

KENNETH KAUFMANN, ATTORNEY AT LAW

1785 Willamette Falls Drive • Suite 5
West Linn, OR 97068

office (503) 230-7715
fax (503) 972-2921

Kenneth E. Kaufmann
Ken@KaufmannLaw
(503) 595-1867

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Via Electronic Mail

Filing Center
Public Utility Commission of Oregon
P.O. Box 1088
Salem, OR 97308-1088
puc.filingcenter@state.or.us

Re: OPUC Docket No. UM 1998

Attention Filing Center:

Attached for filing in the above-captioned docket is an electronic version of *Evergreen BioPower, LLC's Reply and Response to Portland General Electric Company's Motion for Summary Judgment*.

Thank you in advance for your assistance.

Sincerely,



Ken Kaufmann
Attorney for Evergreen BioPower, LLC

Attach.

Kenneth Kaufmann, Atty OSB 982672
1785 Willamette Falls Drive, Suite 5
West Linn, OR 97068
Telephone: (503) 230-7715
FAX: (503) 972-2921
ken@kaufmann.law

Attorney for Complainant, Evergreen BioPower, LLC

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

Evergreen BioPower, LLC

Complainant,

vs.

Portland General Electric Company

Respondent.

DOCKET NO. UM 1998

**Evergreen BioPower, LLC's Reply
and Response to PGE's Cross-
Motion for Summary Judgment**

Evergreen BioPower, LLC (**Evergreen**), by and through its attorney, herein replies to Respondent Portland General Electric Company's (**PGE's**) Response to Evergreen's Motion for Summary Judgment (**MSJ**) and responds to PGE's Cross-Motion for Summary Judgment (**XMSJ**) on all Claims of Evergreen's Complaint.

I

INTRODUCTION

Evergreen sells net output from its qualifying facility (**QF**) to Respondent PGE under a Schedule 201 standard contract. Evergreen's Complaint challenges PGE's practices of: (a) requiring daily settlement of imbalance energy¹ from an off-system QF under its standard contract where daily settlement prevents the QF from delivering a portion of its Net Output; (b) refusing to acknowledge that its standard contract does not transfer ownership of Thermal RECs (aka **T-RECs**) generated by the Seller during the renewable deficiency period; and (c) not accepting T-RECs as replacement RECs where it accepts other unbundled RECs. Evergreen seeks the Commission's declaration that PGE is precluded from implementing the practices above.

Evergreen filed a Motion for Summary Judgment (MSJ) on Claims 1 and 2 on June 24, 2019.² Specifically, Evergreen asked that the Commission find:

- (a) That PGE's policy of settling Evergreen's imbalance energy on a daily on- and off-peak basis violates PURPA and Oregon law, where PGE admits in its Answer that daily settlement reduces the amount of Net Output PGE purchases at avoided cost compared to monthly settlement of imbalance energy (Count 1 and Count 2 of Claim 1);

¹ The discussion of "**imbalance energy**" in this brief is limited to the context of off-system QFs delivering net output to the purchasing utility via an hourly, whole-MWh schedule. Whereas the utility requires the QF to schedule in whole-MWh blocks, the QF's output rarely matches the whole MWh schedule exactly. The difference between the schedule and the net output from the QF during an hour is the imbalance energy.

² Plaintiff does not move for summary judgment on Count 4 of Claim 1, or on Claim 3 at this time.

- (b) That PGE violated Evergreen's standard contract by subordinating its net output purchase obligation set forth in Sections 1.19 and 4.1 of the PPA to the scheduling requirements in Section 4.4; and
- (c) That Evergreen's contract does not transfer T-RECs from Seller to PGE, during the deficiency period or at any time (Claim 2).

PGE responded to Evergreen's MSJ and filed a Cross-Motion for Summary Judgment (XMSJ) on all of Evergreen's Claims, on July 18, 2019.

III

APPLICABLE LEGAL STANDARD

Evergreen set forth the applicable legal standard on motions (and cross-motions) for summary judgment in its MSJ, pp 7-8.

IV

UNDISPUTED FACTS

Evergreen relies only upon the undisputed facts (PGE Admissions A-M) set forth in Section IV (pp 8-11) of Evergreen's MSJ.

V

ARGUMENT

A. Claim 1, Count 1 and Count 2: PGE's Daily Settlement practices violate PURPA and State Law.

Claim 1, Count 1 alleges that PGE violates PURPA by requiring daily on- and off-peak settlement of imbalance energy, where PGE paid Evergreen the contract price for only 94.5% of its net output in 2018, where Evergreen requested monthly

settlement, and where PGE admits that its form of daily settlement “resulted in a smaller amount of generation being compensated at the contract price than would have resulted under a monthly settlement practice.”³ Claim 1, Count 2 alleges that the same actions, above, also violate Oregon’s statutes analogous to PURPA.

1. Evergreen’s MSJ can be granted.

i. PGE does not dispute any material fact.

PGE’s response does not dispute the material facts of Count 1 and Count 2 of Evergreen’s first claim, all of which were admitted previously by PGE in its Answer and in its responses to data requests.⁴ PGE instead relies upon Commission Order 14-287 as justification for its actions.⁵

ii. PGE’s reliance on Order 14-287 is misplaced.

As pointed out in the MSJ (p 19), the Commission’s (January 22, 2015) Order 14-287 did not rule out monthly netting, but found the record before it did not justify such a remedy. No such lack of evidence exists in this dispute, where PGE admits that more than 5% of Evergreen’s net output does not receive the contract price and that monthly settlement would increase the fraction of net output purchased. Consistent with its reasoning in Order 14-287, the Commission should find that, on these facts, daily settlement violates PURPA and state law.

The Commission also may take notice of FERC’s June 18, 2015 PáTu Order, where FERC concluded that PGE’s daily settlement violated PURPA. FERC’s decision

³ Evergreen’s MSJ, p. 12.

⁴ Section IV of Evergreen’s MSJ sets forth thirteen material facts admitted by PGE in its Answer and in its responses to data requests. See Evergreen’s MSJ, pp 8-11 (PGE Admission A through PGE Admission M).

⁵ See PGE’s XMSJ, pp. 11-12.

does not conflict directly with Order 14-287 because FERC went beyond the Commission's textual analysis of the language of the PPA and considered the effect of PGE's daily netting requirements as-applied to PáTu. FERC concluded that **"[b]y requiring a firm, whole MW-hour product from PáTu, Portland General prevents PáTu from delivering its entire net output and Portland General is thereby able to escape its mandatory purchase obligation as it applies to PáTu's unscheduled net output. In *Entergy*, however, the Commission found that such actions are impermissible."**⁶ FERC's decision considered the specific impacts of PGE's actions on PáTu's ability to deliver net output and concluded that daily settlement violated PURPA as applied to PáTu. Applying the undisputed facts in Evergreen to the logic of FERC's June 18, 2015 PáTu decision (see Evergreen's MSJ at 17), Evergreen is entitled to summary judgment on Count 1 and Count 2 of its first Claim.

PGE (XMSJ at 14) attempts to denigrate the importance of FERC's PURPA analysis in its PáTu decisions by suggesting that FERC might take a different position in an enforcement action against PGE. However PGE's actions show it does not believe its own suggestion. After FERC's June 18, 2015 PáTu Order, PGE made several modifications to its scheduling requirements that together virtually ensured PáTu would be paid contract price for all of its net output.⁷ And when PGE proposed a host of "improvements" to its standard contracts in December 2018, PGE paid particular emphasis to its proposed change from daily to monthly settlement.⁸

⁶ Evergreen MSJ at 15.

