’s designated Specified Amounts for the Delivery Period as provided to Buyer pursuant to Section 2.5 of this Agreement and as reflected in Exhibit C.

1.45 “Interest Rate on Cash Collateral” means the lesser of (i) the maximum amount allowed by Applicable Law or (ii) the Federal Funds Rate for the holding period. The “Federal Funds Rate” means the sum of the effective Federal Funds Rate, as published daily by the Federal Reserve Bank H.15 Statistical Release website for each day of the holding period, less 50 basis points (0.50). Such interest shall be calculated on the basis of the actual number of days elapsed over a year of 360 days. Notwithstanding the foregoing, in no case shall the Interest Rate on Cash Collateral be less than zero (0).

1.46 “Letter(s) of Credit” means one or more irrevocable, transferable, unconditional, standby letters of credit issued by a Qualified Institution, in an amount, form and substance reasonably acceptable to the Buyer. Costs of a Letter of Credit shall be borne by the Seller for such Letter of Credit.

1.47 “Losses” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any, resulting from termination of this Agreement, determined in a commercially reasonable manner.

1.48 “Market Index Disruption Event” means any of the following events: (a) the failure of the index to announce or publish necessary information; (b) the failure of trading to commence or the permanent discontinuation or material suspension of trading in the relevant options contract or commodity on the exchange or market acting as the index; (c) the temporary or permanent discontinuance or unavailability of the Market Index Price; (d) the temporary or permanent closing of any exchange acting as the index; or (e) a material change in the formula for or the method of determining the Market Index Price.

1.49 “Market Index Price” means the EIM real-time pre-dispatch nodal price for the Delivery Point. In the event Buyer is participating in an organized market other than the EIM, then the Market Index Price will mean the Locational Marginal Price associated with the Pricing Node or Aggregate Pricing Node for the Delivery Point within such organized market. The Parties intend to utilize the price that most accurately represents the market price for Energy as delivered at the Delivery Point.

1.50 “Market Index Settlement Price” means 93% of the production-weighted average of the Market Index Price for each hour during the delivery month. For the avoidance of doubt, if the Market Index Price is negative, the Market Index Price will be multiplied by 107% when

calculating the Market Index Settlement Price. Exhibit E sets forth an accurate and indicative example of a Market Index Settlement Price calculation.

Commented [NR3]: Note to PGE: should this be Exhibit I, and such calculations need to be included therein?

1.51 “Maximum Annual Volume” means the maximum annual production of Specified Energy equal to the annual total of the Initial Specified Amounts for each calendar year during the Delivery Period, prorated for any partial calendar years during the Term.

1.52 “Merger Event” means an entity consolidates or amalgamates with, or merges into or with, or transfers all or substantially all of its assets to another entity, and (i) the resulting, surviving or transferee entity fails, at the time of such consolidation, amalgamation, merger or transfer, to assume each and all of the obligations of such other entity hereunder including any Letter(s) of Credit, Payment Bond(s) or other Performance Assurance required pursuant to this Agreement, or (ii) the benefits of any Letter(s) of Credit, Payment Bond(s) or other Performance Assurance or credit support provided pursuant to this Agreement fail, at any time following such consolidation, amalgamation, merger or transfer, to extend to the performance of its obligations arising hereunder, or (iii) the Credit Rating of the resulting, surviving or transferee entity is not equal to or higher than that of the transferring entity, or is not at least BBB, by S&P and Baa3 by Moody’s, immediately prior to such consolidation, amalgamation, merger, or transfer.

1.53 “Minimum Annual Volume” means the annual production of Specified Energy equal to eighty percent (80%) of the annual total of the Initial Specified Amounts for each calendar year during the Delivery Period, prorated for any partial calendar years during the Term.

1.54 “Moody’s” means Moody’s Investor Services, Inc. or its successor.

1.55 “MW” and “MWh” means megawatt, and megawatt-hour, respectively. One megawatt equals one (1) million watts.

1.56 “Nameplate Capacity Rating” is set forth in the Project Operating Parameters and means the full (maximum) gross power capability of a power station, prime mover or other electric power production equipment (e.g., photovoltaic solar panel) under optimal conditions designated by the manufacturer, expressed in MW_{DC}.

1.57 “NERC” means the North American Electric Reliability Council or any successor organization thereto.

1.58 “Negative Price Event” has the meaning set forth in Section 3.1(c).

1.59 “Net Available Capacity” is set forth in the Project Operating Parameters and means the full (maximum) net Energy the Project is capable of delivering to the interconnecting Balancing Authority, which is equivalent to the Nameplate Capacity Rating of a generating unit less station service (parasitic power and electrical losses) and inverter limitations, expressed in MW_{AC}.

1.60 “Non-Defaulting Party” has the meaning set forth in Section 5.2.

1.61 “Off-Peak” means all hours other than On-Peak hours.

1.62 “On-Peak” means 6×16 (Monday through Saturday, HE 0700 — HE 2200 PPT, excluding NERC holidays).

1.63 “Oregon Renewable Portfolio Standard” means the renewable portfolio standard contemplated by ORS Chapter 469A, and its implementing regulations, in each case as amended from time to time.

1.64 “Open Access Transmission Tariff” or “OATT” means the Transmission Provider’s FERC approved Open Access Transmission Tariff.

1.65 “Payment Bond(s)” means one or more payment bonds issued by a Qualified Institution, in an amount, form and substance reasonably acceptable to Buyer. Costs of a Payment Bond shall be borne by Seller.

1.66 “Performance Assurance” means collateral posted by Seller as required by the terms of this Agreement in the form of either cash, Payment Bond(s), Letter(s) of Credit, a combination of the foregoing, or other security reasonably acceptable to Buyer.

1.67 “PPT” means Pacific Prevailing Time.

1.68 “Product” means each and together, carbon free Specified Energy and As-Available Energy that is scheduled and delivered and sold by Seller and is received and purchased by Buyer pursuant to this Agreement, together with any associated Green Attributes and Capacity Attributes.

1.69 “Project” means that solar generation facility to be designed, constructed, owned, operated and maintained by Seller in Jefferson County, Oregon, having a Net Available Capacity of 63 MW_{AC} and a Nameplate Capacity Rating of 75 MW_{DC} as further described in Exhibit E and Section 2.1.

1.70 “Project Meter” means the metering equipment designed, furnished, installed, owned, inspected, tested, maintained and replaced as provided for in the Interconnection Agreement and located at the point of interconnection with the Balancing Authority.

1.71 “Project Output” means all electric Energy produced by the Project, less station service (parasitic power and electrical losses), if any, all as measured at the Project Meter.

1.72 “Project Operating Parameters” means the Project’s operational and dispatch characteristics and constraints as of the Effective Date and set forth on Exhibit E.

1.73 “Projected Contract Costs” has the meaning set forth in Section 8.2.

1.74 “Projected Power Replacement Costs” has the meaning set forth in Section 8.2.

1.75 “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 WECC 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 immediately preceding sentence.

1.76 “Qualifying Facility” has the same meaning as that term is utilized in the version of 18 C.F.R. Part 292 in effect on the Effective Date.

1.77 “Qualifying Replacement RECs” means environmental attributes (including renewable energy credits and renewable energy credit reporting rights) that are (i) delivered at a delivery point agreeable to Buyer bundled with energy produced simultaneously by a generating source that (A) is an Oregon Renewable Portfolio Standard eligible renewable energy resource, (B) produces environmental attributes (including renewable energy credits and renewable energy credit reporting rights) of the same type and quality as Green Attributes (including Bundled Project RECs and REC Reporting Rights), (C) is located in Oregon or Washington, and (D) achieves commercial operation after the Commercial Operation Date, or (ii) RECs from As-Available Energy that were not conveyed by Seller to Buyer under this Agreement, if any, or (iii) a combination thereof.

1.78 “Qualified Institution” means a major U.S. commercial bank, a trust company, or a U.S. branch office of a major foreign commercial bank (which is not an Affiliate of such party) organized under the laws of the United States (or any state or political subdivision thereof) with such bank having shareholders’ equity of at least \$10 billion (U.S. Dollars) and a Credit Rating of at least A+ by S&P, A1 by Moody’s, A+ by Fitch, or A (high) by DBRS.

1.79 “RAS Obligation Event” means an action taken by a Reliability Entity which may include changes in demand, generation (MW and Mvar), or system configuration to maintain system reliability, stability, acceptable voltage, or power flows as prescribed by a Remedial Action Scheme.

1.80 “REC(s)” means the Green Attributes and the REC Reporting Rights associated with Project Output, however commercially transferred or traded under any or other product names, such as “green tags,” “Green-e Certified,” or otherwise. RECs are accumulated on a MWh basis and one REC represents the Green Attributes made available by the generation of one MWh of Project Output. All RECs delivered to Buyer under this Agreement must comply with the Oregon Renewable Portfolio Standard.

1.81 “REC Reporting Rights” are the right of a buyer to report the ownership of accumulated RECs in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at such buyer's discretion, and include without limitation those REC Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any

present federal, state, or local law, regulation or bill, and international or foreign emissions trading program.

1.82 “REC Shortfall” is defined in Section 4.2.

1.83 “Reliability Entity Curtailment Event” is defined in Section 3.11.

1.84 “Reliability Entity” may include, without limitation, NERC, WECC, the Balancing Authority, Transmission Provider, regional transmission organization, independent system operator, reliability coordinator or any other entity that has, or that may have in the future (i) responsibility over the reliability of the bulk power system and (ii) by virtue of such responsibility the legal authority to affect the operations of the Project or delivery of the Product.

1.85 “Remedial Action Scheme” means an automatic protection system designed to detect abnormal or predetermined system conditions and take corrective actions other than or in addition to the isolation of faulted components to maintain system reliability. Such action may include changes in demand, generation (MW and Mvar), or system configuration to maintain system stability, acceptable voltage, or power flows.

1.86 “S&P” means the Standard & Poor’s Global Ratings (a division of McGraw-Hill, Inc.) or its successor.

1.87 “Sales Price” means the price at which Seller, acting in a commercially reasonable manner, resells any Product not accepted by Buyer in breach of Buyer’s obligations under this Agreement, deducting from such proceeds any (i) Costs reasonably incurred by Seller in reselling such Product and (ii) additional transmission charges, if any, reasonably incurred by Seller in delivering such Product to the third party purchasers. “Costs” shall not include any negative price amounts for the Product, penalties, ratcheted demand or similar charges. In no event shall the Sales Price be less than zero dollars (\$0.00).

1.88 “Schedule” or “Scheduling” means the actions of Seller, Buyer, a Transmission Provider and all other impacted entities, or their representatives, of notifying, requesting, and confirming/implementing the quantity and type of Product, transmission arrangements, and timing of delivery, subject to Article 3 (Obligations and Deliveries) and the prevailing Western EIM, NAESB, WECC, and NERC scheduling requirements.

1.89 “Seller” means Madras PV1, LLC.

1.90 “Settlement Amount” means the net Losses, Gains and Costs, as calculated by the Non-Defaulting Party, that each Party would incur as of an Early Termination Date designated by the Non-Defaulting Party following an Event of Default pursuant to Section 5.2.

1.91 “Specified Amount(s)” means the amount of Firm Energy generated by the Project that Seller is required to deliver to Buyer at the Delivery Point for each monthly On-Peak period and for each monthly Off-Peak period during the Delivery Period. The Specified Amounts for each month during the following calendar year shall be established by Seller pursuant to Sections 2.5 and 3.1.

1.92 “Specified Energy” means Firm Energy simultaneously bundled with the Project’s associated Green Attributes, including Bundled Project RECs, as generated and metered net of all Project losses and station service at the Project Meter, scheduled in hourly blocks, and delivered to the Delivery Point, up to the Specified Amounts according to the Scheduling Procedure in Section 3.10. Each MWh of Specified Energy delivered shall include one (1) Bundled Project REC.

1.93 “Sufficiency Period” means the Renewable Resource Sufficiency Period as defined in Portland General Electric Company’s Schedule 201, Qualifying Facility 10 MW or Less Avoided Cost Power Purchase Information, approved by the Public Utility Commission of Oregon for service on and after the Effective Date.

1.94 “Start-Up Testing” means the completion of applicable required factory and other start-up tests as set forth in Exhibit I.

Commented [NR4]: Note to PGE: not sure if this is the correct exhibit to reference. Please see Exhibit I and note therein.

1.95 “Tax” means all taxes, rates, levies, adders, assessments, surcharges, duties and other fees and charges of any nature, including but not limited to ad valorem, consumption, excise, franchise, gross receipts (including any Oregon business and occupation tax and Oregon public utility tax and any successor tax thereto), import, export, license, property, sales, stamp, storage, transfer, turnover, use, or value-added taxes, and any and all items of withholding, deficiency, penalty, addition to tax, interest, or assessment related thereto.

1.96 “Term” has the meaning set forth in Section 10.1.

1.97 “Test Energy” means all Energy generated by the Project prior to the Commercial Operation Date.

1.98 “Trading Day” means a day that the Market Index Price source published the relevant Market Index Price.

