

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1861

Served electronically at Salem, Oregon, 8/7/17, to:

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Re: UM 1861, Complainant VOLCANO SOLAR, LLC
vs. PORTLAND GENERAL ELECTRIC COMPANY, Respondent

Volcano Solar, LLC has filed a complaint against Portland General Electric. A copy of the complaint is attached and served on Respondent, under ORS 756.512(1). The Commission has assigned Docket No. UM 1861 to this complaint. Please use this number whenever you refer to this case.

The Public Utility Commission must receive an Answer from the Respondent or their attorney by August 28, 2017, under OAR 860-001-0400(4)(a). A copy must be served on the complainant.

After the filing of the answer, the matter will be set for hearing and you will be notified of the time and place.

PUBLIC UTILITY COMMISSION OF OREGON



Cheryl Walker
Administrative Specialist 2
Administrative Hearings Division
(503) 378-2849

c: Barbara Parr, barbara.parr@pgn.com

Attachments: Complaint
Notice of Contested Case Rights and Procedures

NOTICE OF CONTESTED CASE RIGHTS AND PROCEDURES

Oregon law requires state agencies to provide parties written notice of contested case rights and procedures. Under ORS 183.413, you are entitled to be informed of the following:

Hearing: The time and place of any hearing held in these proceedings will be noticed separately. The Commission will hold the hearing under its general authority set forth in ORS 756.040 and use procedures set forth in ORS 756.518 through 756.610 and OAR Chapter 860, Division 001. Copies of these statutes and rules may be accessed via the Commission's website at www.puc.state.or.us. The Commission will hear issues as identified by the parties.

Right to Attorney: As a party to these proceedings, you may be represented by counsel. Should you desire counsel but cannot afford one, legal aid may be able to assist you; parties are ordinarily represented by counsel. The Commission Staff, if participating as a party in the case, will be represented by the Department of Justice. Generally, once a hearing has begun, you will not be allowed to postpone the hearing to obtain counsel.

Administrative Law Judge: The Commission has delegated the authority to preside over hearings to Administrative Law Judges (ALJs). The scope of an ALJ's authority is defined in OAR 860-001-0090. The ALJs make evidentiary and other procedural rulings, analyze the contested issues, and present legal and policy recommendations to the Commission.

Hearing Rights: You have the right to respond to all issues identified and present evidence and witnesses on those issues. *See* OAR 860-001-0450 through OAR 860-001-0490. You may obtain discovery from other parties through depositions, subpoenas, and data requests. *See* ORS 756.538 and 756.543; OAR 860-001-0500 through 860-001-0540.

Evidence: Evidence is generally admissible if it is of a type relied upon by reasonable persons in the conduct of their serious affairs. *See* OAR 860-001-0450. Objections to the admissibility of evidence must be made at the time the evidence is offered. Objections are generally made on grounds that the evidence is unreliable, irrelevant, repetitious, or because its probative value is outweighed by the danger of unfair prejudice, confusion of the issues, or undue delay. The order of presenting evidence is determined by the ALJ. The burden of presenting evidence to support an allegation rests with the person raising the allegation. Generally, once a hearing is completed, the ALJ will not allow the introduction of additional evidence without good cause.

Record: The hearing will be recorded, either by a court reporter or by audio digital recording, to preserve the testimony and other evidence presented. Parties may contact the court reporter about ordering a transcript or request, if available, a copy of the audio recording from the Commission for a fee set forth in OAR 860-001-0060. The hearing record will be made part of the evidentiary record that serves as the basis for the Commission's decision and, if necessary, the record on any judicial appeal.

Final Order and Appeal: After the hearing, the ALJ will prepare a draft order resolving all issues and present it to the Commission. The draft order is not open to party comment. The Commission will make the final decision in the case and may adopt, modify, or reject the ALJ's recommendation. If you disagree with the Commission's decision, you may request reconsideration of the final order within 60 days from the date of service of the order. *See* ORS 756.561 and OAR 860-001-0720. You may also file a petition for review with the Court of Appeals within 60 days from the date of service of the order. *See* ORS 756.610.