⁷ Evergreen MSJ at 16.

⁸ Evergreen MSJ at 19.

Controlling or not, FERC's PáTu Orders deserve deference because they involve facts very similar to Evergreen, because FERC has particular expertise in PURPA, and because they were the culmination of lengthy litigation with experienced counsel representing both parties. It is very uncommon to have such a closely conforming precedent (same issue, same party, same contract) decided by such an able decisionmaker as FERC's PáTu Orders apply to Evergreen. In fact they are so similar one might wonder whether PGE really believes in the merits of its position or whether it wants to litigate for other reasons.

iii. PGE's XMSJ cannot be granted because it depends on disputed material facts.

Whereas Evergreen's MSJ on Claim 1, Counts 1 and 2, is based only upon material facts admitted by PGE in its Answer and responses to data requests, PGE's "undisputed facts" are really a restatement of John Morton's Declaration.⁹ PGE's legal case for summary judgment depends upon several assumed facts that Evergreen vigorously disputes.

1. PGE's definition of "scheduled and delivered" is arbitrary and disputed.

PGE asserts (XMSJ at 10) as fact that "netting period (daily versus monthly) does not affect the amount of net output Evergreen delivers, only the amount of undelivered net output for which it nevertheless receives the contract price." This is not fact, but a conclusion--which Evergreen disputes.

When Evergreen generates electricity, its net output flows onto the (non-PGE) transmission system. If net output equals Evergreen's scheduled delivery to PGE, then an amount of energy equal to net output flows from the transmission

⁹ PGE XMSJ at 2-8 (citing Morton Declaration 28 times).

provider's system to PGE's system and is credited as originating from Evergreen. This does not mean that energy from Evergreen's facility (net output) literally flows onto PGE's system at the point of delivery. In reality, Evergreen's net output is consumed mostly in line losses and loads on transmission provider's system before reaching PGE, and energy scheduled and delivered to PGE from Evergreen originates from sources closer than Evergreen to PGE's system.

If PGE's PURPA obligation were limited to electrons originating from Evergreen (as PGE uncritically assumes), then PURPA would be rendered meaningless, because energy does not literally flow from Evergreen (or any off-system QF) to PGE in a directly measureable way. Instead, PGE relies on meters that measure net output from the QF, and scheduled delivery to PGE, and arbitrarily decides a time-step over which to compare those two amounts.

PGE's assertion that "scheduled and delivered net output" means scheduled and delivered within the same clock hour is a disputed legal conclusion. In other situations, utilities frequently ascribe a different meaning to "scheduled and delivered output." Bonneville Power Administration settles imbalances in point to point transmission schedules on a monthly basis.¹⁰ PacifiCorp settles imbalances in its standard PURPA contracts on a monthly basis.¹¹ In fact, PGE uses *two* different

¹⁰ TRANSMISSION, ANCILLARY, AND CONTROL AREA SERVICE RATE SCHEDULES (ACS-18) ("Return energy [under BPA's Energy Imbalance Service] may be scheduled at any time during the month to bring the deviation account balances to zero at the end of each month." *Id.* at 50).

¹¹ PGE XMSJ at 17 n 91.

meanings of “scheduled and delivered net output” in administering Evergreen’s contract.¹²

2. PGE’s concern about variability in Evergreen’s output is not motivated by any adverse affect upon PGE’s system or operations.

PGE asserts (XMSJ at 14) that Evergreen “should be in a position to more accurately schedule its net output” because it is paid baseload prices. In fact, due to variations in fuel heat content and other factors, Evergreen’s output fluctuations are substantial (as shown by its hourly load profile at Evergreen/101, K Freres/1) even though the plant is closely monitored by trained operators. Although Evergreen’s hourly output does fluctuate, PGE always receives a flat hourly delivery of the amount scheduled by Evergreen.

The inherent fluctuation in Evergreen’s output does not affect PGE’s ability to dispatch, since PGE does not dispatch the Evergreen facility. Evergreen 202, K Fereres/7. When Evergreen schedules hourly energy deliveries to PGE, PGE receives a flat, whole-MW, even if Evergreen’s actual net output for the hour is not flat. Evergreen 202, K Freres/10. Although delivery may be curtailed if transmission is curtailed, PGE is unaware of curtailment ever impacting Evergreen’s scheduled delivery. Evergreen 202, K Freres/8. In sum, PGE’s operations are not negatively impacted by variability in Evergreen’s generation. In fact, energy scheduled and delivered by Evergreen in flat, whole-MW hourly blocks, backed by the spinning

¹² When Evergreen is generating, PGE only credits net output that is scheduled and delivered. However when Evergreen is not generating, PGE charges Evergreen for negative net output, even though Evergreen did not schedule or deliver negative net output, and did not consume any energy from PGE. See Evergreen/201, K Freres 13. PGE’s requirements for “scheduled and delivered net output” appear to depend on what benefits its bottom line.

reserves of the transmission provider, is among the firmest, most reliable energy sources available to PGE.

Evergreen disputes PGE's contention that deviations in scheduled versus delivered energy diminishes Evergreen's certified renewable energy.¹³ Oregon' RPS statute prevents such diminution by allowing substitution of "any other electricity for the qualifying electricity at any point after the time of generation."¹⁴ In fact, Evergreen will convey to PGE during the renewable deficiency period one bundled REC for every MWH of net output.

Evergreen disputes PGE's attempt to characterize the financial impact of daily versus monthly settlement as minor.¹⁵ If the Mid-C Index price exceeded the Contract Price for significant periods in 2019, such conditions are very unlikely to recur in 2020 and beyond when PGE is obligated to pay Evergreen the deficiency period baseload renewable avoided cost prices set forth in Table 4a of Schedule 201 (filed with Evergreen's MSJ as Evergreen/102, K Freres/37).

Finally, Evergreen sighs at PGE's fervent desire to police Evergreen's energy imbalances for the benefit of the third party transmission provider.¹⁶ Evergreen must pay the transmission service provider for imbalance energy and is subject to penalty under its transmission service agreement for large and/or persistent imbalances. Since PGE does not provide transmission service to Evergreen and is

¹³ PGE's XMSJ at 4 ("The energy supplied by the transmission provider is referred to as "imbalance energy"--which is not certified to be renewable energy.").

¹⁴ ORS 469A.130(2).

¹⁵ Decl. of John Morton at 4-5.

¹⁶ Decl. of John Morton at 1-2.

not harmed by Evergreen's imbalances, its interference with Evergreen's transmission arrangements is unwarranted harassment.

In sum, genuine issues of material fact preclude summary judgment on Count 1 and Count 2 of Evergreen's First Claim.

B. Claim 1, Count 3: PGE's daily imbalance energy settlement practices violate Evergreen's PPA.

1. Why Evergreen's MSJ can be granted

As stated previously, Evergreen's MSJ relies only on material facts admitted by PGE. On these facts, PGE's election of daily imbalance settlement violates PGE's duty (under PPA §4.1) to purchase all scheduled and delivered net output at the contract price. FERC reached the same conclusion when it analyzed the PáTu PPA, which is essentially identical to Evergreen's.¹⁷

2. Why PGE's XMSJ cannot be granted

PGE's XMSJ cannot be granted because it relies on the disputed facts listed above. PGE also incorrectly concludes that the Commission's Order 14-287 controls Evergreen's Count 3, even though Order 14-287 admitted the possibility of monthly netting and relies on different material facts. And even assuming PGE could make a case that daily settlement is permitted under the standard PPA, it should be estopped from doing so for equitable reasons.