1.99 “Transmission Provider” means Portland General Electric Company acting in its transmission function and any entity (including any FERC-authorized regional transmission organization) transmitting Energy from the Delivery Point.

1.100 “WECC” means the Western Electricity Coordinating Council or its successor organizations.

1.101 “WREGIS” means the Western Renewable Energy Generation Information System or its successor system(s).

1.102 “WECC Pre-Scheduling Day” means the WECC Pre-Scheduling Day prior to the delivery day or day(s) as defined by the most recent WECC Pre-Schedule calendar. For example, if Seller pre-schedules on a Thursday, the relevant WECC Pre-Scheduling Day for that day will typically be for delivery days of Friday and Saturday.

**ARTICLE 2
THE PROJECT**

2.1 Project Milestones. Seller shall design, construct, own, operate, repair, and maintain the Project in accordance and consistent with the Project Documentation listed in Section 2.2 and Prudent Electrical Practices so as to ensure the continuous ability of the Project to meet Seller's obligations to Buyer under this Agreement. Seller shall exercise its best efforts, consistent with Prudent Electrical Practices, to complete development of the Project in accordance with the milestones set forth below in this Section 2.1. If Seller materially fails to meet a Project milestone, Seller shall communicate to the Buyer in writing the following no more than 10 Business Days after receiving notice from Buyer: (i) further information concerning the status of Project development; (ii) a written report containing Seller's analysis of the reasons behind the failure to meet the original milestone(s), including a description of the remedial actions that Seller agrees to undertake to complete the Project by the Commercial Operation Date; and (iii) further assurances that the Project will be completed consistent with the terms of this Agreement.

- (a) Seller shall demonstrate site control as of the Effective Date of this Agreement by ownership, lease, or option to lease of real property sufficient to enable Seller to finance, construct and operate the Project, with any such lease (or future lease referenced in such option to lease) having a term equal to or greater than the Term of this Agreement. Seller shall provide Buyer an executed lease agreement within 180 days after the Effective Date of this Agreement.
- (b) Seller shall have executed with a qualified contractor an enforceable engineering, procurement and construction contract ("EPC Contract") no later than June 1, 2021.
- (c) Seller shall receive in final, non-appealable form all permits and licenses needed to construct and operate the Project no later than March 1, 2021.
- (d) Seller shall apply for and obtain financing approval as demonstrated by Seller providing a copy of the bank approval letter to Buyer no later than June 1, 2021.
- (e) Seller shall break ground on construction of the Project no later than June 1, 2021.
- (f) Seller shall execute the Facilities Study Agreement no later than April 12, 2019.
- (g) Seller shall execute a Generation Interconnection Agreement no later than thirty (30) days after Seller and PGE (acting in its transmission function) have come to mutual agreement with regard to the form of generation Interconnection Agreement, including the cost of any network upgrades and/or interconnection facilities and the timeline for completion of any network upgrades and/or interconnection facilities.

Deleted: Seller shall execute a generation Interconnection Agreement no later than _____. Seller shall execute a generation Interconnection Agreement no later than [March 1, 2020].¶

- (h) Seller shall take all necessary steps and actions prior to the Commercial Operation Date to allow the Project RECs that will be transferred to Buyer pursuant to this Agreement to be tracked in WREGIS. Seller shall register the Project in WREGIS as an eligible renewable resource for Oregon, and, if the Applicable Law then in effect so provide, for Washington, California, and any other state reasonably requested by the Buyer during the Delivery Period. Commencing on the Commercial Operation Date and continuing through the end of the Delivery Period, Seller shall comply with all applicable WREGIS operating rules and maintain its registration in WREGIS for the Project.
- (i) Seller shall coordinate with Buyer to register and model the Project as a PGE EIM Participating Resource with the CAISO EIM, as defined in the OATT, in a manner agreeable to Buyer no later than March 1, 2021.

Seller shall have the right, but not the obligation, to toll, on a day-for-day basis, but in no event for a period lasting longer than three-hundred and sixty five (365) days, any or all of the foregoing milestones in this Section 2.1 as a result of (i) any delay by the Transmission Provider in issuing the Facilities Study report, or (ii) any dispute brought forth by Seller against Transmission Provider related to the System Impact Study report, Facilities Study report, the generation Interconnection Agreement, or any studies performed by Transmission Provider or actions of Buyer required in order for Buyer to designate the Facility as a Network Resource. Without limiting the generality of the foregoing, “dispute” shall include Seller’s right to request that the Transmission Provider file the unexecuted Generation Interconnection Agreement with FERC.

2.2 Project Documentation. Seller shall provide Buyer with the documents listed below detailing the project design, each of which shall be attached as Exhibit F on the Effective Date, except for the executed Generation Interconnection Agreement, which shall be attached within ten (10) days after becoming available. As the Project develops pursuant to this Agreement, Seller may submit updates to such documents to the Buyer; provided, however, Seller may not materially amend such documents, or Exhibit F, during the Term, without Buyer’s written consent, which may not be unreasonably withheld or delayed. Any increase in the Nameplate Capacity Rating or Net Available Capacity will be deemed a material amendment for this Agreement.

- (a) Seller’s proposed Level 1 schedule, including significant Project activities, milestones and deliverables.
- (b) A list of permits and approvals required for the construction and operation of the Project.
- (c) Project layout drawings, including all major equipment and balance of plant equipment.
- (d) An electrical single-line diagram for the Project.
- (e) 8760 net energy production estimate and 12x24 energy profile with supporting PV-Syst or equivalent modeling inputs.

- (f) System Impact Study
- (g) Executed Generation Interconnection Agreement

Any review by Buyer of the design, construction, operation or maintenance of the Project or documents pertaining thereto is solely for Buyer's information, and Buyer shall have no responsibility or liability to Seller or any third party in connection with such review. Seller is solely responsible and liable for the economic and technical feasibility, operational capability and reliability of the Project.

2.3 **Project Test Energy.** If and to the extent the Project generates Test Energy, Seller shall have the right to sell such Test Energy to a third party, including submitting bids into the EIM, free and clear of any obligations hereunder to Buyer. If and to the extent that the Project generates Test Energy and such Test Energy is sold to Buyer, the price for such Test Energy received by Buyer shall be fifty percent (50%) of the Market Index Settlement Price in excess of \$15.00. To the extent the Market Index Settlement Price is less than \$15.00 or the Test Energy Integration Cost exceeds \$15.00 in any given hour, Seller shall pay any incremental costs or expenses that are required for Buyer to receive such Test Energy, including but not limited to reimbursement for negative pricing and any necessary capacity costs, reserves costs, and imbalance costs necessary to make Buyer whole ("Test Energy Integration Cost"). Seller shall schedule Test Energy according to the Scheduling Procedure in Section 3.10.

Commented [CL6]: The intent of this agreement is that all energy generated by the facility be sold to and purchased by PGE.

Commented [NR7]: Ecoplexus has repeatedly informed PGE that it intends to sell Test Energy as a wholesale sale to third parties, and PGE cannot require that Ecoplexus sell the entire net output to PGE.

2.4 **Commercial Operation.** Seller shall place the Project in commercial operation on March 1, 2022 (the "Commercial Operation Date"). Seller shall demonstrate in writing, in accordance with the requirements in this Section 2.4, that the following events have occurred prior to the Commercial Operation Date:

- (a) Buyer has received a certificate addressed to Buyer from a Licensed Professional Engineer acceptable to Buyer in its reasonable judgment ("LPE") stating that the Project is able to generate electric power reliably and in accordance with the terms and conditions of this Agreement (certifications required under this Section can be provided by the same or different LPEs).
- (b) Start-Up Testing of the Project has been completed.
- (c) After Buyer has received notice of completion of Start-Up Testing, Buyer has received a certificate addressed to Buyer from an LPE stating that (a) the Project has operated for testing purposes under this Agreement, and (b) the Project was continuously mechanically available for operation for a minimum of 120 hours. Seller must provide five (5) Business Days written notice to Buyer prior to the start of the initial testing period. If the mechanical availability of the Project is interrupted during this initial testing period or any subsequent testing period, the Project shall promptly start a new testing period and provide Buyer forty-eight (48) hours written notice prior to the start of such testing period.
- (d) Buyer has received a certificate addressed to Buyer from an LPE stating that all required interconnection facilities have been constructed and all required interconnection tests have been completed.

- (e) Buyer has received confirmation from the Transmission Provider(s) that (a) the Project has successfully achieved interconnected operations using Network Resource Interconnection Service, and (b) Seller has paid all amounts due under the Interconnection Agreement, including, but not limited to required network upgrades.
- (f) Buyer has received a certificate addressed to Buyer from an LPE stating that Seller has obtained all required permits and, if requested by Buyer in writing, has provided copies of any or all such requested permits.
- (g) Buyer shall have received all Performance Assurance required by this Agreement.

Seller shall provide written notice to Buyer stating when Seller believes that the Project has achieved Commercial Operation accompanied by the certificates and other documentation described above. Buyer shall have ten (10) days after receipt of Seller's notice either to confirm to Seller that all of the conditions to Commercial Operation have been satisfied or have occurred, or to state with specificity what Buyer reasonably believes has not been satisfied. If, within such ten (10) day period, Buyer does not respond or notifies Seller confirming that the Project has achieved Commercial Operation, the original date of receipt of Seller's notice shall be the Commercial Operation Date. If Buyer notifies Seller within such ten (10) day period that Buyer reasonably believes the Project has not achieved Commercial Operation, the Commercial Operation Date shall not occur until Seller has addressed the concerns stated in Buyer's notice to the mutual satisfaction of both Parties.

2.5 Initial Specified Amounts. Seller shall provide Buyer with written notice setting forth the Specified Amounts for each month during the Delivery Period, as represented in Exhibit C on the Effective Date.

2.6 Project Remedial Action Scheme. Buyer shall have the right to utilize the Project for Buyer's Transmission Provider's Remedial Action Scheme. Before the Commercial Operation Date, Seller shall at its expense make necessary arrangements, including installing any equipment contemplated in the generation Interconnection Agreement, reasonably required to enable the Project to participate in such Remedial Action Scheme for Buyer's benefit.

2.7 Insurance. Seller shall acquire and maintain insurance for the Project in amounts and at coverage levels reasonably acceptable to Buyer as set forth in Exhibit A. Such insurance policies shall name Buyer, its Affiliates, and its and their employees, officers and directors as additional insureds for the purpose of liability associated with this Agreement.

2.8 Qualifying Facility Certification. On or before the Effective Date, Seller shall certify the Project as a "Qualifying Facility," as that term is utilized in the version of 18 C.F.R. Part 292 in effect on the Effective Date. Seller shall not design, construct, operate, repair, upgrade or maintain the Project in a manner that violates the requirements to maintain such status as a Qualifying Facility for the entire Term. Furthermore, Seller shall use its best efforts, subject to Section 10.12 below, to maintain such Project status as a Qualifying Facility for the entire Term.

2.9 Sale of Project Output. Seller shall sell one hundred percent (100%) of the Energy generated by the Project to Buyer and may not sell any Energy generated by the Project to any other purchaser, unless such sale is expressly allowed by this Agreement or by Buyer in writing. To the extent the Seller retains the right to sell RECs associated to the Project's generation during the Delivery Period to a third party, such RECs shall be deemed unbundled.

ARTICLE 3 OBLIGATIONS AND DELIVERIES

3.1 Specified Amounts. For the first three (3) years of the Delivery Period, Seller's Specified Amounts for each monthly On-Peak and Off-Peak period shall equal the corresponding Initial Specified Amount identified in Exhibit C. Beginning on September 1 of the third year during the Delivery Period, and thereafter on or before September 1 of each year during the Delivery Period, Seller shall provide Buyer with updated Specified Amounts for each month during the following calendar year (except for any months outside the Delivery Period) consistent with Sections 3.1(a) and 3.1(b) below.

- (a) The Specified Amounts for each month shall be consistent with the greater of (i) the Project's demonstrated rolling three (3) year average of Project Output for such month adjusted for actual solar panel output degradation during the 3 year period, but in no event shall the degradation adjustment be greater than 0.5% per year, or (ii) eighty percent (80%) of the Initial Specified Amounts for such monthly On-Peak or Off-Peak period.
- (b) In the event that the Parties mutually agree that the Project Output in any particular month or months during the rolling 3-year period was caused by materially unusual circumstances, the Parties may agree to exclude such month or months from the rolling 3-year calculation of Project Output. The Parties agree that the intent of using the three (3) year rolling Project Output is to develop generation forecasts that accurately reflect the actual generating characteristics of the Project.
- (c) Subject to terms and conditions of the Scheduling Services Agreement, Buyer may submit curtailment bids to the CAISO EIM equal to the Fixed Price for the applicable hour on behalf of Seller so that when the Market Index Prices is less than zero, and Seller expects to receive little or no net payment for its output ("Negative Price Event"), Seller shall have the right, but not the obligation, to suspend part or all of its deliveries through CAISO EIM dispatch, via a reduction in Project Output Seller's obligation to deliver the Specified Amount shall be reduced by one (1) MWh for each substantiated MWh reduced due to a Negative Price Event during such month.
- (d) In the event of a RAS Obligation Event at the Project pursuant to Section 2.8, Seller's obligation to deliver the Specified Amount during the month of the

RAS Obligation Event at the Project shall be reduced by one (1) MWh for each MWh reduced due to the RAS Obligation Event at the Project.