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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

Volcano Solar, LLC,)	
Complainant,)	DOCKET NO. ____
)	
v.)	COMPLAINT
)	
Portland General Electric Company,)	
Defendant.)	
)	
_____)	

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I. INTRODUCTION

This is a complaint (“Complaint”) filed by Volcano Solar, LLC (“Volcano Solar” or “Complainant”) with the Oregon Public Utility Commission (the “Commission” or “OPUC”) under Oregon Revised Statute (“ORS”) 756.500 and Oregon Administrative Rule (“OAR”) 860-001-0170. Portland General Electric Company (“PGE” or the “Company”) has not agreed to purchase the net output from Volcano Solar’s solar qualifying facility (“QF”) (“Volcano Solar Project”) as a mandatory purchase under the Public Utility Regulatory Policies Act of 1978 (“PURPA”). PGE has failed to comply with its own rate Schedule 201, the Commission’s rules and policies, the Federal Energy Regulatory Commission’s (“FERC”) rules and policies, and the Oregon and federal

1 PURPA statutes. PGE has refused to finalize or execute a power purchase agreement
2 (“PPA”) with Volcano Solar.

3 Volcano Solar has formed a legally enforceable obligation because it has been
4 ready, willing, and able to sign a PPA with PGE since at least July 27, 2017, and has
5 repeatedly and unequivocally committed itself to sell the net output to PGE at the
6 Schedule 201 avoided cost rates and standard PPA terms and conditions that are currently
7 in effect. This includes Volcano Solar obligating itself to provide power or be subject to
8 penalty pursuant to the standard PPA terms and conditions for failing to deliver energy on
9 the scheduled commercial on-line date. PGE should be required to execute a PPA with
10 Volcano Solar because the establishment of a legally enforceable obligation turns on
11 Volcano Solar’s commitment, and not PGE’s actions.

12 Volcano Solar has formed a legally enforceable obligation despite PGE’s failure
13 to execute a PPA because PGE has violated PURPA, the Commission’s and FERC’s
14 rules and policies, and its own Schedule 201. PGE’s actions that have sought to prevent
15 Volcano Solar from forming a legally enforceable obligation include, but are not limited
16 to: 1) delaying the PPA negotiation process; 2) seeking interim relief to prevent Volcano
17 Solar from being able to execute a PPA;¹ 3) refusing to inform Volcano Solar that it was
18 going to make or had made its Solar Limitation Filing;² 4) seeking an early rate effective

¹ Specifically, PGE has proposed to lower the size threshold for standard contract prices to 2 to 3 megawatts (“MW”) and impose a permanent lifetime cap on any owner that prevents them from even requesting more than 10 MW of standard contract QF projects (“Solar Limitation Filing”). PGE has sought interim relief to make the Solar Limitation Filing retroactive to June 30, 2017. If granted, then these restrictions could apply to Volcano Solar because it is more than 2 MW and its owner has requested more than 10 MW of QF projects.

² PGE’s purpose in not informing Volcano Solar was to ensure that Volcano Solar would not complete and execute a PPA prior to June 30, 2017. PGE decided

1 date for its post Integrated Resource Plan avoided cost rate update;³ 5) failing to inform
2 Volcano Solar seeking an early rate effective date for its post Integrated Resource Plan
3 avoided cost rate update; 6) stating that it was not willing to provide Volcano Solar with
4 an executable PPA or otherwise execute a PPA; 7) refusing to provide an executable PPA
5 or otherwise execute a PPA that should have been provided;⁴ and 8) claiming that it no
6 longer needs to comply with the law since it has sought interim relief seeking to change
7 the Commission's PURPA policies. PGE is required to comply with Commission orders
8 and policies, and cannot unilaterally refuse to comply with the law or prevent Volcano
9 Solar from forming a legally enforceable obligation simply because it has sought, but not
10 yet obtained, equitable relief seeking to retroactively lower the solar size threshold and
11 imposing a permanent lifetime cap on any one owner requesting standard contract and
12 rate PPAs.

sometime in early 2017 that it would attempt to delay the PPA negotiation process past June 30, 2017, and that it would refuse to provide an executable PPA, if it was able to delay negotiations past June 30, 2017. But for PGE keeping its plans a secret, Volcano Solar's PPA would have been more expeditiously processed and it could have been fully executed.