PGE should be judicially estopped from implementing daily settlement over the objection of a QF. "Judicial estoppel" is a common law equitable principle that applies to prevent a litigant who has benefitted from a position taken in an earlier

¹⁷ See Evergreen's summary of FERC's argument on pp 13-14, and 21 of Evergreen's MSJ.

judicial proceeding from taking an inconsistent position in a later proceeding. *Nw. Pub. Communs. Council v. Qwest Corp.*, 279 Or App 626, 645-46, 379 P3d 633, 644 (2016) (internal citations and quotation marks omitted). “The policies underlying preclusion of inconsistent positions are general considerations of the orderly administration of justice and regard for the dignity of judicial proceedings. Judicial estoppel is intended to protect against a litigant playing ‘fast and loose’ with the courts.

To Evergreen’s knowledge, the only time Commission Staff has thoroughly vetted the imbalance and scheduling provisions in PGE’s standard contract and Schedule 201 was in UM 1129.¹⁸ At that time, Staff understood (from a statement by PGE) that PGE would settle imbalances over the billing period (e.g. on a *monthly* basis). Staff found that PGE’s proposed provisions for netting were “not appropriate as written” due to lack of clarity; however, Staff supported their adoption in reliance upon a clarifying Email from PGE, which Staff understood as a commitment by PGE to allow monthly netting. Two particularly illuminating passages from Staff’s testimony show Staff’s understanding that PGE would use monthly netting:

Q: ARE THE PRODUCTION BALANCING PROVISIONS IN PGE’S POWER PURCHASE AGREEMENT FOR OFF-SYSTEM QFS APPROPRIATE?

A: Yes, but the language in Schedule 201 should be clarified. ***

For example, assume that a QF has a nameplate rating of 3.5 MW, generates 3.5 MW in each hour, and schedules 3 MW in half of the hours and 4 MW in the remaining hours in the billing period (ignoring on-peak and off-peak periods for purposes of this example). On average, over the billing period the

¹⁸ Evergreen attached to its Complaint Commission Staff’s testimony in Docket UM 1129 regarding PGE’s treatment of imbalance energy under its standard contract and Schedule 201. Complaint, Attachment B.

QF would have scheduled and generated, and the [transmission operator] would have delivered, 3.5 MW per hour. **Therefore, the QF may reasonably expect to be paid avoided cost for all of its output.** The language in Schedule 201 implies that PGE would pay the avoided cost for 3.5 MW per hour, but would only pay the off-peak price for the extra 0.5 MW that was delivered in hours when 4MW was scheduled and delivered. This apparent conflict in language should be resolved, and **the tariff should make clear that PGE will allow balancing within the [monthly] billing period."**

UM 1129, Direct Testimony of Dr. Stefan Brown, Senior Economist, OPUC, (March 24, 2006) at Staff/2200; Brown 6-7; Complaint, Attachment B at 4-5 (emphasis added).

Q: ARE THE COST AND CONTRACTUAL PROVISIONS IN PGE'S AND PACIFICORP'S POWER PURCHASE AGREEMENTS FOR OFF-SYSTEM QFS APPROPRIATE?

A: Some of the provisions are not appropriate. **PGE's implicit balancing provisions are not appropriate as written. However PGE has clarified its intention in an e-mail to Staff.⁶ I recommend that PGE modify the language in Schedule 201 to clarify its intent to allow for netting of differences between Net Output and delivered energy across the billing period.**

UM 1129, Direct Testimony of Dr. Stefan Brown, Senior Economist, OPUC, at Staff/2200; Brown at 9; Complaint, Attachment B at 7 (emphasis added). The above provisions make clear that Staff, in reliance on an Email from PGE, believed PGE intended to allow for netting across the entire monthly billing period. Having taken such a position in Docket UM 1129, PGE should not now be allowed to require daily netting.

In Oregon, judicial estoppel depends on the existence of three predicates: (1) a benefit; (2) obtained in a different judicial proceeding; (3) by means of asserting a position inconsistent with a position asserted in a later judicial proceeding. *Mid-Valley Res., Inc. v. Foxglove Props., LLP*, 280 Or App 784, 789-91, 381 P3d 910, 915

(2016) (internal citations and quotation marks omitted). Because it is intended to protect the dignity of the judicial process, it is an equitable doctrine invoked by a court at its discretion.” *Rissetto v. Plumbers & Steamfitters Local 343*, 94 F.3d 597, 601 (CTA 9, 1995).

Commission Staff involved in Docket UM 1129 received an Email from PGE attorney, Doug Kuns, stating PGE’s position on settlement of imbalance energy:

Regarding your telephone question about the out of service area standard contract with respect to scheduled and delivered QF power. It is our intent as stated in Section 4.5, that the QF will be able to use commercially reasonable efforts to schedule and deliver its Net Output to PGE. The Net Output and Nameplate Capacity Rating definitions provide the objective measures to assure that the Company purchases only the QF’s Net Output. Section 4.5 accommodates the requirements placed on a QF from a transmitting entity to schedule QF power within certain parameters. For example, the scheduling requirements for whole MW increments is acceptable within our proposed agreement, even if the QF production may be higher or lower than the scheduled amount in an hour. PGE will purchase the scheduled and delivered energy.

Schedule 201 provides that the Company will purchase in accordance with the appropriate agreement, QF energy delivered to the Company’s system and made available for purchase.

UM 1129, Staff/2202; Brown 1; Complaint, Attachment B at 4-5 (emphasis added).

PGE contends, in its XMSJ, that it “cannot reasonably be inferred that Mr. Kuns made a promise to Staff that PGE would net energy imbalance with off-system QFs on a monthly basis” XMSJ, 23, lines 20-21. In fact, that is *exactly* what Staff inferred. (see bolded excerpts from Staff’s testimony, above). Staff effectively acted as PGE’s agent when publishing and characterizing the meaning of PGE’s email in its testimony. “It is well settled that a principal who, after knowledge of the fact, neglects to promptly disavow the act of an agent who has exceeded his authority, makes such act his own, and such acquiescence is equivalent to a previous authority.

Finnegan v. Pac. Vinegar Co. 26 OR 152, 154 (1894). If PGE believes that Staff misconstrued Mr. Kuns' Email when it declared that PGE expressed its intent to allow monthly netting, it should have set the record straight, but it did not. Mr. Kuns did not correct Staff's characterization of PGE's position, in his April 7, 2006, rebuttal testimony (presumably because PGE did not want to risk the Commission Staff changing its recommendation). By failing to correct Staff's detailed description of PGE's position, PGE effectively adopted Staff's description as its own.

Under Oregon's application of judicial estoppel, the estopped party must have received a benefit from its position in another proceeding. In UM 1129, PGE obtained crucial support from Staff for the off-system related terms of its standard contract and Schedule 201 because of its March 13 Email. Therefore, Predicates 1 and 2 for judicial estoppel are present.¹⁹

After happily accepting Staff's statement that PGE intended to allow monthly netting in UM 1129, PGE now dismisses Staff's interpretation as unreasonable, and asserts the right to require daily netting. PGE took one position to get its standard contract approved, and the opposite position in application--thereby satisfying Predicate 3 to judicial estoppel. To preserve the integrity of the Commission, PGE should be held to its original position.