3.2 **Energy Delivery.** Unless excused by (i) Force Majeure, (ii) Seller's voluntary curtailment under Section 3.1(c) associated with a Negative Price Event, (iii) Buyer's Refusal (as set forth in Section 4.3), or (iv) a Reliability Entity Curtailment Event (as set forth in Section 3.11), during the Delivery Period, Seller shall schedule and deliver the Product to Buyer at the Delivery Point, commencing on the Commercial Operation Date and continuing through the end of the Delivery Period, subject to the terms and conditions herein.

- (a) Seller shall provide Buyer with a generation forecast for the Project that contains all information reasonably requested by Buyer in order to facilitate the Parties' compliance with requirements of each Reliability Entity ("Generation Forecast"). Each Generation Forecast shall be performed by an independent Forecasting Agent. The Forecasting Agent shall utilize methodology consistent with the requirements set forth in Exhibit H. At Buyer's request, Seller will cause the Forecasting Agent to provide PGE with an Application Program Interface from which Buyer may access raw forecasting files. The Forecasting Agent and Buyer shall have real time access to information and forecasts concerning the Project's availability. Seller shall maintain, and from time to time Buyer may request copies of, an archive of observed generation, hourly generation forecasts, and hourly schedules.
- (b) Seller shall schedule the Product in accordance with Section 3.10 for delivery to Buyer at the Delivery Point in the amount of Energy expected to be generated by the Project consistent with the Generation Forecast. Seller's Energy delivery Schedule may not intentionally exceed the Generation Forecast in any hour. Seller's Energy delivery Schedule may not exceed the Net Available Capacity in any hour. Seller and Buyer agree that the intent of this Section 3.2(b) is for Seller to Schedule and deliver Energy resembling actual production for each hour.
- (c) Seller shall provide Buyer with a real-time ICCP and EIDE communications link to the Project Meter.
- (d) Unless otherwise provided in this Agreement, Seller shall deliver to Buyer a quantity of Specified Energy for each monthly On-Peak and Off-Peak period during the Delivery Period in an amount equal to Specified Amounts as set forth in Section 3.1.
- (e) Seller shall be responsible for any costs or charges imposed on or associated with the Product or its receipt, provided such costs or charges are either (a) imposed on the Seller's side of the Delivery Point, or (b) as a result of schedule deviations, or (c) schedule deviations, or (c) Seller's actions.

Commented [NR8]: Note to PGE: please see note in Exhibit H.

- (f) Seller shall maintain records of energy forecasts, schedules, and Net Output. Seller shall maintain a minimum of forty-two (42) months of records and shall agree to allow PGE to have access to such records.
- (g) Seller is responsible for all costs and ensuring the Project is designated as a PGE EIM Participating Resource (as defined in the OATT), including designing, constructing, installing, repairing and maintaining all requisite technology requirements set forth in the OATT.

3.3 Green Attributes Delivery. Unless excused by (i) Force Majeure, (ii) Seller's voluntary curtailment under Section 3.1(c) associated with a Negative Price Event, (iii) Buyer's Refusal (as set forth in Section 4.3), or (iv) a Reliability Entity Curtailment Event (as set forth in Section 3.11), during the Deficiency Period, Seller shall convey to Buyer all Green Attributes, including Bundled Project RECs, associated with all Specified Energy. Seller represents and warrants that Seller will hold good title, free and clear of any liens or encumbrances, to all Green Attributes from the Project during the Deficiency Period, including all Bundled Project RECs, conveyed to Buyer.

- (a) Title to RECs transferred by Seller to Buyer pursuant to this Agreement shall be settled through WREGIS.
- (b) Unless otherwise specified herein or by written notification by Buyer, for each month of the Delivery Period after the beginning of the Deficiency Period, Seller shall deliver and convey the Bundled Project RECs associated with the Specified Energy delivered to Buyer within ten (10) Business Days after the end of the month in which the WREGIS certificates for such Bundled Project RECs are created.
- (c) Buyer and Seller may mutually agree during the Deficiency Period for the purchase and conveyance of Bundled Project RECs and Green Attributes associated with any As-Available Energy delivered by Seller to Buyer.
- (d) Each calendar year, Seller shall offer to sell all Sufficiency Period RECs to Buyer for the applicable year. Seller shall provide Buyer 30 days to consider any of Seller's offer to purchase all the RECs or a portion thereof under this Section, prior to selling the RECs to a third party. In the event Buyer declines any offer to purchase the RECs, Seller may not sell the RECs to a third party at a lower price than what was offered to Buyer without first offering to sell the RECs to Buyer at such lower price.

3.4 Carbon Emissions. Seller is responsible for and shall pay for all future costs, if any, whether incurred by Seller or Buyer, resulting from any carbon emissions generated by or associated with the Delivered Energy Quantity. Seller may provide Buyer with carbon emissions offsets that are reasonably satisfactory to Buyer in lieu of a monetary settlement. Within ten (10) Business Days after Buyer's request, Seller shall provide Buyer with the carbon emissions data for the Delivered Energy Quantity delivered during the Delivery Period.

3.5 Buyer's Obligations. Buyer shall purchase and receive the Product delivered by Seller to the Delivery Point up to the Net Available Capacity in any hour during the Delivery Period in accordance with and subject to the terms of this Agreement. Buyer shall pay Seller the applicable price for all Specified Energy and As-Available Energy delivered to the Delivery Point as set forth in Article 6 (Price, Payment and Netting). Buyer shall be responsible for any costs or charges imposed on or associated with the Product or its receipt, provided such costs or charges are imposed at or on the Buyer's side of the Delivery Point and the not the result of Seller's actions.

3.6 Metering. Seller shall design, furnish, install, own, inspect, test, and maintain metering equipment for the Project. Seller shall periodically (but no less than once every six (6) months) inspect, test, repair or replace the metering equipment at Seller's cost and provide such results to Buyer upon Buyer's request. If any of the inspections or tests disclose an error exceeding 0.5 percent, either fast or slow, proper correction, based upon the inaccuracy found, shall be made of previous readings for the actual period during which the Project Meter 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 Project Meter 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 Buyer arising out of such inaccuracy of metering equipment.

Commented [CL9]: Under review since Seller will interconnect using NRIS.

3.7 Planned Outages. Beginning on September 1, 2021, and thereafter on or before September 1 of each year during the Delivery Period (except for the last partial year of the Delivery Period), Seller shall provide Buyer with an annual schedule of all planned maintenance at the Project for the upcoming calendar year that is expected to result in an outage of more than ten percent (10%) of the generating capacity of the Project for two (2) or more consecutive On-Peak hours, as represented in Exhibit G. Seller shall use commercially reasonable efforts to plan scheduled maintenance to (i) maximize the productive output of the Project and (ii) not to occur between July 1 and September 30 or between December 1 and February 28.

3.8 Forced Outages. Seller shall give Buyer immediate telephonic notice (within 20 minutes) of any forced or unplanned outage events at the Project if such events will curtail or adversely affect scheduled Energy deliveries or any Generation Forecasts provided to Buyer, by contacting the Buyer's Scheduling Desk. Such notice must include a description of the cause of the outage and an estimate of the duration of the outage. Seller shall provide Buyer regular and frequent updates regarding any changes of status set forth in the initial notice. Seller shall use reasonable efforts to avoid or mitigate outages during the Delivery Period, and Seller shall use best efforts to avoid or mitigate outages during Buyer's system emergencies.

3.9 Intentionally Left Blank.

(a)

3.10 Scheduling Procedure.

- (a) For each day during the Delivery Period, Seller shall, by 5:00 a.m. PPT of the customary WECC Pre-Scheduling Day, communicate to PGE's Pre-schedule Desk via API or as directed by PGE, the expected energy to be delivered each hour at the Delivery Point for the delivery day, consistent with the Generation Forecast.
- (b) Seller shall communicate to PGE's Real-time Desk via API or as directed by PGE energy deliveries consistent with the Generation Forecast described in Section 3.2 (iii) no later than ninety (90) minutes prior to the flow hour ("Base Schedule").
- (c) Seller and PGE agree that the intent of Section 3.10 is for Seller to schedule and deliver energy resembling actual production from the Facility for each interval.
- (d) In the event the regional market design, CAISO EIM, Balancing Authority, or other Reliability Entity causes PGE's scheduling practices to change after the Effective Date, PGE shall have the right but not the obligation to update the scheduling and forecasting procedures described in this Sections 3.2 and 3.10 by giving sixty (60) days' prior written notice to Seller of such update.

3.11 Reliability Entity Curtailment. Buyer shall not be liable to Seller if curtailment of Energy is due to the action of a Reliability Entity to mitigate system emergencies or extreme light loading conditions ("Reliability Entity Curtailment Event").

3.12 Approval for Seller to Join Organized Markets. During the Term of this Agreement, Seller shall not register as participating resource in an independent system operator market or other organized market without prior written consent from Buyer, which consent may be granted in Buyer's sole discretion.

3.13 Seller to Designate Forecasting and Scheduling Coordinator. At least thirty (30) days before it begins to Schedule and deliver Test Energy under this Agreement, Seller shall engage at its expense a top-tier third-party forecasting agent (the "Forecasting Agent"), subject to Buyer's prior approval. At least thirty (30) days before it begins to deliver Test Energy under this Agreement, Seller agrees to enter into a separate agreement with Buyer for scheduling services ("Scheduling Services Agreement"). Under the Scheduling Services Agreement, Buyer shall perform Seller's Scheduling for the Product obligations under this Section 3.13 based exclusively on forecasts supplied by the Forecasting Agent. Seller is responsible for all expenses related to the Forecasting Agent and the Scheduling Services Agreement.

3.14 Maximum Delivery Amounts. Seller shall sell and deliver, and Buyer shall buy and receive, the Delivered Energy Quantity delivered pursuant to this Agreement, up to the Net Available Capacity per hour and Maximum Annual Volume. Seller shall not increase (i) the Project's ability to deliver Project Output, (ii) Nameplate Capacity Rating, or (iii) Net Available Capacity through any means, including but not limited to replacement or modification of equipment or related infrastructure.

ARTICLE 4
REMEDIES FOR FAILURE TO DELIVER/RECEIVE

4.1 Seller Failure to Deliver Specified Energy. If Seller fails to schedule and deliver Specified Energy and in an amount equal to the Specified Amount for any monthly On-Peak or Off-peak period (“Energy Shortfall”), and such failure is not excused by (i) Force Majeure, (ii) Seller’s voluntary curtailment under Section 3.1(c) associated with a Negative Price Event, or (iii) Buyer’s Refusal (as set forth in Section 4.3), Seller shall pay Buyer as follows:

- (a) Seller shall pay Buyer an amount for such deficiency equal to the positive difference (if any) of the average On-Peak or Off-Peak Market Index Prices for such month minus the Fixed Price for such On-Peak or Off-Peak period multiplied by the positive difference (if any) of the Specified Amount applicable monthly On-Peak and Off-peak period minus the Specified Energy delivered during such monthly On-Peak or Off-peak period; and
- (b) In the event the replacement energy procured by Buyer as a result of Seller’s failure to deliver the Specified Amount results in incremental Carbon Emissions costs to the Buyer, Seller shall pay Buyer an amount equal to the costs incurred by Buyer or provide carbon offsets to Buyer in accordance with Section 3.4; provided, however that Buyer shall provide commercially reasonable evidence that it incurred such costs as a result of Seller’s failure to deliver the Specified Amount; and
- (c) In the event the replacement energy procured by Buyer as a result of Seller’s failure to deliver the Specified Amount results in incremental ancillary services and transmission costs, Seller shall pay Buyer an amount equal to the costs incurred by Buyer; provided, however that Buyer shall provide commercially reasonable evidence that it incurred such costs as a result of Seller’s failure to deliver the Specified Amount; and
- (d) Seller shall not owe Buyer amounts under this Section 4.1 to the extent that Seller’s failure to deliver Energy in any month is caused by Seller’s voluntary curtailment of generation at the Project, in whole or part, during Negative Price Events.

