



ALISHA TILL  
Direct (503) 290-3628  
alisha@mrg-law.com

December 21, 2017

**VIA ELECTRONIC FILING**

Attention: Filing Center  
Public Utility Commission of Oregon  
P.O. Box 1088  
Salem, Oregon 97308-1088

**Re: Docket UM 1887: Stipulated Facts**

Dear Filing Center:

Attached for filing in the above-captioned docket is a copy of the Parties' Stipulated Facts for Cross Motion for Summary Judgment. Confidential copies will be sent to the Commission via postal delivery.

Please contact this office with any questions.

Very truly yours,

A handwritten signature in blue ink that reads "Alisha Till".

Alisha Till  
Administrative Assistant

Attachments

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UM 1887**

Portland General Electric Company,  
Complainant

v.

Covanta Marion, Inc.,  
Respondent.

**STIPULATED FACTS FOR CROSS  
MOTIONS FOR SUMMARY  
JUDGMENT**

1           Portland General Electric Company (PGE) and Covanta Marion, Inc. (Covanta) stipulate  
2 to the following facts:

3           1.     Covanta owns and operates a waste to energy facility (Facility) located in Brooks,  
4 Oregon. The Facility has been in operation since 1987. It is currently comprised of two 275-  
5 ton-per-day Martin mass burn combustion trains feeding steam to one Mitsubishi Hitachi Power  
6 Systems steam turbine. The Facility uses municipal solid waste as its primary fuel source.

7           2.     The Facility was originally designed and constructed with, and still currently has,  
8 a manufacturer's nameplate capacity rating of 13.1 MW. In its Federal Energy Regulatory  
9 Commission (FERC) Form 556, Covanta stated that it has a generation capacity of  
10 approximately 15 MW.

11          3.     In its present configuration, the Facility is capable of producing and regularly  
12 produces energy in excess of 10 MW. Over the past year, based on the hourly generation data,  
13 the approximate net production of the Facility delivered to PGE exceeded eleven (11) MW  
14 during one and three-tenths percent (1.3%) of the hours, and exceeded ten (10) MW during fifty-  
15 six and seven-tenths percent (56.7%) of the hours.

16          4.     The Facility is self-certified with the FERC as a qualifying facility (QF) under the  
17 Public Utility Regulatory Policies Act (PURPA).

1           5.     Covanta has at all times sold all of the output of the Facility to PGE under power  
2 purchase agreements (PPA). The initial PPA between Covanta and PGE, which was a PURPA  
3 agreement, was entered into on September 7, 1984 and expired on June 30, 2014 (the “1984  
4 PURPA PPA”).

5           6.     On June 10, 2013, Covanta sent a formal request to PGE to negotiate a Schedule  
6 202 contract to replace the 1984 PURPA PPA. On June 19, 2013, PGE provided Covanta with  
7 indicative pricing for a Schedule 202 contract. On July 12, 2013, PGE sent Covanta a term sheet  
8 for a Schedule 202 contract. On April 12, 2014, Covanta initiated the process to obtain an  
9 interconnection agreement to replace the interconnection provisions embedded in the expiring  
10 1984 PURPA PPA. PGE and Covanta did not reach agreement on a Schedule 202 contract.

11          7.     In lieu of a Schedule 202 contract, on October 9, 2013, PGE tendered to Covanta  
12 a three-year “merchant” contract based on the Edison Electric Institute Master Power Purchase  
13 and Sale Agreement (the “Merchant PPA”). Following execution of the Merchant PPA, on  
14 December 2, 2013, the Parties agreed to terms on the interconnection agreement.

15          8.     The Merchant PPA expired on September 30, 2017. Since that time, the Parties  
16 have been operating under short-term extensions of the Merchant PPA pending the execution of  
17 a new PURPA contract requested by Covanta.

18          9.     On May 2, 2016, representatives of Covanta and PGE held a teleconference to  
19 discuss options for a long-term replacement to the Merchant PPA. Among other things, Covanta  
20 raised on this call the possibility that it might increase the Facility’s nameplate capacity, or  
21 decrease the Facility’s nameplate capacity rating to 10 MW.

22          10.    Following the May 2, 2016 discussion with PGE, Covanta negotiated and  
23 executed a written agreement to have Mitsubishi Hitachi Power Systems, the original turbine  
24 manufacturer, overhaul and physically modify the turbine. Upon completion of such overhaul  
25 and modifications, the Facility will have a new official manufacturer nameplate capacity rating

1 of 10 MW. A relevant excerpt of the agreement showing the scope of work to be completed by  
2 Mitsubishi Hitachi Power Systems is attached hereto as Exhibit A (Confidential).

3 11. In order to complete the overhaul and turbine modifications, Mitsubishi Hitachi  
4 Power Systems will have to take the turbine completely off-line. Mitsubishi Hitachi Power  
5 Systems has committed in writing to complete the overhaul and modification, and to bring the  
6 Facility back on-line, by September of 2019.

7 12. The primary purpose of having Mitsubishi Hitachi Power Systems modify the  
8 turbine and re-rate the Facility is so that it will qualify for a Schedule 201 contract under current  
9 Commission rules and policies implementing PURPA.