C. Claim 1, Count 4: PGE's XMSJ on Evergreen's promissory estoppel doctrine should be denied.

Evergreen concedes that it did not assert direct reliance upon PGE's communications with Commission Staff in UM 1129 concerning monthly settlement.

¹⁹ "Judicial estoppel" applies in administrative as well as judicial *fora*. *Rissetto v. Plumbers & Steamfitters Local 343*, 94 F.3d 587, 604 (CTA 9 1996).

However, PGE does not dispute that Commission Staff relied upon PGE's position that it would allow monthly netting, and that PGE took no steps to clarify its position at the time, in its rebuttal testimony or otherwise. Evergreen belongs to a class of persons (small QFs) that relied on Staff's reasoning for supporting the standard PPA and relies on Commission Staff's statements generally. The Commission has broad equitable and legal powers to ensure that PGE's practices are lawful and fair. ORS 756.040. Those powers include the power to file or join a complaint on its own initiative. ORS 756.500. If the Commission agrees that PGE's change in position, between the time it sought approval of its standard contracts in UM 1129 and the time it implemented those contracts after they were approved, harms the integrity of the Commission's process, then promissory estoppel is an appropriate remedy.

D. Claim 2: The PPA does not transfer T-REC ownership.

1. Evergreen's MSJ can be granted.

As stated previously, Evergreen's MSJ relies only on material facts admitted by PGE. On these facts, Evergreen's entitlement to a declaration that its PPA does not transfer T-RECs to PGE is clear, for the reasons stated in Evergreen's MSJ at 21.

2. Evergreen's claim is not mooted by PGE's statement of present intent.

In October 2018, Evergreen sent PGE a letter with sourced legal authorities explaining its position that T-RECs belonged to Evergreen and asking PGE to confirm Evergreen's belief. In its November 2018 response, PGE refused to waive any claim to ownership of Evergreen's T-RECs, asserting without attribution that ownership was "unsettled as a matter of state law." Evergreen Complaint, ¶35. PGE's cloud on Evergreen's ownership of T-RECs prevented Evergreen from perfecting

their legal status or selling them to third parties. *Id. at* ¶¶36-37. In May 2019, PGE notified Evergreen through its Answer that PGE has “evaluated this issue further and has now concluded that under the PPA, Evergreen’s T-RECs do not transfer to PGE.” Answer, ¶35.

Because PGE’s statement of present intent does not amount to a final, irreversible decision, Evergreen’s Claim 2 is not moot. PGE’s change of position between November 2018 and May 2019 was not the result of a new law, but according to PGE arose from further evaluation of the PPA. If Evergreen dismissed Claim 2, nothing would prevent PGE from re-evaluating the PPA and reversing its position again. There is precedent for such concern in PGE’s past actions. In 2017, PGE reversed its position after five months of negotiations and accused Evergreen of exceeding the 10,000 kW cap for a standard contract eligibility on the same day it executed Evergreen’s standard PPA. Evergreen filed a complaint with the Commission and PGE acknowledged Evergreen’s eligibility. PGE’s change in position regarding daily versus monthly netting, discussed in Section V B (2) above, is another example of PGE changing its position in the context of a PURPA contract. A declaration from the Commission, as requested in Evergreen’s Complaint, would settle the question of T-REC ownership once and for all.²⁰

²⁰ While PGE’s XMSJ also asserts that Evergreen lacks standing to litigate T-REC ownership, the Commission has virtually never dismissed a complaint for lack of standing. ORS 756.500(1) and (2) provide that “any person” may file a complaint before the Commission, regardless of any pecuniary interest in the matter complained of. Further, executive branch review tribunals, such as this Commission, are not bound by mootness limitations applicable to the judicial branch. *Wetherell v. Douglas County*, 66 Or. LUBA 454, 458 (2012)(“LUBA is an executive branch review tribunal, not a judicial branch court. * * * constitutional justiciability principles that are applicable to courts, including principles relating to mootness and standing, do

E. PGE's XMSJ on Claim 3 (PGE's treatment of T-RECs violates RPS Statute) should be denied.

Evergreen's Claim 3 alleges that PGE undertakes actions that, together, depress the value of T-RECs compared to other Oregon RPS compliant RECs in violation of Oregon's RPS statute set forth in ORS 469A. PGE's XMSJ on Claim 3 must be denied unless there are no genuine issues of material fact and Evergreen's claim cannot succeed as a matter of law.

1. Evergreen substantiated its assertions in the Complaint that PGE discriminates against T-RECs compared to other unbundled RECs.

T-RECS are a statutory creation intended to foster development of qualifying facilities that produce useful thermal energy as a byproduct of power generation. Under ORS Chapter 469A.132, T-RECs are equivalent for purposes of compliance with Oregon's renewable portfolio standards. Evergreen uses heat in conjunction with its facility that is eligible for Thermal RECs. However Evergreen has not located a buyer for such RECs, although it has located a buyer (PGE) for *non-Thermal* unbundled RECs. *Evergreen/200, K Freres 2nd Aff./ 3.*

PGE buys large amounts of RECs in order to meet compliance targets set forth in Chapter 469A. However PGE has never purchased any T-RECs. Besides purchasing RECs and generating RECs from its own qualifying resources, PGE acquires RECs when it purchases net output from qualifying facilities under a renewable avoided cost contract. The renewable avoided cost is larger than the standard avoided cost and reflects the added value of renewable energy.

not apply to LUBA")(internal citations and quotations omitted). Evergreen's desire to develop and monetize T-RECs from its facility as soon as a buyer can be found is more than enough basis for standing. *Evergreen/200, K Freres 2nd aff/2.*

Besides acquiring bundled RECs from QFs, PGE has the potential to acquire unbundled RECs from QFs. Unbundled RECs, coupled with non-renewable spot purchases, are a useful means by which a large QF may cover a shortfall in its delivery obligation to PGE. PGE has executed four Schedule 202 contracts with large QFs with a combined capacity of more than 143MW. Evergreen/201, K Freres/4-5. Between 50 MW and 70 MW of those Schedule 202 contracts contain provisions that limit Seller's ability to cure a shortfall with unbundled T-RECs. Evergreen/201, K Freres/6.

PGE published an example of the definition of "Qualifying Replacement RECs" contained in its Schedule 202 contracts at a recent UM 1987 workshop. That definition includes limitations on RECs that do not exist in Chapter 469A or its implementing regulations. For example, Qualifying Replacement RECs must be "of the same type and quality as Green Attributes"; must come from a QF located in Oregon or Washington; and must come from a project that achieved commercial operation after its Commercial Operation Date." Evergreen/201, K Freres/11. Finally, PGE admits that it values T-RECs differently from other unbundled RECs, although ORS 469A nor the Commission's renewable avoided cost authorize differing treatment for T-RECs.

Viewed in light favorable to Evergreen, PGE's disparate treatment of T-RECs may be a proximate cause of Evergreen's inability to sell T-RECs, and PGE's XMSJ must be denied.