4.2 Seller Failure to Deliver Green Attributes. If Seller fails to deliver associated Green Attributes, including Bundled Project RECs, in an amount equal to the Specified Amount for any monthly On-Peak or Off-peak period (“REC Shortfall”), and such failure is not excused by (i) Force Majeure, (ii) Seller’s voluntary curtailment under Section 3.1(c) associated with a Negative Price Event, or (iii) Buyer’s Refusal (as set forth in Section 4.3), then Seller shall be obligated to settle any shortfall in the delivery of Green Attributes (including Bundled Project RECs) as follows:

- (a) Seller shall deliver an equivalent amount of Qualifying Replacement RECs to remedy any REC Shortfall from the applicable month within 120 days after the end of the shortfall month (for the avoidance of doubt, Qualifying Replacement

RECs may include RECs from As-Available Energy that were not conveyed by Seller to Buyer under this Agreement, if any, generated within the same calendar year); or

- (b) In the event Seller elects not to deliver an equivalent amount of Qualifying Replacement RECs under Section 4.2(a) above and Buyer elects, in its sole discretion, to purchase Replacement Bundled RECs, Seller shall owe Buyer the bundled REC price, excluding the Energy value, that Buyer (acting in a commercially reasonable manner) actually pays for Replacement Bundled RECs; or
- (c) In the event Seller elects not to deliver an equivalent amount of Qualifying Replacement RECs under Section 4.2(a) above and Buyer does not elect, in its sole discretion, to purchase replacement bundled RECs under subpart (ii), Seller shall owe Buyer the spot bundled REC price, excluding the Energy value, identified by Buyer multiplied by the number of Bundled Project RECs Seller failed to deliver. Buyer shall use commercially reasonable efforts to mitigate the amount owed by Seller under this Section 4.2(c). The replacement price for bundled RECs shall be determined by taking the lower of two dealer quotes representing a live offer to sell bundled RECs in a quantity sufficient to cover the shortfall.

For purposes of Section 4.2, a “Replacement Bundled REC” shall mean a REC bundled with the associated qualifying energy generated by an Oregon Renewable Portfolio Standard eligible renewable energy resource and delivered bundled at a delivery point agreeable to the Buyer.

Any amount owed by the Seller to the Buyer under this Section 4.1 shall be netted against Buyer’s payment obligation for the month pursuant to Section 6.5 below.

4.3 Buyer Refusal. If Buyer refuses to accept any part of the Product that is scheduled in accordance with Section 3.10 and that Seller is ready, willing and able to deliver to the Delivery Point, and such refusal is not excused by a Reliability Entity Curtailment Event, Force Majeure or by Seller’s failure to perform, then Buyer shall owe Seller an amount for such deficiency equal to the positive difference between the applicable purchase price as set forth in Section 6.1 below for the amount of Product Buyer refuses to receive minus the Sales Price associated with the amount of Product Buyer refuses to receive that Seller elects to sell to third parties, if any. Any such amount owed by the Buyer to the Seller shall be added to the calculation of the Buyer’s payment obligation for the month pursuant to Section 6.1 below. For each MWh of Product not accepted by Buyer pursuant to this Section 4.3, Seller’s obligation to deliver Specified Amount shall be reduced by one (1) MWh, and Seller’s Minimum Annual Volume shall be similarly reduced by one (1) MWh.

ARTICLE 5
EVENTS OF DEFAULT; REMEDIES

5.1 Events of Default. An “Event of Default” shall mean, with respect to a Party (a “Defaulting Party”), the occurrence of any of the following:

- (a) the failure to make, when due, any payment required pursuant to this Agreement that is not subject to a good faith dispute, if such failure is not remedied within three (3) Business Days after written notice;
- (b) any representation or warranty made by a Party herein is false or misleading when made or when deemed made or repeated in any respect that materially adversely affects the other Party;
- (c) the failure to perform any material covenant or obligation set forth in this Agreement if the Defaulting Party does not initiate a remedy within ten (10) Business Days after written notice and thereafter diligently pursue such remedy to completion (but in no event later than ninety (90) calendar days after written notice is provided to the Defaulting Party); provided, however, this Section 5.1(c) shall not apply to Seller’s obligation to schedule and deliver the Specified Amounts of Product and Bundled Project RECs or to Buyer’s obligation to receive and purchase the Product, as the exclusive remedies for such events are provided in Article 4 (Remedies for Failure to Deliver/Receive);
- (d) such Party becomes Bankrupt;
- (e) the failure of such Party to timely satisfy the creditworthiness/collateral requirements agreed to pursuant to Article 8 (Credit and Collateral Requirements) hereof, if the failure continues for five (5) Business Days after written notice of the failure is given to that Party;
- (f) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;
- (g) during any period in which a Letter of Credit is issued on behalf of that Party, a Letter of Credit default shall have occurred upon the occurrence of any of the following events with respect to the issuer of such Letter of Credit and the event has not been remedied or an eligible replacement Letter of Credit has not been provided within two (2) Business Days of written notice of the Letter of Credit default: (i) such issuer fails to be a Qualified Institution; (ii) such issuer fails to comply with or perform its obligations under such Letter of Credit; (iii) such issuer disaffirms, disclaims, repudiates, or rejects, in whole or in part, or challenges the validity of, such Letter of Credit; (iv) such Letter of Credit expires or is within thirty (30) days of its expiration date or otherwise terminates, fails, or

ceases to be in full force and effect at any time during the term, in any such case without replacement; (v) such issuer becomes bankrupt; or (vi) a Merger Event occurs with respect to the issuer of such Letter of Credit; provided, however, that no Letter of Credit default shall occur or be continuing in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be canceled or returned to a Party in accordance with the terms of this Agreement;

- (h) in the event Seller materially fails to meet a Project development milestone set forth in Article 2 (The Project), provided that such failure is not excused by the tolling provisions in Section 2.1, Seller's failure to provide Buyer with the information or assurances required in Section 2.1, as determined in Buyer's reasonable discretion, that the Project will be completed consistent with the terms of this Agreement (taking into account the cure period applicable to the Commercial Operation Date set forth below) and such failure continues for ten (10) Business Days after written notice of the failure is given to the Seller;
- (i) Seller's failure to make material progress on construction activities for the Project, as determined in Buyer's reasonable discretion, provided that such failure is not excused by the tolling provisions in Section 2.1, by December 1, 2021, and such failure continues for ten (10) Business Days after written notice of the failure is given to the Seller, unless Seller can establish to Buyer's reasonable satisfaction that the delay in material progress is caused by circumstances outside Seller's reasonable control (such as an injunction, an inability of the supply chain to deliver orders that were placed timely to meet the Commercial Operation Date, or force majeure);
- (j) Seller's failure to achieve the scheduled Commercial Operation Date set forth in Section 2.4 but only if such failure is not remedied within twelve (12) months after Seller receives Buyer's written notice to cure. Within thirty (30) days after Seller receives such notice to cure, Seller shall provide Buyer with a detailed Project completion plan, including updated and detailed milestone dates. Seller shall be entitled to a day-for-day extension of Commercial Operation Date beyond such twelve (12) months, but in no event for longer than an additional twelve (12) months, if the cause of Seller's failure to achieve the Commercial Operation Date is solely and directly attributable to the failure of PGE (acting in its transmission function) to place any required interconnection facilities and/or network upgrades into service by the in-service dates agreed to in the executed Generation Interconnection Agreement;
- (k) commencing on the Commercial Operation Date, Seller's failure to deliver the Minimum Annual Volume to Buyer during either two (2) consecutive calendar years or two (2) out of three (3) calendar years during the Delivery Period by reason other than (i) Force Majeure, (ii) Seller's voluntary curtailment under Section 3.1(d) associated with a Negative Price Event, (iii) Buyer Refusal pursuant to Section 4.3, or (iv) a Reliability Entity Curtailment Event pursuant to Section 3.11.

5.2 Declaration of an Early Termination Date and Calculation of Settlement Amount.

If an Event of Default with respect to a Defaulting Party has occurred and is continuing, the Non-Defaulting Party shall have the right to: (i) designate a day, no earlier than the day such notice is effective and no later than twenty (20) days after such notice is effective, as an early termination date (“Early Termination Date”) upon which to calculate a Settlement Amount as described below; and (ii) suspend further performance pursuant to Section 5.5 below. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount as of the Early Termination Date. The Gains and Losses shall be determined by calculating the amount that would be incurred or realized to replace or to provide the economic equivalent of the remaining payments or deliveries for a period of either (i) five (5) years after the Early Termination Date, or (ii) the amount of time between the Early Termination Date and the original expiration date of the Agreement, whichever occurs earlier. The Non-Defaulting Party (or its agent) may determine its Gains and Losses by reference to information either available to it internally or supplied by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets. Third parties supplying such information may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The calculation of the Settlement Amount shall assume that the monthly Specified Amounts for future years will be the same as the Initial Specified Amounts established in accordance with Section 2.6.

5.3 Payment of Settlement Amount.

As soon as practicable after a calculation of the Settlement Amount, written notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Settlement Amount and whether payment of the Settlement Amount is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such Settlement Amount. In the event that the Settlement Amount is to be paid by the Defaulting Party to the Non-Defaulting Party, payment of the Settlement Amount shall be made within thirty (30) days after such notice. In the event that the Settlement Amount is to be paid by the Non-Defaulting Party to the Defaulting Party, payment of the Settlement Amount shall be made upon the earlier to occur of: (i) such time as the Non-Defaulting Party receives confirmation satisfactory to it in its reasonable discretion (which may include an opinion of its counsel) that all other obligations of any kind whatsoever of the Defaulting Party to make any payments to the Non-Defaulting Party under this Agreement or otherwise which are due and payable as of the Early Termination Date have been fully and finally performed; or (ii) one hundred eighty (180) days after the Early Termination Date.

5.4 Disputes with Respect to Settlement Amount.

If the Defaulting Party disputes the Non-Defaulting Party’s calculation of the Settlement Amount, in whole or in part, the Defaulting Party shall, within ten (10) Business Days of receipt of Non-Defaulting Party’s calculation of the Settlement Amount, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute; provided, however, that if the Settlement Amount is due from the Defaulting Party, the Defaulting Party shall first transfer Performance Assurance to the Non-Defaulting Party in an amount equal to the Settlement Amount.

5.5 Buyer Suspension of Performance.

Notwithstanding any other provision of this Agreement, if an Event of Default by Seller has occurred and is continuing, the Buyer, upon written notice to the Seller, shall have the right (i) to suspend future performance of both Parties

under this Agreement; provided, however, in no event shall any such suspension continue for longer than ten (10) Business Days unless an early Termination Date has first been declared and notice thereof pursuant to Section 5.2 given, and (ii) to the extent an Event of Default shall have occurred and be continuing to exercise any remedy available at law or in equity.

5.6 Subsequent Agreement Following Early Termination. If this Agreement is terminated early because of an Event of Default by Seller, and Seller or Seller's assignee subsequently seeks to resume selling Project Output to Buyer, then Buyer in its sole discretion may: (a) require that the terms of any such sale be governed by the then-applicable avoided cost rates and contract terms; or (b) require that the terms of any such sale be subject to the avoided cost rates and other terms and conditions of this Agreement until this Agreement's original expiration date.

5.7 Seller's Failure to Obtain an Interconnection Agreement. Notwithstanding anything to the contrary in this Article 5 or elsewhere in this Agreement, should Seller be unable to secure a financeable Interconnection Agreement, as determined by Seller in its reasonable discretion, Seller shall have the right to terminate this Agreement without penalty or owing of any Settlement Amount, so long as such termination occurs no later than eighteen (18) months after the Effective Date.

ARTICLE 6 PRICE, PAYMENT AND NETTING

6.1 Price. For each calendar month during the Delivery Period during the Fixed Price Term, Buyer shall pay Seller the sum of the following (a) – (c):

- (a) The amount of Specified Energy delivered during the calendar month, up to the Specified Amounts for such month, multiplied by the applicable Firm Fixed Prices for On-Peak hours and for Off-Peak hours; plus
- (b) The amount of As-Available Energy delivered during the calendar month multiplied by the Market Index Settlement Price; plus
- (c) For each hour that the Market Index Price is negative, the sum of the Delivered Energy Quantity for each applicable hour multiplied by the Market Index Price.

6.2 Seller shall be responsible for any and all costs, charges, or fees associated with any schedule deviations after ninety from the Base Schedule. Generally, the Schedule Deviations will be calculated as follows for each hour:

- (a) [FMM Instructed Imbalance Energy minus Base Schedule] multiplied by the real-time pre-dispatch price; plus
- (b) [Real Time Instructed Imbalance Energy minus FMM Instructed Imbalance Energy] multiplied by the real-time dispatch price; plus

- (c) [Real Time Uninstructed Imbalance Energy minus Real Time Instructed Imbalance Energy] multiplied by the real-time dispatch price; plus
- (d) Any other costs, charges, or fees associated with Schedule Deviations provided, however that Buyer shall provide commercially reasonable evidence that it incurred such costs, charges, or fees as a result of the deviation from schedule.

To the extent the above calculation result in a net negative value for the respective hour, the Seller shall reimburse Buyer for such value.

6.3 Billing Period. The calendar month shall be the standard period for all payments under this Agreement (other than payment of the Settlement Amount). As soon as practicable but not more than five (5) calendar days after the end of each month, Seller will tender to Buyer a written statement of the payment obligations, if any, incurred hereunder during the preceding month.

6.4 Timeliness of Payment. All amounts due and owing under this Agreement shall be paid on or before the twentieth (20th) day of each month or, if such day is not a Business Day, then on the next Business Day. The Party owing payment for the month will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the receiving Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date but excluding the date the delinquent amount is paid in full.