³ On August 4, 2017, PGE announced in its 2016 IRP that PGE will ask the Commission to change its current avoided cost rate process (which re-sets avoided cost rates only after approval of a new rate filing that is made 30 days after the IRP acknowledgment) to instead ensure that the avoided cost prices paid to QFs that enter into contracts or achieve a legally enforceable obligation after the Commission's acknowledgement will no longer to be eligible for the current rates ("August Early Rate Effective Date Request").

⁴ Volcano Solar has been working on obtaining a PPA for over three months, and has requested a final and executable PPA. Under FERC's policies and rules, a legally enforceable obligation can be effectuated in less than one month. Under the Commission's policies and Schedule 201, an executable contract can generally be provided in less than two months from initial request. In addition, Volcano Solar would have requested and obtained an executable PPA earlier, if PGE had provided advance notice of the May 1, 2017 avoided cost rate update, or its Solar Limitation Filing.

1 The Commission cannot revise its own rules or policies to lower the size
2 threshold, impose an ownership cap, or make other changes in a manner that effectively
3 prevents Volcano Solar from committing itself to sell the net output of its project or
4 otherwise creating a legally enforceable obligation. Volcano Solar has relied upon the
5 Commission maintaining a settled and uniform institutional climate for QFs, and
6 upholding its policies regarding eligibility for standard avoided cost rates and contracts,
7 including ensuring that Volcano Solar is able to enter contracts or create legally
8 enforceable obligations based on the policies and rules in effect at the time that the QF
9 makes its request for a PPA.

10 Given PGE's refusal to execute a PPA and attempt to change Commission
11 policies to prevent Volcano Solar from executing a PPA, Volcano Solar respectfully
12 requests that the Commission confirm: 1) that Volcano Solar has a legally enforceable
13 obligation with PGE based on its commitment to sell its net output under the partially
14 executed PPA, which is the same as the Commission's approved contract and rates and
15 the last draft PPA provided by PGE; and 2) require PGE to enter into a PPA with
16 Volcano Solar with the rates, terms, and conditions under Schedule 201 and the standard
17 renewable PPA currently in effect.

18 **II. SERVICE**

19 Copies of all pleadings and correspondence should be served on Volcano Solar's
20 counsel and representatives at the addresses below:

21	Irion Sanger	Troy Snyder
22	Sanger Law, PC	Volcano Solar, LLC
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7

8 In support of this Complaint, Volcano Solar alleges as follows:

9 **III. IDENTITY OF THE PARTIES**

10 1. PGE is an investor-owned public utility regulated by the Commission
11 under ORS Chapter 757. PGE is headquartered at 121 Southwest Salmon Street,
12 Portland, Oregon 97204.

13 2. Volcano Solar, a limited liability company organized under the laws of
14 Oregon, is the owner of the Volcano Solar Project and will be the seller of the net output
15 of the Volcano Solar Project. Volcano Solar's mailing address is Volcano Solar, c/o TLS
16 Capital, Inc., 3519 NE 15th Ave., #325, Portland, Oregon 97212.

17 **IV. APPLICABLE STATUTES AND RULES**

18 3. The Oregon statutes expected to be involved in this case include:
19 ORS 756.040-756.068, 756.500-756.558, 756.990, and 758.505-758.575. The Oregon
20 rules expected to be involved in this case include: OAR 860-001, and 860-029.

21 4. The federal statute expected to be involved in this case is PURPA, 16
22 United States Code ("USC") 824a-3. The federal rules expected to be involved in this
23 case include: 18 Code of Federal Regulations ("CFR") 292.101-292.602.