10 13. On March 2, 2017, Covanta sent PGE a letter explaining that “Covanta is  
11 undertaking a turbine modification and re-rate project at the Facility to achieve a Nameplate  
12 Capacity Rating of 10,000 kW and a Commercial Operation Date of September 20, 2019.”  
13 Based on the revised manufacturer nameplate capacity rating, Covanta indicated that it “hereby  
14 elects as of the date of this letter to enter into . . . the enclosed Schedule 201 Contract.” Covanta  
15 sent PGE a signed Schedule 201 Standard Contract.

16 14. On or about March 22, 2017, Angeline Chong of PGE sent Covanta a written  
17 response confirming PGE’s receipt of Covanta’s Schedule 201 contract request and attaching  
18 PGE’s initial information request. A copy of that letter is attached as Exhibit B.

19 15. On May 5, 2017, PGE wrote a second letter to Covanta explaining that the FERC  
20 Form 556 provided by Covanta listed the Facility’s nameplate capacity as approximately 15  
21 MW—and for that reason the Facility is not eligible for a Schedule 201 contract. The letter also  
22 stated that upon completion of the re-rate, however, Covanta could submit a new Schedule 201  
23 contract request for the Facility. A copy of that letter is attached as Exhibit C.

24 16. On June 8, 2017, counsel for PGE contacted counsel for Covanta and explained  
25 that it is PGE’s view that, under OPUC policy, a QF with a nameplate capacity of above 10 MW

1 cannot render itself eligible for a Standard Contract by voluntarily modifying an existing facility  
2 to obtain a new nameplate capacity at or below 10 MW.

3 17. Covanta and PGE currently dispute whether, under existing Commission rules  
4 and policies implementing PURPA, the Facility is eligible for a Schedule 201 contract based on  
5 the intended physical modifications to the turbine and revised Facility manufacturer nameplate  
6 capacity rating of 10 MW.

7 18. PGE initiated this UM 1887 proceeding with the Commission on August 11, 2017  
8 in order to resolve the dispute.

Dated this 21st day of December 2017.

**MCDOWELL RACKNER GIBSON PC**



Lisa F. Rackner  
Jordan R. Schoonover  
419 SW 11<sup>th</sup> Avenue, Suite 400  
Portland, Oregon 97205  
Telephone: (503) 595-3925  
Facsimile: (503) 595-3928  
[dockets@mrg-law.com](mailto:dockets@mrg-law.com)

**PORTLAND GENERAL ELECTRIC COMPANY**

Donald J. Light  
Associate General Counsel  
121 SW Salmon Street, 1WTC1301  
Portland, Oregon 97204  
Telephone: (503) 464-8315  
[donald.light@pgn.com](mailto:donald.light@pgn.com)

Attorneys for Portland General Electric Company

**EXHIBIT A IS CONFIDENTIAL PER  
PROTECTIVE ORDER 17-505 AND  
WILL BE PROVIDED SEPARATELY**

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UM 1887**

**PORTLAND GENERAL ELECTRIC COMPANY**

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Exhibit B

December 21, 2017



**Portland General Electric Company**  
121 SW Salmon Street • Portland, Oregon 97204

**March 22, 2017**

Coventa Marion, Inc  
4850 Brooklake Road  
Brooks, OR 97305  
skabbani@coventa.com

RE: Schedule 201 Initial Information Form

Dear **Mr. Kabbani**,

Thank you for your interest in a Standard Power Purchase Agreement (Standard PPA). The process of obtaining a Standard PPA from Portland General Electric (PGE) is governed by PGE Schedule 201, a copy of which is available online at:

<https://www.portlandgeneral.com/-/media/public/business/power-choices-pricing/documents/business-sched-201.pdf>

To qualify for a Standard PPA, your generation project must satisfy a number of state and federal requirements. Among other requirements, your project must be certified as a qualifying facility pursuant to 18 CFR 292.207 and it must have a total manufacturer's nameplate capacity of 10,000 kilowatts or less.

**First Step—Provide PGE with Information**

The first step in the process of obtaining a Standard PPA is for you to provide PGE with the information identified in the enclosed *Schedule 201 Initial Information Form*. You should provide your response in writing. Please do not submit project information by filling in a copy of one of PGE's form contracts. Under the process established by Schedule 201 and approved by the Public Utility Commission of Oregon (OPUC), PGE will generate each draft of the Standard PPA.

Within 15 business days of receiving your written response to PGE's *Schedule 201 Initial Information Form*, PGE will send you either a draft Standard PPA or a request for additional or clarifying information.

PGE will send you a request for more information if you have failed to provide all of the required information or if PGE requires additional or clarifying information to fully understand your proposal. Within 15 business days of receiving your written response to an additional information request, PGE will send you either a draft PPA or another request for additional or clarifying information. This process will repeat as necessary until PGE has sufficient information to understand your proposal and prepare a draft

**Mr. Kabbani**  
**March 22, 2017**  
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PPA. Vague, uncertain, inconsistent or incomplete information is likely to lead to additional information requests. The best way to expedite the process of obtaining a draft Standard PPA is to provide PGE with specific, detailed and complete responses to all requests for information in PGE's *Schedule 201 Initial Information Form*.