6.5 Disputes and Adjustments of Invoices. Buyer may, in good faith, dispute the correctness of any monthly payment amount calculated by Seller under this Agreement within twelve (12) months. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within ten (10) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 6.4 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

6.6 Netting of Payments. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other for the same monthly billing period through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of the Product during the monthly billing period under this Agreement, including any

related damages calculated pursuant to Article 4 (Remedies for Failure to Deliver/Receive) (unless one of the Parties elects to accelerate payment of such amounts as permitted by Article 4), interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

6.7 Payment Obligation Absent Netting. If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly billing period, including, but not limited to, any related damage amounts calculated pursuant to Article 4 (Remedies for Failure to Deliver/Receive), interest, and payments or credits, that Party shall pay such sum in full when due.

6.8 Security. Except in connection with a liquidation and termination in accordance with Article 5 (Events of Default; Remedies), all amounts netted pursuant to this Article 6 (Price, Payment and Netting) shall not take into account or include any Performance Assurance which may be in effect to secure a Party's performance under this Agreement.

6.9 Price Adjustment for Project Operating Parameters. In the event the Project Operating Parameters differ in a materially adverse way, as reasonably determined by Buyer, from the operating conditions actually observed over the course of ninety (90) consecutive calendar days after the Commercial Operation Date, Buyer (acting in a commercially reasonable manner) may re-evaluate and adjust the Fixed Price for future deliveries after delivering sixty (60) days prior written notice to Seller of such price adjustment.

ARTICLE 7 LIMITATIONS OF LIABILITY

EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, AND THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE

Commented [NR10]: Ecoplexus will not accept this clause. Section 30.5 requires redispatch of Network Resources is performed on a "least-cost, non-discriminatory basis..." Section 33.2 of the OATT goes on to state that redispatch of Network Resources will occur on a "least-cost basis without regard to the ownership of such resources." Section 33.3 states that the Transmission provider and Network Customers "will each bear a proportionate share of the total redispatch cost based on their respective Load Ratio Shares." Nowhere under the OATT are redispatch costs allowed to be assigned directly to any specific Network Resource.

Commented [DL11R10]: These OATT provisions don't really govern this issue because PGE is the Network Customer with regard to the transmission necessary to deliver the facility's output to PGE's load. PGE believes that this should not be an issue because any deliverability issues should be handled in the interconnection process, which would allow PGE to transfer the output of both the PRB and Madras Solar facilities to its load. However, if Madras Solar is not willing to pay costs associated with deliverability and PGE is ultimately required to back down its PRB facility to satisfy its PURPA purchase obligation, thereby taking more expensive output from Madras Solar over less costly PRB output, PURPA's customer indifference principles clearly require Ecoplexus to pay this cost difference. The use of "redispatch" might be misleading here, so I've tried to use different terminology, but in principle, PGE cannot agree to a dispatch scenario where its customers are not compensated if PGE is required to purchase higher cost QF output over readily available, more affordable hydro output due to a QF's siting decision.

Deleted: <#>Price Adjustment for Redispatch of Dispatch Requirements Affecting Buyer Generation. In the event a Governmental Authority requires Buyer to redispatch back down generation at one or more of Buyer's electric generation facilities to accommodate or otherwise facilitate the dispatch of the Project under this Agreement, Buyer (acting in a commercially reasonable manner) may re-evaluate and adjust the Fixed Price for future deliveries after delivering sixty (60) days prior written notice to Seller of such price adjustment. ¶

CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE 8 CREDIT AND COLLATERAL REQUIREMENTS

8.1 Seller Financial Information. If requested by Buyer, Seller shall deliver: (i) prior to mobilization under the EPC Contract, evidence of Project financing, including the material terms of such financing (e.g., copy of the bank approval letter); (ii) within 120 days following the end of each fiscal year, a copy of Seller's annual report containing audited consolidated financial statements for such fiscal year; (iii) within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year, a copy of Seller's quarterly report containing unaudited consolidated financial statements for such fiscal quarter; and (iv) any supplemental financial information required to answer any questions related to such reports in a timely manner. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as Seller diligently pursues the preparation, certification and delivery of the statements.

8.2 Performance Assurance. Beginning on the Commercial Operation Date, and at the beginning of each calendar quarter thereafter, Buyer shall calculate the Projected Power Replacement Costs and the Projected Contract Costs in accordance with the formulas below. If the Projected Power Replacement Costs are greater than the Projected Contract Costs, Seller shall deliver to Buyer, within ten (10) Business Days, Performance Assurance in an amount equal to the amount by which the Projected Power Replacement Costs exceed the Projected Contract Costs.

- (a) The Projected Power Replacement Costs shall equal the net present value of the sum of: (i) 110% of the price curve of the future ICE Mid-C Index for both On-Peak hours and Off-Peak hours multiplied by the Specified Amounts to be delivered during such hours over the next five (5) years; and, during the Deficiency Period, (ii) 110% of the projected spot price for Qualifying Replacement RECs determined consistent with Section 4.2(b) above for bundled RECs multiplied by the Specified Amounts to be delivered over the next five (5) years. During the first five (5) years of the Term, commencing on the Effective Date, the calculation of the Projected Power Replacement Costs shall assume that the monthly Specified Amounts for future years will be the same as the Initial Specified Amounts established in accordance with Section 2.6.

- (b) The Projected Contract Costs shall equal the net present value of the Fixed Prices set forth in Schedule C for both On-Peak hours and Off-Peak hours multiplied by the Specified Amounts to be delivered during such hours over the next five (5) years. The calculation of the Projected Contract Costs shall assume that the monthly Specified Amounts for future years will be the same as the Initial Specified Amounts established in accordance with Section 2.6.

To calculate net present value for purposes of this Agreement, the Parties shall use the Bloomberg "S23 Corp" (Bloomberg ID "YCSW0023") interest-rate swap curve as the discount rate.

8.3 Buyer Financial Information. If requested by Seller, Buyer shall deliver (i) within 120 days following the end of each fiscal year, a copy of Buyer's annual report containing audited consolidated financial statements for such fiscal year and, (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of Buyer's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. Delivery of these financial statements may be achieved by Buyer making them available on Buyer's company website or through the Securities Exchange Commission EDGAR website. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as Buyer diligently pursues the preparation, certification and delivery of the statements. Notwithstanding the foregoing, Buyer will not have any obligation to post any form of performance assurance with respect to this Agreement, and Seller hereby waives all implied rights related to financial assurance arising from Section 2-609 of the Uniform Commercial Code or case law applying similar doctrines.

8.4 Interest Rate on Cash Collateral. Performance Assurance delivered by Seller in the form of cash shall bear interest at the Interest Rate on Cash Collateral and shall be calculated by Buyer and paid to Seller along with the monthly payment amount set forth in Article 6 (Price, Payment and Netting) above.

8.5 Performance Assurance is Not a Limit on Seller's Liability. The Performance Assurance contemplated by this Article 8 (Credit and Collateral Requirements) (a) constitutes security for, but is not a limitation of, Seller's obligations under this Agreement, and (b) shall not be Buyer's exclusive remedy for Seller's failure to perform in accordance with this Agreement.

8.6 Grant of Security Interest in Performance Assurance. To secure its obligations under this Agreement and to the extent Seller delivers Performance Assurance, Seller hereby grants to Buyer a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, Buyer, and Seller agrees to take such action as Buyer reasonably requires in order to perfect Buyer's first-priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

**ARTICLE 9
GOVERNMENTAL CHARGES**

9.1 Cooperation. Each Party shall use reasonable efforts to implement the provisions of and to administer this Agreement in accordance with the intent of the Parties to minimize all taxes, so long as neither Party is materially adversely affected by such efforts.

9.2 Governmental Charges. Seller shall pay or cause to be paid all taxes imposed by any government authority (“Governmental Charges”) on or with respect to the Project or the Product arising prior to the Delivery Point. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product at and from the Delivery Point (other than ad valorem, franchise or income taxes related to the sale of the Product by Seller and are, therefore, the responsibility of the Seller). In the event one Party remits or pays any Governmental Charges that are the other Party’s responsibility hereunder, the amount of such payment shall be included in the calculation of the next monthly net payment amount calculated by Seller pursuant to Section 6.5 above. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the law.

**ARTICLE 10
MISCELLANEOUS**

10.1 Conditions Precedent; Term of Agreement.

(a) Buyer Condition Precedent. The obligations under this Agreement are conditioned on and subject to Seller paying in full all amounts due under the Interconnection Agreement, including, but not limited to reasonably required network upgrades identified via the Network Resource Interconnection Service process, provided that either the Public Utilities Commission of Oregon or FERC does not abnegate this requirement in accordance with Section 3.6(c). In the event this condition precedent (i) has not been abnegated or (ii) has not been either satisfied or waived by Buyer, Buyer may terminate this Agreement by providing written notice of termination to Seller not earlier than the Commercial Operation Date. Neither Buyer nor Seller shall have any liability to one another associated with such termination.

(b) Term of Agreement. The term of this Agreement shall commence on the Effective Date and shall end on February 28, 2037 (the “Term”). In no case shall the expiration of this Agreement affect or excuse the performance of either Party under any provision of this Agreement that, by its terms or by its intent, survives the expiration of the Agreement.

10.2 Representations and Warranties. As of the Effective Date, each Party represents and warrants to the other Party that:

(a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

- (b) it has or will obtain all regulatory authorizations necessary for it to legally perform its obligations under this Agreement at the time such obligations must be performed;
- (c) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;
- (d) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any Equitable Defenses.
- (e) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;
- (f) there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;
- (g) no Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement;
- (h) it is acting for its own account, has made its own independent decision to enter into this Agreement and, as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement;
- (i) it is a “forward contract merchant” within the meaning of the United States Bankruptcy Code;
- (j) it has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to make or take delivery of the Product;
- (k) it is a producer, processor, commercial user or merchant handling the Product, and it is entering into this Agreement for purposes related to its business as such;
- (l) the material economic terms of this Agreement are subject to individual negotiation by the Parties; and
- (m) it is not required by any Applicable Law, as modified by the practice of any relevant governmental revenue authority, of any relevant jurisdiction to make any deduction or withholding for or on account of any Tax.

10.3 Title and Risk of Loss. Title to and risk of loss related to the Product shall transfer from Seller to Buyer at the Delivery Point. Seller warrants that it will deliver to Buyer the Product free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Delivery Point. Notwithstanding the foregoing, Seller may transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements.

10.4 Indemnity. Each Party shall indemnify, defend and hold harmless the other Party from and against any Claims arising from or out of any event, circumstance, act or incident first occurring or existing during the period when control and title to Product is vested in such Party as provided in Section 10.3. Each Party shall indemnify, defend and hold harmless the other Party against any Governmental Charges for which such Party is responsible under Article 9 (Governmental Charges).

10.5 Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent may be withheld in the exercise of its sole discretion; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an Affiliate of such Party which Affiliate's creditworthiness is equal to or higher than that of such Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets whose creditworthiness is equal to or higher than that of such Party; provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request.

10.6 Governing Law. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF OREGON, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW, AND THE PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978, AS APPLICABLE. IN THE EVENT THAT A MATTER IS NOT OTHERWISE SUBJECT, BY OPERATION OF LAW, TO THE EXCLUSIVE JURISDICTION OF FERC, THE PUBLIC UTILITY COMMISSION OF OREGON, OR ANY OTHER GOVERNMENTAL AUTHORITY, EACH PARTY IRREVOCABLY CONSENTS TO THE JURISDICTION OF THE COURTS OF THE STATE OF OREGON OR OF THE U.S. DISTRICT COURT FOR THE DISTRICT OF OREGON FOR ANY ACTION, SUIT, OR PROCEEDING IN CONNECTION WITH THE AGREEMENT AND WAIVES ANY OBJECTION THAT SUCH PARTY MAY NOW OR HEREAFTER HAVE REGARDING CHOICE OF FORUM. EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

10.7 Notices. All notices, requests, statements or payments shall be made as specified in Exhibit B. Notices (other than scheduling requests) shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, overnight courier service or electronic mail. Notice by electronic mail or hand delivery shall be effective at the

close of business on the day actually received, if received during business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day. Notice by overnight United States mail or courier shall be effective on the next Business Day after it was sent. A Party may change its addresses by providing notice of same in accordance herewith.

10.8 General. This Agreement (including the exhibits, schedules and any written supplements hereto), and any designated collateral, credit support or margin agreement or similar arrangement between the Parties, constitutes the entire agreement between the Parties relating to the subject matter. Notwithstanding the foregoing, any collateral, credit support margin agreement or similar arrangement between the Parties shall, upon designation by the Parties, be deemed part of this Agreement and shall be incorporated herein by reference. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. Except to the extent herein provided for, no amendment or modification to this Agreement shall be enforceable unless reduced to writing and executed by both Parties. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. Any provision declared to be unenforceable by a Governmental Authority having jurisdiction over the Agreement will not otherwise affect the remaining lawful obligations that arise under this Agreement; and provided, further, that in such case the Parties shall use their best efforts to reform this Agreement in order to give effect to the original intention of the Parties. The term “including” when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights shall survive the termination of this Agreement for twelve (12) months. This Agreement shall be binding on each Party’s successors and permitted assigns.