24 **V. JURISDICTION**

25 5. FERC has adopted regulations and policies governing utility purchases
26 from QFs under PURPA. 18 CFR 292.101-292.602. State regulatory agencies are
27 required to implement FERC's regulations. See 16 USC 824a-3(f); FERC v. Mississippi,

1 456 U.S. 742, 751, 102 S. Ct. 2126 (1982). FERC’s rules provide each QF with the right
2 to unilaterally create a legally enforceable obligation to sell its energy and capacity at
3 projected avoided cost rates in effect on the date that the QF obligates itself to sell energy
4 and capacity. 18 CFR 292.304(d)(2)(ii); FLS Energy Inc., 157 FERC ¶ 61,211 at PP 23-
5 25 (2016).

6 6. Oregon law also includes a requirement that a QF has the right to legally
7 obligate itself to sell its net output prior to the delivery of its net output. Specifically,
8 ORS 758.525(2)(b) provides: “At the option of the qualifying facility, exercised before
9 beginning delivery of the energy or energy and capacity, such prices may be based on . . .
10 [t]he projected avoided costs calculated at the time the legal obligation to purchase the
11 energy or energy and capacity is incurred.” Thus, the “obligation to purchase power is
12 imposed by law on a utility; it is not voluntarily assumed.” Snow Mountain Pine Co. v.
13 Maudlin, 84 Or. App. 590, 598, 734 P.2d 1366 (1987).

14 7. The Commission is the Oregon state agency that implements the state and
15 federal PURPA statutes. ORS 758.505(3); OAR 860-029-0001; Snow Mountain, 84 Or.
16 App. at 593. Public utilities are defined in ORS 758.505(7), and include PGE. Oregon
17 law provides that the “terms and conditions for the purchase of energy or energy and
18 capacity from a qualifying facility shall . . . [b]e established by rule by the commission if
19 the purchase is by a public utility.” ORS 758.535(2)(a). The Commission has the power
20 and jurisdiction to hear complaints by QFs against public utilities, including PGE. ORS
21 756.040, 756.500-756.558, and 758.505-758.555; OAR 860-001-0010(3), and 860-029-
22 0030.

23 VI. FACTUAL BACKGROUND

1 8. The Volcano Solar Project will be a 0.75 megawatt (“MW”) nameplate
2 solar generation facility located in Yamhill County, Oregon.

3 9. The Volcano Solar Project will interconnect with PGE.

4 10. Volcano Solar is owned by TLS Capital.

5 11. TLS Capital has previously submitted and executed standard PPAs with
6 PGE, including the Willamina Mill Solar Project.

7 12. The Willamina Mill Solar Project will be 2.2 MW nameplate solar
8 generation facility located in Polk County, Oregon.

9 13. The Willamina Mill Solar Project will interconnect with PGE.

10 14. Volcano Solar understood that PGE would make its annual avoided cost
11 rate update filing on May 1, 2017, but expected PGE’s avoided cost rates to change in the
12 end of June 2017.

13 15. Volcano Solar is aware that PGE’s integrated resource plan is scheduled
14 for acknowledgement at the end of August 2017, and expects PGE’s avoided cost rates to
15 be revised about two months later, or the end of October 2017.

16 16. Before May 1, 2017, PGE decided to prepare an application that would
17 update and lower its Schedule 201 prices and request Commission approval at the May
18 16, 2017 public meeting (“May 1 Update”).

19 17. On May 1, 2017, PGE filed its May 1 Update.

20 18. PGE chose not to inform QFs that it was planning to file its May 1 Update
21 and to seek an early effective date and approval at the May 16, 2017 public meeting.

22 19. On May 5, 2017, Volcano Solar initially contacted PGE and requested a
23 standard PPA.

1 20. PGE did not respond to Volcano Solar's initial contact.

2 21. On May 9, 2017, Volcano Solar again contacted PGE and requested a
3 standard PPA.

4 22. On June 2, 2017, Volcano Solar provided complete information to obtain a
5 standard PPA.