The terms and conditions of PGE's Standard PPAs have been reviewed and approved by the OPUC. Most of the language of the Standard PPA is fixed and is not subject to negotiation or change. However, there are a number of *variable terms* that will differ from project to project. These variable terms will fill blank spaces in the standard form contract and will populate the contract exhibits. PGE will use the information you provide to insert variable terms into a draft Standard PPA.

### **The Rest of the Process—Draft PPA, Final Draft PPA, and Executable PPA**

Once you have received your draft Standard PPA you will have several options: you can decide not to pursue an agreement any further; you can propose changes to your project or to the variable terms of the draft Standard PPA; or you can indicate that the draft Standard PPA is acceptable and request that PGE prepare a final draft Standard PPA.

If you propose substantive changes, PGE will treat your proposal as a new request for a draft Standard PPA and, within 15 business days of receiving your written proposal to change project details or the variable terms of the draft contract, PGE will send you either a new draft Standard PPA or request additional or clarifying information as necessary to fully understand your proposal.

If you ask PGE to prepare a final draft Standard PPA without substantive changes to the project proposal or variable terms, then, within 15 business days of receiving your written request, PGE will send you either a final draft Standard PPA or a request for any additional or clarifying information needed by PGE to prepare a final draft Standard PPA.

Once you have received a final draft Standard PPA, you will need to request in writing an executable Standard PPA. Within 15 business days of receiving your written request for an executable contract, PGE will send you either an executable Standard PPA, a new draft Standard PPA (if you have requested substantive changes as part of your request for an executable Standard PPA), or a request for additional or clarifying information if PGE determines that more information is needed to prepare an executable or new draft Standard PPA.

Once you receive an executable Standard PPA, you can execute it without alteration and establish a legally enforceable obligation. Pursuant to PGE's Schedule 201 at Sheet No. 201-3 and OPUC Order No. 16-174 at 3, the power purchase prices you are entitled to receive under your Standard PPA for the first 15 years of the contract term will be based on PGE's Standard Avoided Costs or Renewable Avoided Costs in effect at the time that you execute an executable Standard PPA provided to you by PGE.

**Mr. Kabbani**  
**March 22, 2017**  
Page 3 of 3

This letter summarizes the Standard PPA process; it does not address every detail of the process. Additional details will be provided in letters associated with each stage of the process. If you have any questions, please contact PGE's Power Production Coordinator at (503) 464-8000.

Sincerely,



Angeline D. Chong |

Portland General Electric |

121 SW Salmon St. 3WTC0306 | Portland, Oregon 97204 |

W: 503-464-7343 | F: 503-464-2605 |

E: [angeline.chong@pgn.com](mailto:angeline.chong@pgn.com)

enclosure: *Schedule 201 Initial Information Form*

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UM 1887**

**PORTLAND GENERAL ELECTRIC COMPANY**

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Exhibit C

December 21, 2017



**Portland General Electric Company**  
121 SW Salmon Street • Portland, Oregon 97204

**May 5, 2017**

Covanta Marion, Inc  
4850 Brooklake Road  
Brooks, OR 97305  
skabbani@covanta.com

RE: Transmittal of Draft Standard PPA  
**Covanta Marion** project, an existing **15 megawatt biomass QF**

Dear **Mr. Kabbani**,

Thank you for your interest in entering into a Standard Power Purchase Agreement (Standard PPA) with Portland General Electric (PGE). We received your written response to PGE's *Schedule 201 Initial Information Form* on **April 17, 2017**.

Based on the information you provided, PGE has determined that the Covanta Marion project ("Covanta") does not meet the requirements necessary to qualify for Schedule 201, and we are unable to provide you with a draft Schedule 201 PPA at this time.

Covanta is an existing facility with a rated nameplate capacity of 15 megawatts per the Form 556 submitted, and as such, your project does not qualify for a Schedule 201 at this time.

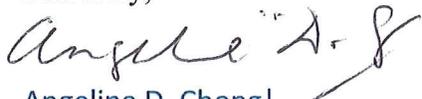
You have shared your intention to rerate the Covanta at 10MW or less, and upon completion of the proposed rerate you may submit a new Schedule 201 PPA request subject to the prevailing terms and conditions at the time of your request. Until such time, Covanta may be eligible for PGE's Schedule 202.

Options available to Covanta are as follows:

1. Submit a new request for consideration under PGE's Schedule 202
2. Negotiate a new bilateral agreement
3. Submit a new request for Schedule 201 upon completion of the rerate

Please let us know how you would to proceed.

Sincerely,

A handwritten signature in cursive script, appearing to read "Angeline D. Chong".

Angeline D. Chong |  
Portland General Electric |  
121 SW Salmon St. 3WTC0306 | Portland, Oregon 97204 |  
W: 503-464-7343 | F: 503-464-2605 |  
E: [angeline.chong@pgn.com](mailto:angeline.chong@pgn.com)