10.9 Audit. Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. If requested, a Party shall provide to the other Party statements evidencing the Product was delivered or received at the Delivery Point. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.

10.10 Forward Contract. The Parties intend that (i) this Agreement constitutes a “forward contract” within the meaning of the United States Bankruptcy Code (the “Bankruptcy Code”); (ii) all payments made or to be made by one Party to the other Party pursuant to this Agreement constitute “settlement payments” within the meaning of the Bankruptcy Code; (iii) all transfers of Performance Assurance by one Party to the other Party under this Agreement constitute “margin payments” within the meaning of the Bankruptcy Code; and (iv) this Agreement constitutes a “master netting agreement” within the meaning of the Bankruptcy Code.

10.11 Confidentiality. Neither Party shall disclose the terms or conditions of this Agreement to a third party (other than the Party's employees, lenders, investors, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except to an index publisher or rating agency who has executed a confidentiality agreement with such Party or, in order to comply with any Applicable Law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

10.12 Change in Applicable Law. 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. In the event that a Government Authority having jurisdiction over the matter finds any provision hereof to be unlawful or unenforceable, the remainder of the Agreement shall continue in full force and effect, and the Parties shall use commercially reasonable efforts to mutually agree upon replacement provisions to implement the intent of the provision found to be unlawful or unenforceable.

10.13 Market Index Disruption Event. If a Market Index Disruption Event has occurred that affects the any provision of this Agreement that relies on the availability of the Market Index Price, then the Market Index Price shall be based on the first Trading Day thereafter on which no Market Index Disruption Event exists. In the event the index publisher of the Market Index Price discontinues publishing the relevant index, the applicable replacement or successor index shall apply if one is established, or if no replacement or successor index is established, the Parties will replace the index with a mutually agreed to index that most closely reflects the discontinued index. If the Parties are unable to mutually agree on a replacement index within three (3) Business Days after the Market Index Disruption Event occurred or existed, then the Parties shall negotiate in good faith on a revised method for determining the Market Index Price.

10.14 Corrections to Market Index Price. For purposes of determining the relevant Market Index Price for any Trading Day, if the price published or announced on a given Trading Day and used or to be used to determine a relevant price is subsequently corrected and the correction is published or announced by the person responsible for that publication or announcement within sixty (60) days of the date of delivery, either Party may notify the other Party of (i) the correction and (ii) the amount (if any) that is payable as a result of that correction.

10.15 Force Majeure. To the extent either Party is prevented by Force Majeure from timely carrying out, in whole or part, its obligations under this Agreement and such Party (the "Claiming Party") gives notice and details of the Force Majeure to the other Party as soon as practicable, then the Claiming Party shall be excused from the performance of its obligations to the extent and for the duration of the Force Majeure event (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). Such notice must include a description of the Force Majeure event and an estimate of the duration of the Force Majeure event, along with a plan to remediate the Force Majeure event. The Claiming Party shall provide the non-Claiming Party regular and frequent updates regarding any changes of status set forth in the initial notice. The Claiming Party shall remedy the Force

Majeure with all reasonable dispatch. The non-Claiming Party shall not be required to perform any obligations to the Claiming Party directly corresponding to the obligations of the Claiming Party excused by Force Majeure. In the event of a Force Majeure, the Parties shall use commercially reasonable efforts to mutually agree to an equitable adjustment to the Specified Amounts.

If a Force Majeure event prevents a Party from performing its material obligations under this Agreement for a period exceeding 365 consecutive days (despite the affected Party's effort to take all reasonable steps to remedy the Force Majeure event with all reasonable dispatch), then either Party may terminate this Agreement by giving 10 days' prior notice to the other Party. Upon such termination, neither Party will have any liability to the other with respect to periods following the effective date of such termination and as otherwise expressly provided in this Agreement; provided, however, that this Agreement will remain in effect to the extent necessary to facilitate the settlement of all liabilities and obligations arising under this Agreement before the effective date of such termination.

10.16 Binding Rates and Terms.

- (a) Absent the agreement of the Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any waiver in Section 10.16(b) below is unenforceable or ineffective as to such Party), a non-party or FERC acting *sua sponte*, shall solely be the “public interest” application of the “just and reasonable” standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956) and clarified by Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish 554 U.S. 527 (2008) (the “Mobile-Sierra” doctrine).
- (b) In addition, and notwithstanding the foregoing subsection (a), to the fullest extent permitted by Applicable Law, each Party, for itself and its successors and assigns, hereby expressly and irrevocably waives any rights it can or may have, now or in the future, whether under §§ 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any section of this Agreement specifying the rate, charge, classification, or other term or condition agreed to by the Parties, it being the express intent of the Parties that, to the fullest extent permitted by Applicable Law, neither Party shall unilaterally seek to obtain from FERC any relief changing the rate, charge, classification, or other term or condition of this Agreement, notwithstanding any subsequent changes in Applicable Law or market conditions that may occur. In the event it were to be determined that Applicable Law precludes the Parties from waiving their rights to seek changes from FERC to their market-based power sales contracts (including entering into covenants not to do so) then this subsection (b) shall not apply, provided that, consistent with the foregoing subsection (a), neither Party shall seek any such changes except solely under the “public interest”

application of the “just and reasonable” standard of review and otherwise as set forth in the foregoing subsection (a).

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the date first above written.

Portland General Electric Company

Madras PV1, LLC

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

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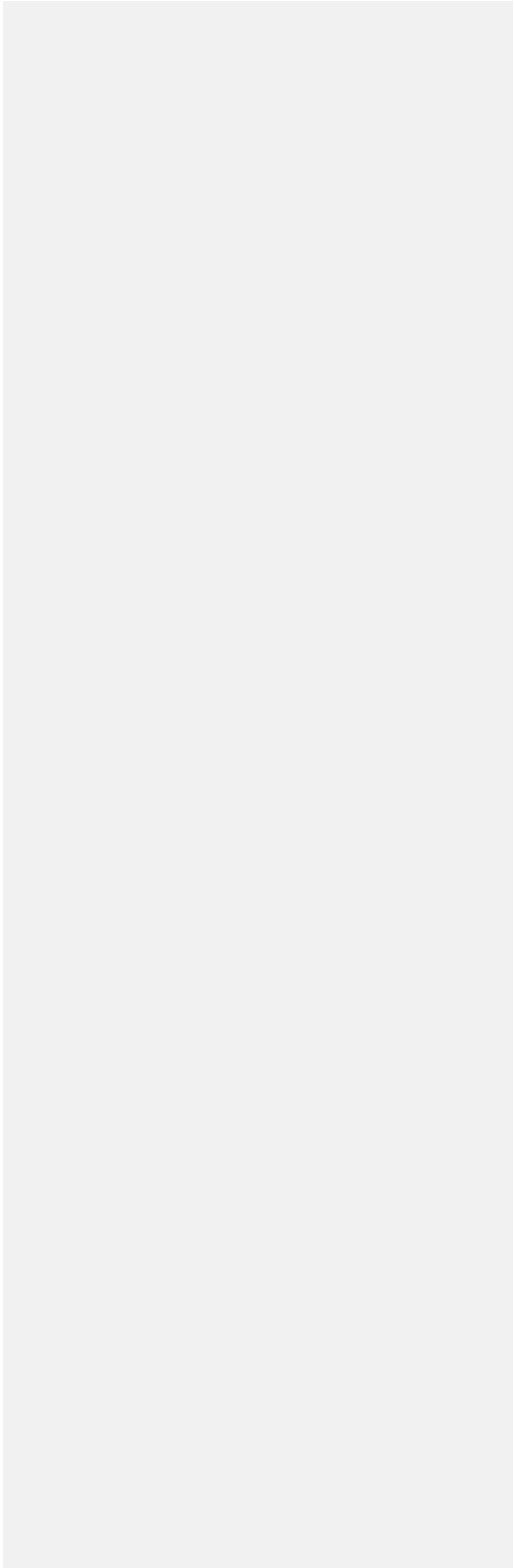


EXHIBIT A

SELLER'S INSURANCE REQUIREMENTS

1. Acceptable Insurers. All insurance required herein must be obtained from insurers duly authorized to do business in Oregon and which maintain a minimum financial strength rating of "A- VIII" by the A. M. Best Key Rating Guide.
2. Required Insurance and Minimum Limits. During the term of this Agreement, Seller must maintain, at its sole expense, the following insurance coverage:
 - A. Commercial General Liability Insurance
 - i. Scope. Commercial General Liability Insurance written on the current ISO occurrence form (or a substitute form providing equivalent coverage) and must cover liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). If the construction, operation, maintenance or repair of the Project involves or requires blasting, explosive conditions, or underground operations, the coverage must not contain any exclusion relative to blasting, explosion, collapse of buildings, or damage to underground structures.
 - ii. Minimum Required Limit. \$2,000,000 Each Occurrence
 - iii. Waiver of Subrogation. To the fullest extent permitted by law, Seller shall cause its insurer to waive all rights to recover any payments made from Buyer, its Affiliates, and their respective officers, directors, agents and employees.
 - iv. Additional Insured. To the fullest extent permitted by law, the insurance must include Buyer, its Affiliates, and their respective officers, directors, agents and employees as additional insureds. Such coverage must be at least as broad as the coverage provided under ISO endorsements CG 20 10 "Owners, Lessees or Contractors – Scheduled Person or Organization" and CG 20 37 "Owners, Lessees or Contractors – Completed Operations". This insurance must apply as primary insurance without any contribution from any other insurance afforded to or self-insurance maintained by such additional insured. There must not be any endorsement or modification of this insurance to make it excess over any other insurance available to such additional insured.
 - v. Completed Operations. Seller must purchase completed operations coverage for a period of two (2) years after termination or expiration of this Agreement.

B. Property

- i. Minimum Required Limit. Full replacement value of the Project including any related equipment and fixtures
3. Excess or Umbrella Insurance. The required minimum limits may be met through any combination of primary and excess insurance policies.
4. Certificates of Insurance. Prior to commencement of construction of the Project, Seller must furnish Buyer with a Certificate of Insurance evidencing compliance with these requirements. The Certificate of Insurance must list as the certificate holder:

Portland General Electric Company
c/o Global Risk Management Solutions
4447 N. Central Expressway, Suite 110-433
Dallas, TX 75205
5. No Waiver. Buyer's failure to demand the Certificate of Insurance or to identify a deficiency from the Certificate of Insurance or other evidence provided will not be deemed a waiver of Buyer's rights or Seller's obligations. Furthermore, these insurance requirements must not be construed in any manner as waiving, restricting or limiting Buyer's rights or Seller's obligations under this Agreement.
6. Notice of Cancellation. No insurance policy may be canceled or materially modified unless Seller or insurer(s) provide at least thirty (30) days prior written notice to Buyer.
7. Failure to Maintain Required Insurance. Seller's failure to maintain any required insurance shall be an Event of Default subject to Section 5.1(c) of the Agreement.
8. Seller Responsible for Deductibles or Retentions. With respect to any insurance required herein, Seller must bear all costs of all deductibles or Self-Insured Retentions.
9. No Representation of Coverage Adequacy. Buyer does not represent that coverage and limits required herein will be adequate to protect Seller. Seller remains responsible for any liability not paid by insurance.
10. Seller's Property. Seller is responsible for any loss or damage to its property, however caused, and any insurance covering such property will be at Seller's expense and Seller shall cause its insurer to waive all rights to recover any payments made from Buyer, its Affiliates, and their respective officers, directors, agents and employees.
11. No Violation of Insurance Policies. Seller must not knowingly violate or knowingly permit any violation of any warranties, representations, declarations or conditions contained in the policies of insurance.

12. No Claims. As of the execution date of this Agreement, Seller is not aware of any claims or potential claims which have been made, filed or threatened against any of the insurance required herein.
13. Other Insurance. If there is any material change to the nature or scope of the Project, Buyer may require Seller to obtain and maintain additional insurance.
14. Subcontractors. If subcontractors or third parties are used in the performance of Seller's obligations under this Agreement, then Seller must cause each of its subcontractors or third parties to comply with the same insurance requirements imposed on Seller herein. If requested by Buyer, Seller must furnish certificates of insurance evidencing compliance with these requirements for each subcontractor or third party.