VI

CONCLUSION

Wherefore, for the reasons above, Evergreen respectfully requests that this Commission:

1. Declare that PGE's practices for settling imbalance energy on a daily basis violates PURPA, as applied to Evergreen's PPA (Claim 1, Count 1);
2. Declare that PGE's practices for settling imbalance energy on a daily basis violates PURPA any time it prevents the QF from delivering its entire net output to PGE (Claim 1, Count 1);
3. Declare that PGE's practices for settling imbalance energy on a daily basis violates Oregon's statutes and regulations mirroring PURPA at ORS 758.500 *et seq* and OAR 860, Division 29 (Claim 1, Count 2);
4. Declare that PGE's practices for settling imbalance energy on a daily basis violates Evergreen's PPA (Claim 1, Count 3);
5. Order PGE to implement monthly settlement of imbalance energy, or such other settlement method that ensures off-system QFs receive the contract price for their entire net output (Claim 1, Counts 1-3); and
6. Declare that Evergreen's PPA does not convey any interest in Evergreen's T-RECs to PGE at any time (Claim 2); and
7. Grant such other relief the Commission determines appropriate; and
8. Deny PGE's XMSJ on all of Evergreen's Claims.

Respectfully submitted this 1st day of August 2019.

Respectfully submitted,

By: 

Kenneth E. Kaufmann, OSB 982672
Attorney for Evergreen BioPower, LLC

Kenneth Kaufmann, Atty OSB 982672
1785 Willamette Falls Drive, Suite 5
West Linn, OR 97068
Telephone: (503) 230-7715
FAX: (503) 972-2921
ken@kaufmann.law

Attorney for Complainant Evergreen BioPower, LLC

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

Evergreen BioPower, LLC

Complainant,

vs.

Portland General Electric Company

Respondent.

DOCKET NO. UM 1998

**Affidavit of Kyle Freres in support
of Evergreen BioPower, LLC's
Reply and its Response to PGE's
Cross Motion for Summary
Judgment**

1 **Q. Please state your name and position.**

2 A. My name is Kyle Freres. I am the Managing Partner of Evergreen BioPower, LLC
3 (Evergreen) and the Vice President of Operations of its parent company and site
4 host, Freres Lumber Co., Inc (Freres Lumber).

5 **Q. Are you familiar with Evergreen's Exhibit 201 and Exhibit 202?**

6 A. Yes.

1 **Q. Can you please describe Exhibit 201?**

2 A: Exhibit 201 is a copy of questions from Evergreen's Third Set of Data Requests,
3 and PGE's answers thereto.

4 **Q. Can you please describe Exhibit 202?**

5 A: Exhibit 202 is a copy of questions from Evergreen's Fourth Set of Data Requests,
6 and PGE's answers thereto.

7 **Q: Do you intend to sell Thermal RECs (T-RECs) from Evergreen's Facility?**

8 A: Yes. Once I am confident PGE will not dispute ownership of T-RECs from the
9 Evergreen facility I intend to try to sell them.

10 **Q: Do you intend to seek a PGE standard (renewable) power purchase**
11 **agreement in the future?**

12 A: There is the possibility. Freres operates a plywood plant in Mill City, Oregon,
13 where biomass cogeneration could work well. T-RECs could be an important
14 source of revenue necessary to justify the project. However Freres won't ascribe
15 value to T-RECs until it is confident PGE won't dispute ownership and until PGE
16 or another party will buy T-RECs.

17 **Q: Do you know if PGE is currently purchasing T-RECs?**

18 A: Not to my knowledge, although I'm aware that they are purchasing other
19 unbundled RECs.

20 /// /// ///

1 Q. Do you swear your testimony is truthful to the best of your knowledge?

2 A. Yes.

3

4

5 Dated this 1st day of August 2019.

6

7



8 Kyle Freres
9 Manager, Evergreen BioPower, LLC

10

11 STATE OF OREGON)
12) ss.
13 County of Linn)
14

15 On this 1 day of August 2019, before me, a Notary Public in and for the State of Oregon, personally
16 appeared Kyle Freres, known or identified to me and who subscribed said name to
17 the foregoing instrument, and acknowledged to me that they executed the same.

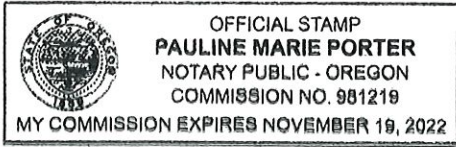
18

19 IN WITNESS WHEREOF, I hereunto set my hand and affix my official seal the day and year first above
20 written.

21 Pauline Marie Porter, Notary Public for Oregon

22 Residing at: 141 14th St. Lyons, OR 97350
23
24
25

26 My commission expires: 11-19-22





LISA RACKNER
Direct (503) 595-3925
lisa@mrg-law.com

June 21, 2019

VIA EMAIL AND U.S. PRIORITY MAIL

Kenneth Kaufmann
Attorney at Law
1785 Willamette Falls Drive, Suite 5
West Linn, OR 97068
ken@kaufmann.law

Re: Docket UM 1998 - Evergreen BioPower, LLC's Third Set of Data Requests

Dear Mr. Kaufmann:

Portland General Electric Company (PGE) is providing the attached data responses to Evergreen BioPower, LLC's (Evergreen) third set of data requests via email. Confidential data response 3.1 will be provided via U.S. priority mail.

Please do not hesitate to contact me if you have any questions.

Sincerely yours,

Lisa Rackner

cc: Donald Light

Attachment

TO: Ken Kaufmann
Attorney for Evergreen BioPower, LLC

FROM: Karla Wenzel
Senior Manager, Rates & Regulatory Affairs, Portland General Electric

**PORTLAND GENERAL ELECTRIC
UM 1998
PGE Response to Evergreen Data Request No. 3.1**

Request:

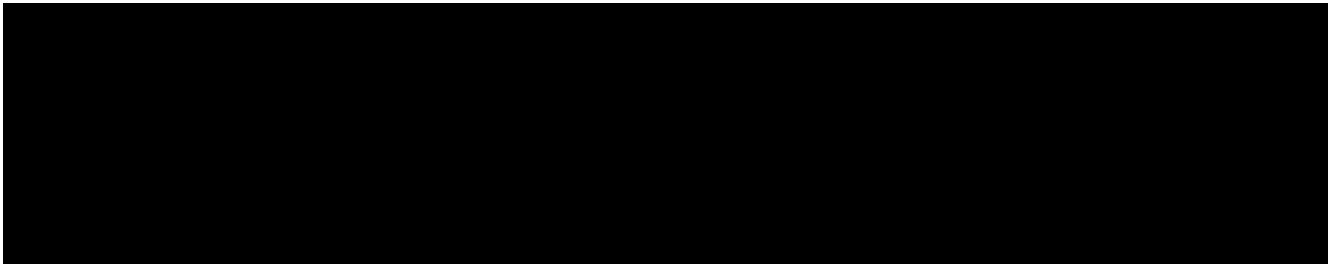
3.1 In its response to DR 2.2, PGE listed seven QF contracts wherein it settled, or does settle, delivery imbalances on a daily basis. For each of those seven QF contracts please complete the table of missing information, below:

QF	MW Nameplate	PPA Status (terminated, operational, or pre-commercial)	PPA execution date	Is Energy from QF to PGE scheduled hourly in whole MW? (If "no", explain)
Evergreen BioPower	10MW	Operational	5/16/2017	Yes
OE Solar 3				
Coffin Butte				
JC Biomethane				
PaTu Wind				
Port of Tillamook Bay		Terminated		
FGO		Terminated		