6 23. On June 16, 2016, TLS Capital inquired regarding its Willamina Mill
7 Solar facility and spoke with PGE regarding the maximum generation numbers. The
8 Willamina Mill Solar PPA was executed by PGE. TLS Capital inquired because PGE
9 offered no guidance regarding the maximum generation number, and informed PGE that
10 it would use 150% of the year 1 generation. PGE accepted this in the Willamina Mill
11 Solar facility without an inquiry.

12 24. On June 22, 2017, PGE did not provide Volcano Solar with a draft
13 standard PPA, instead responded with a letter requesting clarifying information regarding
14 the maximum generation.

15 25. TLS Capital submitted substantially the same type of information
16 regarding previous QFs' maximum generation, and PGE did not raise any other issues or
17 ask for any additional clarifying information, with the one exception of inquiring about
18 the maximum generation hourly profile.

19 26. PGE should have at least provided a draft PPA at this time because that
20 TLS Capital had submitted similar information using the exact same methodology and
21 obtained an executed PPA.

1 27. PGE should have provided a draft PPA because Volcano Solar had
2 provided all the required information under Schedule 201 and PGE's Initial Information
3 Request.

4 28. On June 28, 2017, Volcano Solar provided clarifying information
5 regarding the maximum generation profile.

6 29. On June 29, 2017, PGE responded that they received the additional
7 information and that by July 20, 2017 PGE will send either a draft standard PPA or a
8 request for any additional or clarifying information.

9 30. On or after May 1, 2017, PGE decided to prepare its Solar Limitation
10 Filing. This filing would propose to lower the eligibility cap for a QF to obtain standard
11 avoided cost prices from PGE from 10 MW to 3 MW, and declare that a solar QF project
12 with a capacity above 100 kilowatts ("kW") is not eligible for a standard contract or
13 standard prices from PGE if any owner of the solar QF project has requested or obtained
14 standard prices from PGE for more than 10 MW of solar QF capacity; or in the
15 alternative, lower to 2 MW the eligibility cap for a solar QF project to obtain prices from
16 PGE effective June 30, 2017.

17 31. PGE chose not to inform Volcano Solar that PGE intended to make the
18 Solar Limitation Filing.

19 32. PGE did not inform Volcano Solar and other QFs that PGE intended to
20 make the Solar Limitation Filing in order to ensure that Volcano Solar would not execute
21 a PPA before June 30, 2017.

22 33. Volcano Solar was materially prejudiced by PGE's failure to give notice
23 because, among other things, it prevented Volcano Solar from having the opportunity to

1 expedite its request and Volcano Solar would have processed its PPA request more
2 quickly if it had been aware that PGE intended to make the Solar Limitation Filing.

3 34. On July 20, 2017, PGE did not send either a draft standard PPA or a
4 request for any additional or clarifying information.

5 35. On July 22, 2017, PGE sent a letter once again requesting additional or
6 clarifying information. The additional or clarifying information requested on July 22,
7 2017 was in relation to the year 1 generation profile, which was not inquired about or
8 asked to be clarified in PGE's first request for clarifying information on June 22, 2017.

9 36. On July 24, 2017, Volcano Solar responded to PGE requesting that PGE
10 provide a draft Standard PPA immediately and that PGE reduce the time for PGE to
11 provide the final draft PPA for each day of the delay. Volcano Solar pointed out that
12 there was no need for additional information because "Everything that was provided as
13 part of the IIR for Volcano Solar was the same material provided in previous IIRs for
14 other PPAs which TLS Capital has requested and which PGE deemed complete and
15 ultimately executed."

16 37. PGE ignored Volcano Solar's July 24, 2017 email.

17 38. On July 26, 2017, Volcano Solar again inquired about the status of its
18 draft PPA, and sent a follow up to email to confirm that the previous email was received
19 and request that PGE immediately provide a draft Standard PPA.

20 39. On July 26, 2017, PGE finally responded stating that they are waiting on
21 additional or clarifying information and that within 15 business days of receiving that
22 information, they would send either a draft Standard PPA or another request for

1 additional or clarifying information. It is not clear if PGE would have ever responded to
2 Volcano Solar's inquires if Volcano Solar had not followed up.