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EXHIBIT B
NOTICES

Portland General Electric Company

Madras PV1, LLC

All Notices:

All Notices:

Street: _____

Street: 101 2nd Street, Suite 1250

City: _____ Zip: _____

City: San Francisco, CA Zip: 94105

Attn: Contract Administration

Attn: Contract Administration

Phone: _____

Phone: (415) 626-1802

Facsimile: _____

Facsimile: (415) 449-3466

Duns: _____

Duns: 019421660

Federal Tax ID Number: _____

Federal Tax ID Number: 26-3593905

Invoices:

Invoices:

Attn: _____

Attn: Accounts Payable

Phone: _____

(accounts payable@ecoplexus.com)

Facsimile: _____

Phone: (415) 992-7950

Facsimile: (415) 449-3466

Deleted: Crystal Cash, AP

Scheduling:

Scheduling:

Attn: _____

Attn: TBD

Phone: _____

Phone: TBD

Facsimile: _____

Facsimile: TBD

Payments:

Payments:

Attn: _____

Attn: David Mathai, AR

Phone: _____

(dmathai@ecoplexus.com)

Facsimile: _____

Phone: (415) 655-1848

Facsimile: (415) 449-3466

Wire Transfer:

Wire Transfer:

BNK: _____

BNK: Bank of America

ABA: _____

ABA: 026009593

ACCT: _____

ACCT: 1209369370

Credit and Collections:

Credit and Collections:

Attn: _____

Attn: Kim Gammill

Phone: _____

(kgammill@ecoplexus.com)

Facsimile: _____

Phone: (415) 240-4751

Facsimile: (415) 449-3466

With additional Notices of an Event of Default to:

With additional Notices of an Event of Default:

Attn: _____

Attn: Erik Stuebe and John Gorman

Phone: _____

Email: eriks@ecoplexus.com

Facsimile: _____

Email: johng@ecoplexus.com

Deleted: Phone

Deleted: Facsimile

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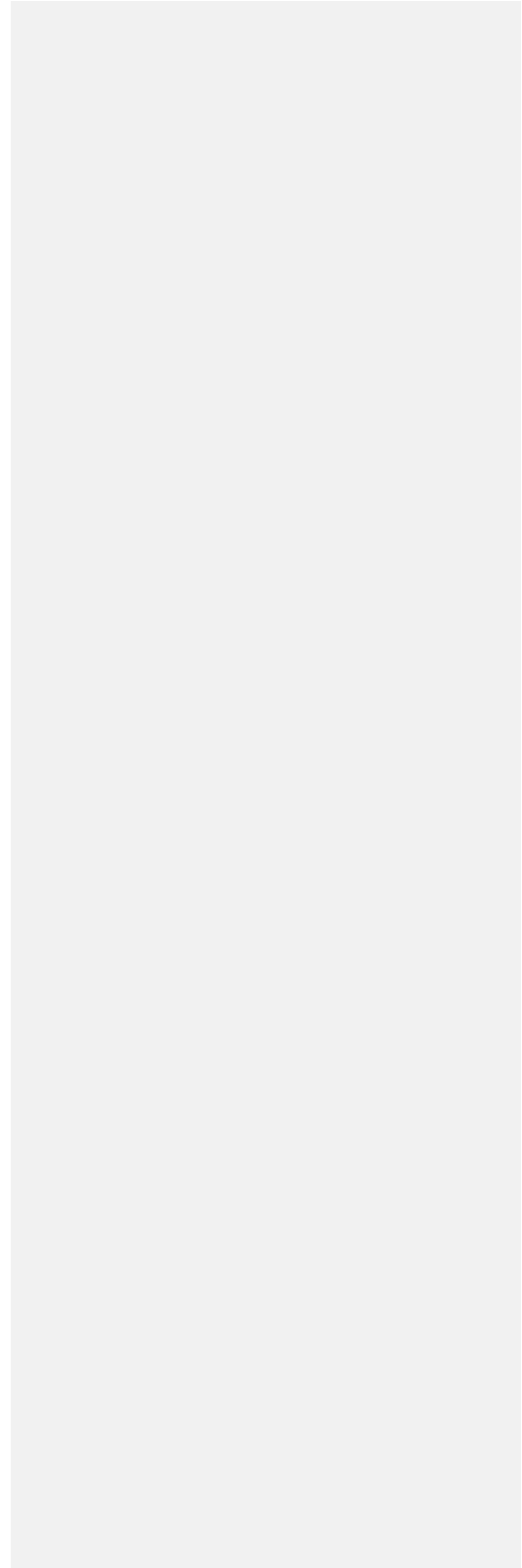


EXHIBIT C
SPECIFIED AMOUNT AND PRICE SCHEDULE

Specified Amount:

Deleted: TBD ¶

Month	Date Beginning	Date Ending	On-Peak kWh	Off-Peak kWh	Total kWh
<u>1</u>	<u>3/1/21</u>	<u>3/31/21</u>	<u>7,920,456</u>	<u>1,148,389</u>	<u>9,068,844</u>
<u>2</u>	<u>4/1/21</u>	<u>4/30/21</u>	<u>10,508,634</u>	<u>1,304,375</u>	<u>11,813,009</u>
<u>3</u>	<u>5/1/21</u>	<u>5/31/21</u>	<u>11,657,180</u>	<u>2,781,136</u>	<u>14,438,315</u>
<u>4</u>	<u>6/1/21</u>	<u>6/30/21</u>	<u>13,153,944</u>	<u>2,084,796</u>	<u>15,238,740</u>
<u>5</u>	<u>7/1/21</u>	<u>7/31/21</u>	<u>14,295,397</u>	<u>2,682,304</u>	<u>16,977,701</u>
<u>6</u>	<u>8/1/21</u>	<u>8/31/21</u>	<u>12,419,046</u>	<u>2,506,629</u>	<u>14,925,675</u>
<u>7</u>	<u>9/1/21</u>	<u>9/30/21</u>	<u>9,856,155</u>	<u>1,742,988</u>	<u>11,599,143</u>
<u>8</u>	<u>10/1/21</u>	<u>10/31/21</u>	<u>6,445,557</u>	<u>1,138,710</u>	<u>7,584,266</u>
<u>9</u>	<u>11/1/21</u>	<u>11/30/21</u>	<u>3,350,721</u>	<u>753,820</u>	<u>4,104,541</u>
<u>10</u>	<u>12/1/21</u>	<u>12/31/21</u>	<u>2,654,017</u>	<u>468,138</u>	<u>3,122,155</u>
<u>11</u>	<u>1/1/22</u>	<u>1/31/22</u>	<u>3,274,550</u>	<u>662,507</u>	<u>3,937,057</u>
<u>12</u>	<u>2/1/22</u>	<u>2/28/22</u>	<u>4,969,358</u>	<u>585,655</u>	<u>5,555,013</u>
<u>13</u>	<u>3/1/22</u>	<u>3/31/22</u>	<u>7,880,853</u>	<u>1,142,647</u>	<u>9,023,500</u>
<u>14</u>	<u>4/1/22</u>	<u>4/30/22</u>	<u>10,456,091</u>	<u>1,297,853</u>	<u>11,753,944</u>
<u>15</u>	<u>5/1/22</u>	<u>5/31/22</u>	<u>11,598,894</u>	<u>2,767,230</u>	<u>14,366,124</u>
<u>16</u>	<u>6/1/22</u>	<u>6/30/22</u>	<u>13,088,174</u>	<u>2,074,372</u>	<u>15,162,546</u>
<u>17</u>	<u>7/1/22</u>	<u>7/31/22</u>	<u>14,223,920</u>	<u>2,668,893</u>	<u>16,892,813</u>
<u>18</u>	<u>8/1/22</u>	<u>8/31/22</u>	<u>12,356,951</u>	<u>2,494,096</u>	<u>14,851,046</u>
<u>19</u>	<u>9/1/22</u>	<u>9/30/22</u>	<u>9,806,874</u>	<u>1,734,273</u>	<u>11,541,147</u>
<u>20</u>	<u>10/1/22</u>	<u>10/31/22</u>	<u>6,413,329</u>	<u>1,133,016</u>	<u>7,546,345</u>
<u>21</u>	<u>11/1/22</u>	<u>11/30/22</u>	<u>3,333,967</u>	<u>750,051</u>	<u>4,084,018</u>
<u>22</u>	<u>12/1/22</u>	<u>12/31/22</u>	<u>2,640,747</u>	<u>465,798</u>	<u>3,106,545</u>
<u>23</u>	<u>1/1/23</u>	<u>1/31/23</u>	<u>3,258,177</u>	<u>659,194</u>	<u>3,917,372</u>
<u>24</u>	<u>2/1/23</u>	<u>2/28/23</u>	<u>4,944,511</u>	<u>582,727</u>	<u>5,527,238</u>
<u>25</u>	<u>3/1/23</u>	<u>3/31/23</u>	<u>7,841,449</u>	<u>1,136,934</u>	<u>8,978,383</u>
<u>26</u>	<u>4/1/23</u>	<u>4/30/23</u>	<u>10,403,811</u>	<u>1,291,364</u>	<u>11,695,175</u>
<u>27</u>	<u>5/1/23</u>	<u>5/31/23</u>	<u>11,540,899</u>	<u>2,753,394</u>	<u>14,294,293</u>
<u>28</u>	<u>6/1/23</u>	<u>6/30/23</u>	<u>13,022,733</u>	<u>2,064,000</u>	<u>15,086,733</u>
<u>29</u>	<u>7/1/23</u>	<u>7/31/23</u>	<u>14,152,801</u>	<u>2,655,548</u>	<u>16,808,349</u>
<u>30</u>	<u>8/1/23</u>	<u>8/31/23</u>	<u>12,295,166</u>	<u>2,481,625</u>	<u>14,776,791</u>
<u>31</u>	<u>9/1/23</u>	<u>9/30/23</u>	<u>9,757,840</u>	<u>1,725,602</u>	<u>11,483,442</u>
<u>32</u>	<u>10/1/23</u>	<u>10/31/23</u>	<u>6,381,262</u>	<u>1,127,351</u>	<u>7,508,613</u>
<u>33</u>	<u>11/1/23</u>	<u>11/30/23</u>	<u>3,317,297</u>	<u>746,301</u>	<u>4,063,598</u>
<u>34</u>	<u>12/1/23</u>	<u>12/31/23</u>	<u>2,627,543</u>	<u>463,469</u>	<u>3,091,012</u>
<u>35</u>	<u>1/1/24</u>	<u>1/31/24</u>	<u>3,241,886</u>	<u>655,898</u>	<u>3,897,785</u>
<u>36</u>	<u>2/1/24</u>	<u>2/29/24</u>	<u>4,919,789</u>	<u>579,813</u>	<u>5,499,602</u>

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Price Schedule:

On-Peak Indicative Prices (\$/MWH) - Madras Solar - 12_7_18												
Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2018					14.38	16.41	28.39	34.00	29.92	24.06	24.06	31.05
2019	26.96	25.36	20.60	17.31	16.88	17.31	28.46	31.79	29.49	23.60	25.53	29.90
2020	30.82	29.10	23.42	18.71	18.08	19.01	29.76	34.15	31.06	26.48	28.53	34.02
2021	34.33	32.41	26.04	20.76	20.05	21.10	33.15	38.07	34.61	29.47	31.77	37.92
2022	36.48	34.43	27.66	22.05	21.29	22.40	35.22	40.45	36.77	31.31	33.75	40.29
2023	36.48	34.43	27.66	22.05	21.29	22.40	35.22	40.45	36.77	31.30	33.75	40.29
2024	32.48	30.48	26.70	23.31	20.53	13.49	25.48	28.72	31.50	31.52	32.10	33.90
2025	88.46	83.40	78.87	65.19	58.16	40.29	70.71	78.93	85.97	86.03	87.50	92.08
2026	90.22	85.06	80.44	66.50	59.33	41.10	72.12	80.51	87.69	87.75	89.24	93.92
2027	92.03	86.76	82.05	67.82	60.51	41.92	73.56	82.12	89.44	89.51	91.03	95.80
2028	93.64	88.29	83.49	69.02	61.58	42.67	74.86	83.57	91.01	91.08	92.63	97.48
2029	95.74	90.27	85.36	70.56	62.96	43.61	76.54	85.44	93.06	93.12	94.70	99.67
2030	97.66	92.07	87.07	71.98	64.22	44.49	78.07	87.15	94.92	94.98	96.60	101.66
2031	99.61	93.91	88.81	73.42	65.50	45.38	79.63	88.89	96.82	96.88	98.53	103.70
2032	101.28	95.48	90.29	74.63	66.58	46.11	80.95	90.37	98.43	98.50	100.18	105.43
2033	103.63	97.70	92.39	76.38	68.14	47.20	82.84	92.47	100.72	100.79	102.50	107.88
2034	105.75	99.70	94.29	77.95	69.55	48.20	84.54	94.37	102.78	102.85	104.60	110.08
2035	107.82	101.65	96.13	79.47	70.90	49.12	86.19	96.22	104.79	104.87	106.65	112.24
2036	109.66	103.38	97.77	80.82	72.10	49.95	87.66	97.85	106.58	106.65	108.47	114.15
2037	112.17	105.75	100.01	82.67	73.76	51.10	89.67	100.10	109.02	109.10	110.95	116.77
2038	114.41	107.88	102.00	84.32	75.23	52.12	91.45	102.09	111.20	111.27	113.17	119.10
2039	116.70	110.02	104.05	86.01	76.74	53.16	93.29	104.14	113.42	113.50	115.43	121.48
2040	118.74	111.95	105.87	87.53	78.09	54.11	94.93	105.97	115.41	115.49	117.45	123.61
2041	121.40	114.46	108.24	89.48	79.83	55.30	97.05	108.34	117.99	118.08	120.09	126.38
2042	123.84	116.75	110.41	91.27	81.43	56.41	98.99	110.51	120.36	120.45	122.49	128.91
2043	126.31	119.08	112.62	93.09	83.06	57.54	100.97	112.72	122.76	122.85	124.94	131.49