Response:

QF	MW Nameplate	PPA Status (terminated, operational, or pre-commercial)	PPA execution date	Is Energy from QF to PGE scheduled hourly in whole MW? (If "no", explain)
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Evergreen Biopower	10	Operational	05/31/2017	Yes
OE Solar 3	10	Operational	01/25/2016	Yes
Coffin Butte	5.66	Operational	07/02/2012	Yes
JC Biomethane	1.6	Operational	12/09/2011	Yes
PaTu Wind	9	Operational	04/29/2010	■
Port of Tillamook Bay	1.2	Terminated	09/20/2013	Yes
FGO	0.37	Terminated	10/25/2012	Yes



TO: Ken Kaufmann
Attorney for Evergreen BioPower, LLC

FROM: Karla Wenzel
Senior Manager, Rates & Regulatory Affairs, Portland General Electric

**PORTLAND GENERAL ELECTRIC
UM 1998
PGE Response to Evergreen Data Request No. 3.2**

Request:

3.2 In its response to DR 2.7, PGE stated it has or had Schedule 202 contracts with Covanta Marion, Inc, Biogreen Sustainable Energy Co., LLC, Tower Road Solar, LLC, and Airport Solar, LLC. For each of those seven QF contracts please complete the table of missing information, below:

QF	MW Nameplate	PPA Status (terminated, operational, or pre-commercial)	PPA execution date	Annual Min Delivery (MWH)
Covanta Marion				
Biogreen Sustainable Energy Co.				
Tower Rd. Solar				
Airport Solar				

Response:

QF	MW Nameplate	PPA Status (terminated, operational, or pre-commercial)	PPA execution date	Annual Min Delivery (MWH)
Covanta Marion	13.1	Pre-commercial	06/19/2018	Sum for the four QFs listed: 508,471
Biogreen Sustainable Energy Co.	28	Terminated	08/25/2017	
Tower Rd. Solar	55	Terminated	09/04/2018	

Airport Solar	47.25	Pre-commercial	04/03/2017	
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TO: Ken Kaufmann
Attorney for Evergreen BioPower, LLC

FROM: Karla Wenzel
Senior Manager, Rates & Regulatory Affairs, Portland General Electric

**PORTLAND GENERAL ELECTRIC
UM 1998
PGE Response to Evergreen Data Request No. 3.3**

Request:

3.3 Please circle the category, below, that most accurately describes the total nameplate capacity of QF contracts listed in 3.2, above, that limit Seller's cure provisions to bundled RECs from an eligible renewable energy resource (in other words, do not allow cure with unbundled Thermal RECs).

- a. less than 10 MW nameplate
- b. less than 30 MW nameplate
- c. less than 50 MW nameplate
- d. less than 70 MW nameplate**
- e. less than 90 MW nameplate
- f. more than 100 MW nameplate

Response:

See above.

TO: Ken Kaufmann
Attorney for Evergreen BioPower, LLC

FROM: Karla Wenzel
Senior Manager, Rates & Regulatory Affairs, Portland General Electric

**PORTLAND GENERAL ELECTRIC
UM 1998
PGE Response to Evergreen Data Request No. 3.4**

Request:

3.4 Has the state legislature recently confirmed that for purposes of RPS compliance, T-RECs are subject to the same requirements for issuance, transfer and use as all other RECs, including unbundled RECs from an Oregon QF? Please cite the basis for your response.

Response:

The Oregon legislature recently passed SB 38, which amends ORS 469A.132 to state, “renewable energy certificates for thermal energy: . . . (b) Shall be subject to the same requirements for issuance, transfer and use as all other renewable energy certificates created pursuant to the system established under ORS 469A.130.” The revisions are effective on January 1, 2020.

TO: Ken Kaufmann
Attorney for Evergreen BioPower, LLC

FROM: Karla Wenzel
Senior Manager, Rates & Regulatory Affairs, Portland General Electric

**PORTLAND GENERAL ELECTRIC
UM 1998
PGE Response to Evergreen Data Request No. 3.5**

Request:

3.5 Has PGE executed power purchase agreements (as buyer) that allow cure of under-delivery of renewable energy with bundled RECs but do not allow cure with unbundled (Oregon RPS qualifying) RECs from carbon free resources?

Response:

PGE objects to the request as vague and ambiguous because it does not define the term “carbon free resources.” Notwithstanding and without waiving this objection, PGE responds as follows: PGE does not currently have any executed and effective non-standard PURPA power purchase agreements (PPAs) that allow for cure of under-delivery only with bundled RECs. PGE had one such agreement; however, that PPA has since been terminated.

TO: Ken Kaufmann
Attorney for Evergreen BioPower, LLC

FROM: Karla Wenzel
Senior Manager, Rates & Regulatory Affairs, Portland General Electric

**PORTLAND GENERAL ELECTRIC
UM 1998
PGE Response to Evergreen Data Request No. 3.6**

Request:

3.6 Has PGE executed power purchase agreements (as buyer) that allow cure of under-delivery of renewable energy with bundled RECs but do not allow cure with unbundled (Oregon RPS qualifying) Thermal-RECs from carbon free resources?

Response:

PGE objects to the request as vague and ambiguous because it does not define the term “carbon free resources.” Notwithstanding and without waiving this objection, PGE responds as follows: PGE is not aware of the existence of thermal RECs from resources that do not emit carbon. Regarding cure with bundled versus unbundled RECs, please see PGE’s response to Data Request 3.5.

TO: Ken Kaufmann
Attorney for Evergreen BioPower, LLC

FROM: Karla Wenzel
Senior Manager, Rates & Regulatory Affairs, Portland General Electric

**PORTLAND GENERAL ELECTRIC
UM 1998
PGE Response to Evergreen Data Request No. 3.7**

Request:

3.7 For PGE's responses to 3.5 and 3.6, define what PGE means by the term "carbon-free" resources.

Response:

PGE objects that this request is vague and ambiguous. PGE's responses to Data Requests 3.5 and 3.6 do not use the term "carbon-free." Generally speaking, PGE would interpret the phrase to refer to a resource that does not emit carbon, but PGE is unclear as to what Evergreen intends by use of this phrase.

TO: Ken Kaufmann
Attorney for Evergreen BioPower, LLC

FROM: Karla Wenzel
Senior Manager, Rates & Regulatory Affairs, Portland General Electric

**PORTLAND GENERAL ELECTRIC
UM 1998
PGE Response to Evergreen Data Request No. 3.8**

Request:

3.8 Please refer to the following definition for Qualifying Replacement RECs published by PGE in the February 12, 2019 UM 1987 workshop:

“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.

(a) Refer to (B) (“Same type or quality as Green Attributes”), above. Suppose Seller offers a replacement REC that is a qualifying REC under Oregon’s RPS, but that PGE believes has a different market value in California than bundled RECs from an Oregon RPS-Qualifying Resource. Could PGE conclude that Seller’s replacement REC is not of the “Same type or quality as Green Attributes” on this basis?

(b) Please explain PGE’s rationale for (C) (“is located in Oregon or Washington”).