3 40. On July 27, 2017, almost two months after submitting all the required
4 information, Volcano Solar requested that PGE provide a final and executable PPA, and
5 was ready, willing, and able to sign a PPA.

6 41. Volcano may have committed and been ready, willing and able to execute
7 a PPA earlier, if PGE had not raised unreasonable objections and requests for additional
8 information.

9 42. On July 27, 2017, Volcano Solar explained why the year 1 hourly
10 generation profile should be acceptable to PGE.

11 43. On July 28, 2017, PGE responded by not providing an executable or draft
12 PPA, but again concerns regarding information in the Initial Information Request dated
13 June 28, 2017. PGE stated that it was struggling to understand Volcano Solar's
14 "Maximum Annual Net Output value in comparison to the Average Annual Net Output
15 value. This was a new issue that PGE had not previously raised.

16 44. On July 28, 2017, PGE did not clarify whether its separate concern
17 regarding the year 1 hourly generation profile is now acceptable to PGE.

18 45. On July 31, 2017, Volcano Solar noted that TLS Capital noted that it
19 previously submitted similar information was deemed acceptable to PGE, and provided
20 the example of the maximum generation numbers for the Willamina Mill Solar Facility
21 that PGE accepted without an inquiry.

22 46. On July 31, 2017, Volcano Solar stated that the only difference between
23 the Volcano Solar Facility and Willamina Mill Solar Facility is that PGE has requested to

1 change the Commission's policies regarding standard price and contract provisions on
2 June 30, 2017.

3 47. On July 31, 2017, Volcano Solar stated that PGE is raising unreasonable
4 and discriminatory questions and issues in an effort to delay the PPA negotiation process
5 so that it does not execute a PPA prior to a Commission order potentially changing its
6 policies.

7 48. On July 31, 2017, Volcano Solar requested an executable PPA from PGE
8 prior to the Commission issuing any orders in its Solar Limitation Filing. Volcano Solar
9 made it clear that it was again obligating itself to provide power or be subject to penalty
10 pursuant to the standard PPA terms and conditions for failing to deliver energy on the
11 scheduled commercial on-line date.

12 49. On August 1, 2017, PGE informed Volcano Solar that it did not agree
13 with all of Volcano Solar's characterizations, that is still seeks information that validates
14 the Maximum Annual Net Output value, and that PGE does not expect that both parties
15 will be in full agreement as to all terms and conditions until Volcano Solar provides
16 additional information that allows PGE to understand the value proposed by Volcano
17 Solar.

18 50. On August 1, 2017, PGE provided Volcano Solar a draft PPA.

19 51. On August 4, 2017, PGE announced in its 2016 IRP that PGE will ask the
20 Commission to change its current avoided cost rate process (which re-sets avoided cost
21 rates only after approval of a new rate filing that is made 30 days after the IRP
22 acknowledgment) to instead ensure that the avoided cost prices paid to QFs that enter into

1 contracts or achieve a legally enforceable obligation after the Commission's
2 acknowledgement will no longer to be eligible for the current rates.

3 52. On August 4, 2017, PGE confirmed that the usual Commission process is
4 PGE must file to update avoided cost prices within 30 days of the Commission's IRP
5 acknowledgement, and once PGE files, there is a 90-day review period before prices
6 become effective.

7 53. On August 4, 2017, PGE explained that only QFs that enter into a contract
8 or achieve a legally enforceable obligation prior to acknowledgement of the IRP will be
9 eligible for current avoided cost rates.

10 54. PGE chose not to inform Volcano Solar that PGE intended to make the
11 August Early Rate Effective Date Request.

12 55. PGE did not inform Volcano Solar that PGE intended to make the August
13 Early Rate Effective Date Request in order to ensure that Volcano Solar would not timely
14 execute a PPA.

15 56. Volcano Solar was materially prejudiced by PGE's failure to give notice
16 because, among other things, it prevented Volcano Solar from having the opportunity to
17 expedite its request and Volcano Solar would have processed its PPA request more
18 quickly if it had been aware that PGE intended to make the August Early Rate Effective
19 Date Request.