Off-Peak Indicative Prices (\$/MWH) - Madras Solar - 12_7_18												
Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2018					5.71	5.71	15.04	23.04	23.55	20.49	20.49	24.82
2019	22.46	21.80	17.19	10.78	8.57	7.69	17.89	22.33	22.76	20.60	21.72	25.24
2020	24.58	24.78	19.24	13.17	10.00	9.63	19.09	25.24	25.73	23.44	25.06	29.75
2021	28.23	28.46	22.04	14.99	11.31	10.89	21.87	29.00	29.57	26.91	28.78	34.23
2022	30.15	30.39	23.63	15.99	12.06	11.61	23.34	30.97	31.68	28.73	30.74	36.56
2023	30.45	30.69	23.75	16.13	12.16	11.70	23.57	31.28	31.89	29.02	31.04	36.93
2024	28.96	26.70	26.35	22.21	19.12	11.67	22.46	26.08	28.12	28.69	30.06	31.04
2025	67.81	62.08	61.21	50.70	42.86	23.97	51.32	60.52	65.70	67.13	70.61	73.10
2026	69.17	63.32	62.43	51.71	43.72	24.45	52.35	61.73	67.01	68.47	72.02	74.56
2027	70.55	64.59	63.68	52.74	44.59	24.93	53.40	62.97	68.35	69.84	73.46	76.05
2028	71.76	65.70	64.77	53.65	45.36	25.36	54.31	64.05	69.52	71.04	74.72	77.35
2029	73.40	67.20	66.25	54.87	46.39	25.94	55.55	65.51	71.11	72.66	76.42	79.12
2030	74.87	68.54	67.58	55.97	47.32	26.46	56.67	66.82	72.53	74.12	77.95	80.70
2031	76.37	69.91	68.93	57.09	48.27	26.99	57.80	68.16	73.98	75.60	79.51	82.32
2032	77.68	71.11	70.12	58.07	49.10	27.46	58.79	69.33	75.26	76.90	80.88	83.73
2033	79.44	72.73	71.71	59.39	50.21	28.08	60.13	70.91	76.97	78.65	82.72	85.63
2034	81.04	74.19	73.14	60.58	51.22	28.64	61.33	72.33	78.51	80.22	84.37	87.35
2035	82.66	75.67	74.61	61.80	52.25	29.22	62.56	73.78	80.08	81.83	86.06	89.10
2036	84.07	76.97	75.88	62.85	53.14	29.71	63.63	75.04	81.45	83.23	87.53	90.62
2037	85.99	78.73	77.62	64.29	54.36	30.40	65.09	76.75	83.31	85.13	89.54	92.69
2038	87.71	80.30	79.17	65.57	55.44	31.00	66.38	78.28	84.97	86.83	91.32	94.54
2039	89.47	81.91	80.76	66.89	56.55	31.63	67.72	79.85	86.68	88.57	93.15	96.44
2040	91.00	83.31	82.14	68.03	57.52	32.16	68.87	81.22	88.16	90.09	94.75	98.09
2041	93.07	85.20	84.01	69.58	58.83	32.90	70.44	83.07	90.17	92.14	96.91	100.32
2042	94.94	86.92	85.69	70.98	60.01	33.56	71.86	84.74	91.98	93.99	98.85	102.34
2043	96.83	88.65	87.41	72.39	61.21	34.23	73.29	86.43	93.81	95.86	100.82	104.38

EXHIBIT D
INTERCONNECTION AND TRANSMISSION AGREEMENTS
[TO BE INSERTED PRIOR TO EXECUTION (as applicable)]

DRAFT

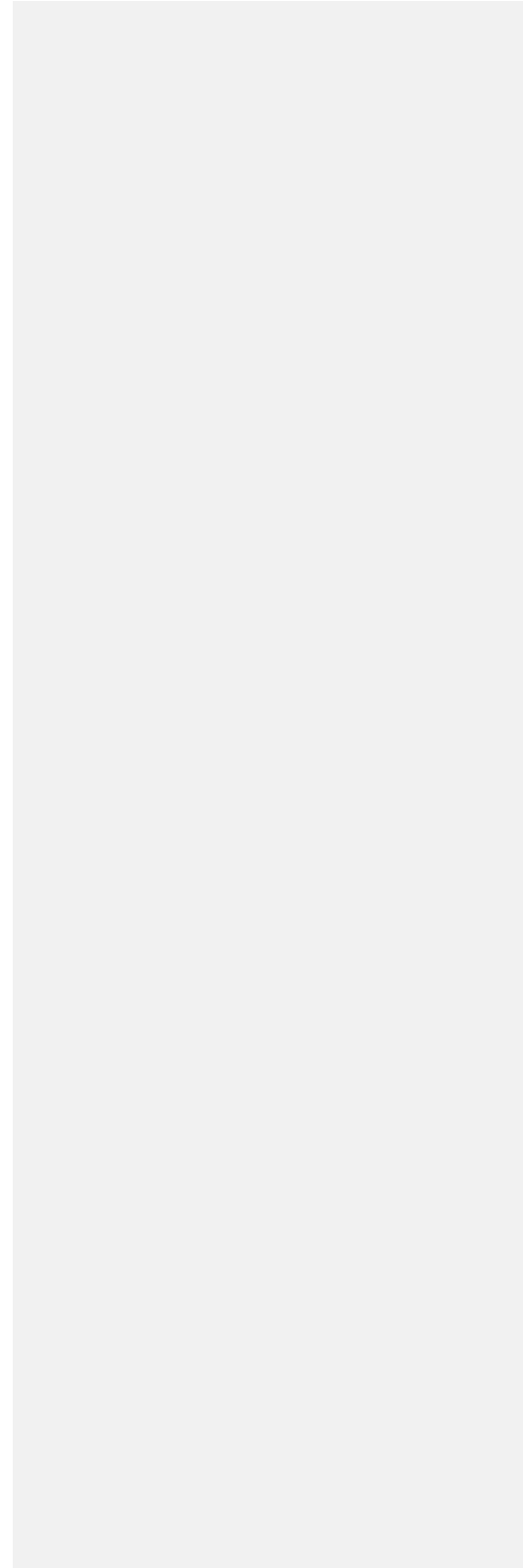


EXHIBIT E
PROJECT OPERATING PARAMETERS

Spin Capability: No

Project Nameplate Capacity: 65,784 KW_{DC}

Deleted: _____

Project Nameplate Capacity: 63,000 KW_{AC}

Deleted: _____

Station Service (parasitic load and electrical losses, etc.): 2,331 KW_{AC}

Deleted: _____

Project Net Dependable Capacity: 60,669 KW_{AC}

Deleted: _____

Interconnection Rating (per Generator Interconnection Agreement): 60,000 KW_{AC}

Deleted: _____

Number of Inverters: 24

Deleted: _____

Inverter Manufacture Nameplate Rating: 2,750 KW_{AC}

Deleted: _____

Number of Panels: 177,795

Deleted: _____

Panel Manufacture Nameplate Rating: 370 W

Deleted: _____

Storage: No

Deleted: K

Deleted: DC

DRAFT

EXHIBIT F
PROJECT DOCUMENTATION

Commented [NR12]: Will include schedule, list of permits, a layout, SLD, and 8760/12X24 as PDFs with execution version.

Commented [JM-M13]: Please include on the next turn of the document.

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EXHIBIT G
PLANNED OUTAGE NOTIFICATION

September 1, [20XX]

Portland General Electric
Attn: Scheduling
121 SW Salmon St.
Portland, OR 97204

Dear PGE,

This notification is provided pursuant to Section 3.7 of that certain Power Purchase and Sale Agreement between Madras PV1, LLC for the Madras Solar Project (“Madras Solar”) and Portland General Electric dated [April XX, 2019].

For calendar year [20XX], Madras Solar has planned maintenance which is expected to result in an outage of more than ten percent (10%) of the generating capacity of the Project for two (2) or more consecutive hours as set forth in the following table.

Outage Number	Specific Unit Offline	Description of Outage	Description of Work Being Performed	Planned Start Time	Planned End Time	Physical Units Off-line	Starting Plant Capacity (MW)	Adjusted Plant Capacity (MW)
20XX.1	Peak RC Outage ID required			MM/DD/YYYY, HE XX	MM/DD/YYYY, HE XX			
20XX.2								
20XX.3								
20XX.4								
20XX.5								
20XX.6								
20XX.7								
20XX.8								
20XX.9								
20XX.10								

Sincerely,
Madras PV1, LLC

Name:
Title:

EXHIBIT H

FORECAST METHODOLOGY

**[TO BE ATTACHED SUBSEQUENT TO EXECUTION UPON
SELLER'S DESIGNATION OF A FORECASTING AGENT IN
ACCORDANCE WITH SECTION 3.13.]**

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DRAFT

EXHIBIT I

Examples

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Commented [NR14]: Note to PGE: Please include example calculations for Market Index Settlement Price, determination of payments, amounts due to Buyer, and amounts due to Seller.

DRAFT

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

Docket No. _____

MADRAS PV1, LLC,

Complainant,

v.

PORTLAND GENERAL ELECTRIC
COMPANY,

Respondent.

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

April 22, 2019

I. INTRODUCTION

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Q. Please state your name and business address.

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

Q. Please describe the purpose of your testimony.

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

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

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

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

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

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

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

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

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

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

8 II. NEGOTIATIONS PROCESS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

³ *Id.*

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

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

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

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

20
21
4 *Id.* at Sheet No. 202-4.

1 **III. OUTSTANDING ITEMS IN NEGOTIATIONS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 Metering. Seller shall design, furnish, install, own, inspect, test, and maintain
12 metering equipment for the Project. Seller shall periodically (but no less than once
13 every six (6) months) inspect, test, repair or replace the metering equipment at
14 Seller's cost and provide such results to Buyer upon Buyer's request. If any of the
15 inspections or tests disclose an error exceeding 0.5 percent, either fast or slow,
16 proper correction, based upon the inaccuracy found, shall be made of previous
17 readings for the actual period during which the Project Meter rendered inaccurate
18 measurements if that period can be ascertained. If the actual period cannot be
19 ascertained, the proper correction shall be made to the measurements taken during
20 the time the metering equipment was in service since last tested, but not exceeding
21 three (3) months, in the amount the Project Meter shall have been shown to be in
22 error by such test. Any correction in billings or payments resulting from a
23 correction in the meter records shall be made in the next monthly billing or payment
24 rendered. Such correction, when made, shall constitute full adjustment of any claim
25 between Seller and Buyer arising out of such inaccuracy of metering equipment.
26

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 **IV. CONCLUSION**

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

19 **Q.** Yes.

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

Docket No. _____

MADRAS PV1, LLC,

Complainant,

v.

PORTLAND GENERAL ELECTRIC
COMPANY,

Respondent.

EXHIBIT MADRAS SOLAR/201

PGE SCHEDULE 202

April 22, 2019

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

PURPOSE

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

AVAILABLE

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

APPLICABLE

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

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

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

POWER PURCHASE INFORMATION

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

GUIDELINES

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

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

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

1. The Seller may request indicative power purchase prices. To obtain an indicative pricing proposal for a proposed project, the Seller must provide in writing, general project information reasonably required for the development of indicative pricing, including, but not limited to:
 - Demonstration of ability to obtain QF status.
 - Design capacity (MW), station service requirements, and net amount of power to be delivered to the Company's electric system.
 - Generation technology and other related technology applicable to the site.
 - Quantity and timing of monthly power deliveries (including project ability to respond to dispatch orders from the Company).
 - Proposed site location and electrical interconnection point.
 - Status of interconnection and transmission arrangements.
 - Proposed on-line date and outstanding permitting requirements.
 - Motive force or fuel plan consisting of fuel type(s) and source(s).
 - Proposed contract term and pricing provisions.

2. The Company will not be obligated to provide an indicative pricing proposal until all the information described above has been received in writing from the Seller. Within 30 business days following receipt of all required information, the Company will provide the Seller with an indicative pricing proposal, which may include other terms and conditions, tailored to the individual characteristics of the proposed project. Such proposal may be used by the Seller to make determinations regarding project planning, financing and feasibility. However, such prices are indicative and are not final and binding. Prices and other terms and conditions are only final and binding to the extent contained in Negotiated Agreement, once executed by both parties. The Company will provide with the indicative prices a description of the methodology used to develop the prices.

SCHEDULE 202 (Continued)

PROCEDURES TO DEVELOP A NEGOTIATED AGREEMENT (Continued)

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

SCHEDULE 202 (Continued)

PROCEDURES TO DEVELOP A NEGOTIATED AGREEMENT (Continued)

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

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

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

OFF SYSTEM POWER PURCHASE AGREEMENT

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