Response:

(a) PGE objects that this question is vague and ambiguous and is premised upon incorrect assumptions about how PGE values RECs. Notwithstanding and without waiving this object, PGE responds as follows: As PGE explained in response to Data Requests 2.9 and 2.10, PGE determines REC value on a case-by-case basis taking multiple factors into account. Hypothetically, any significant differences in market value of a REC could affect its value to PGE. Please see PGE’s response to part (b) below.

(b) In general, PGE’s customers value the Company’s efforts to reduce the carbon content associated with generation used to serve load, and in particular customers value clean,

green, and local generation. For example, under the Company's Green Future programs, customers choose to purchase energy—at a higher price—because they want the energy they receive to be local, renewable, clean, and green. Requiring RECs from Oregon or Washington resources helps meet these needs by ensuring local impacts.

TO: Ken Kaufmann
Attorney for Evergreen BioPower, LLC

FROM: Karla Wenzel
Senior Manager, Rates & Regulatory Affairs, Portland General Electric

**PORTLAND GENERAL ELECTRIC
UM 1998
PGE Response to Evergreen Data Request No. 3.9**

Request:

3.9 Please refer to attached May 19 statement of monthly generation by Evergreen Biopower, which was prepared by PGE and provided to Evergreen. Please refer to May 25 and May 26. Please explain how PGE determined that Evergreen owed PGE \$4.98 on May 25 and \$4.04 on May 26.

Response:

PGE's calculation was based on the definition of "Net Output" in the agreement: "all energy expressed in kWhs produced by the Facility, less station and other onsite use and less transformation and transmission losses." On May 25 and 26, Evergreen did not produce any energy, so under a reasonable interpretation of this definition, station service was subtracted and its Net Output was negative.



LISA RACKNER
Direct (503) 595-3925
lisa@mrg-law.com

July 15, 2019

VIA EMAIL

Kenneth Kaufmann
Attorney at Law
1785 Willamette Falls Drive, Suite 5
West Linn, OR 97068
ken@kaufmann.law

Re: Docket UM 1998 - Evergreen BioPower, LLC's Third Set of Data Requests

Dear Mr. Kaufmann:

Portland General Electric Company (PGE) is providing the attached data responses to Evergreen BioPower, LLC's (Evergreen) fourth set of data requests via email.

Please do not hesitate to contact me if you have any questions.

Sincerely yours,

Lisa Rackner

cc: Donald Light

Attachment

TO: Ken Kaufmann
Attorney for Evergreen BioPower, LLC

FROM: Karla Wenzel
Senior Manager, Rates & Regulatory Affairs, Portland General Electric

**PORTLAND GENERAL ELECTRIC
UM 1998
PGE Response to Evergreen Data Request No. 4.1**

Request:

- 4.1 Please describe PGE’s publicized descriptions of PGE’s settlement and compensation practices for imbalance energy at the time Evergreen signed its Schedule 201 PPA with PGE.**

Response:

In Order No. 14-287 at 3, the Commission stated, “PGE has two separate daily settlement periods of eight hours and sixteen hours, such that variances between scheduled and delivered energy can be measured twice daily.” In addition, PGE provides each QF with an example payment calculation prior to that QF beginning deliveries. While PGE does not always provide this document to QFs in the process of entering standard contracts, PGE would provide the document to any QF that inquired about its settlement and compensation practices for imbalance energy.

TO: Ken Kaufmann
Attorney for Evergreen BioPower, LLC

FROM: Karla Wenzel
Senior Manager, Rates & Regulatory Affairs, Portland General Electric

**PORTLAND GENERAL ELECTRIC
UM 1998
PGE Response to Evergreen Data Request No. 4.2**

Request:

4.2 Prior to or during its Schedule 201 PPA negotiations with Evergreen, did PGE describe PGE's settlement and compensation practices for imbalance energy to Evergreen? If so, please provide the name of the PGE employee(s) who provided the description.

Response:

No, and PGE is not aware of Evergreen asking about PGE's settlement and compensation practices for imbalance energy prior to or during its Schedule 201 contracting process with PGE. Had Evergreen asked, PGE would have provided a description and example. Please see PGE's response to Data Request No. 4.1.

TO: Ken Kaufmann
Attorney for Evergreen BioPower, LLC

FROM: Karla Wenzel
Senior Manager, Rates & Regulatory Affairs, Portland General Electric

**PORTLAND GENERAL ELECTRIC
UM 1998
PGE Response to Evergreen Data Request No. 4.3**

Request:

- 4.3 Please identify all PGE employees who participated in the Schedule 201 PPA negotiation process with Evergreen.**
- a. For each PGE employee listed, please indicate whether the employee participated in Docket No. UM 1129, and if so, in what capacity.**
 - b. At the time Evergreen signed its Schedule 201 PPA with PGE, was any of these employees familiar with the portions of the record in UM 1129 attached to Evergreen's Complaint?**

Response:

1. Angeline Chong
 - a. No.
 - b. To the best of PGE's knowledge, no, but because Ms. Chong is no longer employed by PGE, PGE is unable to confirm with her.
2. Shawn Davis
 - a. No.
 - b. To the best of PGE's knowledge, no, but because Mr. Davis is no longer employed by PGE, PGE is unable to confirm with him.
3. John Morton
 - a. No.
 - b. No.

TO: Ken Kaufmann
Attorney for Evergreen BioPower, LLC

FROM: Karla Wenzel
Senior Manager, Rates & Regulatory Affairs, Portland General Electric

**PORTLAND GENERAL ELECTRIC
UM 1998
PGE Response to Evergreen Data Request No. 4.4**

Request:

4.4 Has PGE ever offered to purchase T-RECs from Evergreen?

Response:

No. Please see PGE's response to Data Request No. 2.9.

TO: Ken Kaufmann
Attorney for Evergreen BioPower, LLC

FROM: Karla Wenzel
Senior Manager, Rates & Regulatory Affairs, Portland General Electric

**PORTLAND GENERAL ELECTRIC
UM 1998
PGE Response to Evergreen Data Request No. 4.5**

Request:

4.5 Has PGE ever offered to purchase T-RECs from anybody?

Response:

No. Please see PGE's response to Data Request No. 2.9.

TO: Ken Kaufmann
Attorney for Evergreen BioPower, LLC

FROM: Karla Wenzel
Senior Manager, Rates & Regulatory Affairs, Portland General Electric

**PORTLAND GENERAL ELECTRIC
UM 1998
PGE Response to Evergreen Data Request No. 4.6**

Request:

4.6 Does PGE dispatch the Evergreen facility? If so, please describe how and when dispatch occurs.

Response:

No.

TO: Ken Kaufmann
Attorney for Evergreen BioPower, LLC

FROM: Karla Wenzel
Senior Manager, Rates & Regulatory Affairs, Portland General Electric

**PORTLAND GENERAL ELECTRIC
UM 1998
PGE Response to Evergreen Data Request No. 4.7**

Request:

4.7 When Evergreen schedules hourly energy deliveries to PGE, has PGE ever not received the amount of hourly energy scheduled for delivery? If “yes”, please describe the time and context of such non-delivery.

Response:

Generally, the third-party transmission provider delivers to PGE an amount of energy equal to what Evergreen schedules. PGE would not receive scheduled energy if a transmission curtailment occurred, but PGE is not aware of any transmission curtailments that have impacted Evergreen’s deliveries.