20 57. PGE's intent and purpose for requesting that QFs that have not entered
21 into a contract or achieve a legally enforceable obligation prior to acknowledgment of the
22 IRP not being eligible for current avoided cost rates is to prevent Volcano Solar and other
23 QFs from being able to complete and execute a PPA at current rates.

1 58. On August 7, 2017, Volcano Solar executed the standard draft PPA.

2 59. On August 7, 2017, Volcano Solar informed PGE that it was again
3 committing itself to sell power to PGE under the currently effective Schedule 201 rates,
4 and the terms and conditions of the partially executed PPA, and obligating itself to
5 provide power or be subject to penalty for failing to deliver energy on the scheduled
6 commercial on-line date.

7 VII. LEGAL CLAIMS

8 Complainant's First Claim for Relief

9 **Volcano Solar is entitled to PGE's standard contract with currently effective**
10 **Schedule 201 rates because Volcano Solar legally obligated itself to sell the net**
11 **output prior to the filing of this Complaint**
12

13 60. Volcano Solar re-alleges all the preceding paragraphs.

14 61. PGE has an obligation to purchase a QF's net output that is directly or
15 indirectly made available to PGE. 18 CFR 292.303(a)&(d), 292.304(d); ORS
16 758.525(2)(b), 758.535(2)(a)&3(b); OAR 860-029-0030(1).

17 62. PGE has an obligation to purchase the net output of a QF pursuant to
18 either a contract or a legally enforceable obligation. 18 CFR 292.304(d); Order No. 69,
19 FERC Stats. & Regs. ¶ 30,128, 45 Fed. Reg. 12,214 at 12,219-20, 12,224 (1980). A
20 legally enforceable obligation is broader than a simple contract between an electric utility
21 and a QF, and may exist without a written, executed contract. FLS Energy, 157 FERC ¶
22 61,211 at PP 24, 26; Grouse Creek, LLC, 142 FERC ¶ 61,187 at P 38 (2013).

23 63. The establishment of a legally enforceable obligation turns on the QF's
24 commitment to sell its net output to the electric utility. FLS Energy, 157 FERC ¶ 61,211
25 at P 24; JD Wind 1, LLC, 129 FERC ¶ 61,148, at P 25 (2009). A QF can enter into a

1 legally enforceable obligation by committing itself to sell power to an electric utility.
2 FLS Energy, 157 FERC ¶ 61,211 at P 25; Cedar Creek Wind, LLC, 137 FERC ¶ 61,006
3 at PP 36, 39 (2011); Snow Mountain, 734 P.2d at 1371.

4 64. A QF can require a utility to purchase its net output, even if the utility has
5 refused to enter into a contract. Id. at 1370-71; FLS Energy, 157 FERC ¶ 61,211 at P 24;
6 Murphy Flat Power, 141 FERC ¶ 61,145 at P 24 (2012); Grouse Creek, 142 FERC ¶
7 61,187 at P 38. A utility cannot refuse to sign a contract “so that a later and lower
8 avoided cost is applicable.” FLS Energy, 157 FERC ¶ 61,211 at P 25; Cedar Creek
9 Wind, 137 FERC ¶ 61,006 at P 36. Similarly, a QF cannot be required to tender an
10 executed interconnection agreement to form a legally enforceable obligation because that
11 requirement would allow “the utility to control whether and when a legally enforceable
12 obligation exists.” FLS Energy, 157 FERC ¶ 61,211 at PP 23, 26.

13 65. The Commission has confirmed the process for obtaining a PPA includes:
14 “(1) a QF initiates the process by submitting certain information, the utilities then have
15 15 days to provide a draft standard contract; (2) the QF may agree to the terms of the
16 draft contract and ask the utility to provide a final executable contract, or suggest
17 changes; (3) the utility provides iterations of the draft standard contract no later than 15
18 days after each round of comments by the negotiating QF; and (4) when the QF indicates
19 that it agrees to all the terms in the draft contract, the utility has 15 days to forward a final
20 executable contract to the QF.” Re Investigation Into QF Contracting and Pricing,
21 Docket No. UM 1610, Order No. 16-174 at 24 (May 13, 2016). Thus, when the QF
22 informs PGE that it has agreed to all terms and conditions in the draft PPA, then PGE is
23 required to provide an executable PPA to the QF.