TO: Ken Kaufmann
Attorney for Evergreen BioPower, LLC

FROM: Karla Wenzel
Senior Manager, Rates & Regulatory Affairs, Portland General Electric

**PORTLAND GENERAL ELECTRIC
UM 1998
PGE Response to Evergreen Data Request No. 4.8**

Request:

4.8 Please describe how the dispatchability (or non-dispatchability) of Evergreen's facility, in terms of the ramp rate of the generator (up & down) in kW/minute as specified by the manufacture, affects the energy product PGE receives under its existing contract with Evergreen.

Response:

PGE objects that this request is vague, ambiguous, and lacking foundation—PGE is not certain what “energy product” means. Notwithstanding and without waiving its objections, PGE responds as follows: Evergreen's dispatchability affects its ability to produce the amount of energy it scheduled for delivery to PGE and may affect the amounts that Evergreen chooses to schedule to PGE. It does not affect whether the transmission provider delivers the scheduled amount of energy to PGE's balancing authority area.

TO: Ken Kaufmann
Attorney for Evergreen BioPower, LLC

FROM: Karla Wenzel
Senior Manager, Rates & Regulatory Affairs, Portland General Electric

**PORTLAND GENERAL ELECTRIC
UM 1998
PGE Response to Evergreen Data Request No. 4.9**

Request:

4.9 Do deviations in the steady state output of the Evergreen facility affect the hourly scheduled deliveries from Evergreen to PGE? If “yes”, please explain.

Response:

No, deviations in Evergreen’s output do not affect the amount of energy that PGE receives from the transmission provider (please see PGE’s response to Data Request No. 4.7). Deviations in Evergreen’s output do affect the amount of the energy PGE receives that is imbalance energy versus Evergreen’s net output.

TO: Ken Kaufmann
Attorney for Evergreen BioPower, LLC

FROM: Karla Wenzel
Senior Manager, Rates & Regulatory Affairs, Portland General Electric

**PORTLAND GENERAL ELECTRIC
UM 1998
PGE Response to Evergreen Data Request No. 4.10**

Request:

4.10 How does PGE utilize the Evergreen generation schedules provided to it by Evergreen (or Evergreen's agent)?

Response:

PGE objects that this request is vague, ambiguous, and lacking foundation—PGE is unclear what “generation schedules” refers to. Notwithstanding and without waiving its objections, PGE responds as follows: PGE assumes “generation schedules” refers to the e-Tags that Evergreen’s Scheduling Agent, EWEB, provides. PGE uses this information to establish its capacity and energy position during each hour of the delivery day.

TO: Ken Kaufmann
Attorney for Evergreen BioPower, LLC

FROM: Karla Wenzel
Senior Manager, Rates & Regulatory Affairs, Portland General Electric

**PORTLAND GENERAL ELECTRIC
UM 1998
PGE Response to Evergreen Data Request No. 4.11**

Request:

4.11 How does PGE utilize the Evergreen generation forecasts provided to it by Evergreen (or Evergreen's agent)?

Response:

PGE objects that this request is vague, ambiguous, and lacking foundation—PGE is unclear what “generation forecasts” refers to. Notwithstanding and without waiving its objections, PGE responds as follows: PGE does not receive generation forecasts from Evergreen. PGE receives e-Tags from Evergreen’s Scheduling Agent, EWEB, provided during the WECC Pre-Scheduling Day for the day of actual deliveries. Please see PGE’s response to Data Request No. 4.10.

TO: Ken Kaufmann
Attorney for Evergreen BioPower, LLC

FROM: Karla Wenzel
Senior Manager, Rates & Regulatory Affairs, Portland General Electric

**PORTLAND GENERAL ELECTRIC
UM 1998
PGE Response to Evergreen Data Request No. 4.12**

Request:

4.12 When Evergreen schedules a flat, 6 MW hourly schedule:

- a. Does PGE receive 6 MW, even if Evergreen does not generate 6 MW?**
- b. When does PGE become aware of imbalances between the scheduled and actual Evergreen generation for the hour?**

Response:

- a. **Yes.** Please see PGE's response to Data Request No. 4.7.
- b. PGE receives Evergreen's actual generation information **at the end of each month.**

TO: Ken Kaufmann
Attorney for Evergreen BioPower, LLC

FROM: Karla Wenzel
Senior Manager, Rates & Regulatory Affairs, Portland General Electric

**PORTLAND GENERAL ELECTRIC
UM 1998
PGE Response to Evergreen Data Request No. 4.13**

Request:

- 4.13 Suppose Evergreen schedules a flat, 6 MW hourly schedule, and its net output varies during that hour from 4MW to 8 MW, but averages 6 MW for the hour:**
- a. How does the value of the product differ (to PGE) compared to if Evergreen generated 6 MW during the entire hour without fluctuation?**
 - b. Does PGE know in real time anything about Evergreen's output other than whether it is delivering its scheduled energy delivery?**

Response:

- a. It does not.
- b. PGE objects that this request is vague, ambiguous, and lacking foundation—PGE does not know whether Evergreen “is delivering its scheduled energy delivery.” Rather, PGE knows whether it is receiving from the transmission provider the amount of energy Evergreen scheduled.

TO: Ken Kaufmann
Attorney for Evergreen BioPower, LLC

FROM: Karla Wenzel
Senior Manager, Rates & Regulatory Affairs, Portland General Electric

**PORTLAND GENERAL ELECTRIC
UM 1998
PGE Response to Evergreen Data Request No. 4.14**

Request:

4.14 Has PGE ever complained to Evergreen about its deliveries? If so, please describe the nature of the complaint, and who communicated the complaint.

Response:

No.

TO: Ken Kaufmann
Attorney for Evergreen BioPower, LLC

FROM: Karla Wenzel
Senior Manager, Rates & Regulatory Affairs, Portland General Electric

**PORTLAND GENERAL ELECTRIC
UM 1998
PGE Response to Evergreen Data Request No. 4.15**

Request:

4.15 How did PGE change its daily settlement practices for off-system QFs after FERC's ruling in *PaTu Wind Farm, LLC v. PGE*, 154 FERC P61,167?

Response:

PGE objects that this request is vague, ambiguous, and lacking foundation, in that it appears to be premised upon the incorrect assumption that *PaTu Wind Farm, LLC v. PGE*, 154 FERC P61,167, addressed settlement practices or required PGE to change its daily netting practices. Notwithstanding and without waiving its objections, PGE responds as follows: PGE's general daily settlement practices for off-system QFs did not change after the *PaTu* ruling referenced in the request.

TO: Ken Kaufmann
Attorney for Evergreen BioPower, LLC

FROM: Karla Wenzel
Senior Manager, Rates & Regulatory Affairs, Portland General Electric

**PORTLAND GENERAL ELECTRIC
UM 1998
PGE Response to Evergreen Data Request No. 4.16**

Request:

4.16 What changes, if any, has PGE made to its imbalance energy settlement practices for off-system Schedule 201 power purchase agreements since FERC issued its several orders in the PaTu Wind dispute? Please specify which existing Schedule 201 off-system QFs were affected by those changes.

Response:

PGE objects that this request is vague, ambiguous, and lacking foundation, in that it appears to be premised upon the incorrect assumption that the FERC orders in the *PaTu* dispute addressed imbalance energy settlement practices or required PGE to change its practices. Notwithstanding and without waiving its objections, PGE responds as follows: PGE's general energy settlement practices for off-system QFs did not change after the *PaTu* orders.