1 66. The Commission has determined that a legally enforceable obligation will
2 be established “once a QF signs the final draft of an executable contract provided by a
3 utility to commit itself to sell power to the utility.” Re Investigation Into QF Contracting
4 and Pricing, Docket No. UM 1610, Order No. 16-174 at 3, 27-28 (May 13, 2016).
5 However, a legally enforceable obligation “may be established earlier if a QF
6 demonstrates delay or obstruction of progress towards a final draft of an executable
7 contract, such as a failure by a utility to provide a QF with required information or
8 documents on a timely basis.” Id.

9 67. The Commission has determined that a PPA can be executed and a legally
10 enforceable obligation can be created in less than two months under normal
11 circumstances. Re Investigation Into QF Contracting and Pricing, Docket No. UM 1610,
12 Order No. 16-174 at 24, 27-28 (May 13, 2016).

13 68. FERC has found that legally enforceable obligations have been created in
14 about one month. Rainbow Ranch Wind, LLC, 139 FERC ¶ 61,077 at PP 2-5, 24 (2012);
15 Grouse Creek Wind Park, LLC, 142 FERC ¶ 61,187, at PP 37-43 (2013).

16 69. Volcano Solar has repeatedly committed itself to sell power to PGE under
17 the currently effective Schedule 201 rates, and the terms and conditions of the draft PPA,
18 including to provide power or be subject to penalty for failing to deliver on the scheduled
19 commercial on-line date. These commitments include but are not limited to Volcano
20 Solar’s request for an executable PPA on July 27, 2017, Volcano Solar’s demand letter
21 sent on July 31, 2017, and Volcano Solar’s execution of the draft PPA on August 7, 2017.

1 75. PGE’s failure to abide by the terms of PURPA, the Commission’s rules
2 and policies, FERC’s rules and policies, and/or Schedule 201 can result in the creation of
3 a legally enforceable obligation. Re Investigation Into QF Contracting and Pricing,
4 Docket No. UM 1610, Order No. 16-174 at 3, 27-28 (May 13, 2016); Snow Mountain,
5 734 P.2d at 1371; International Paper v. PacifiCorp, Docket No. UM 1449, Order No. 09-
6 439 at 6 (Nov 4, 2009).

7 76. The Commission’s polices include that, “when the QF indicates that it
8 agrees to all the terms in the draft contract, the utility has 15 days to forward a final
9 executable contract to the QF.” Re Investigation Into QF Contracting and Pricing,
10 Docket No. UM 1610, Order No. 16-174 at 24 (May 13, 2016).

11 77. PGE’s Schedule 201 includes timelines and requirements that a utility
12 should follow when entering into a PPA with a QF 10 MWs and under. Schedule 201
13 provides that: “When both parties are in full agreement as to all terms and conditions of
14 the draft Standard PPA, the Company will prepare and forward to the Seller a final
15 executable version of the agreement within 15 business days.”

16 78. The Commission’s rules and policies prevent a utility from delaying or
17 obstructing “progress towards a final draft of executable contract”. Re Investigation Into
18 QF Contracting and Pricing, Docket No. UM 1610, Order No. 16-174 at 27-28 (May 13,
19 2016).

20 79. PGE must continue to comply with the Commission’s rules and policies,
21 even though PGE has requested interim relief in the Solar Limitation Filing.

1 80. By no later than August 7, 2017, Volcano Solar had agreed to all terms
2 and conditions, and Volcano Solar requested executed a final executable version of the
3 PPA.

4 81. PGE did not provide and has not provided a final executable version of the
5 PPA.

6 82. PGE violated the Commission's rules and policies, FERC's rules and
7 policies, and Schedule 201 when it refused to notify prior to filing or serve Volcano Solar
8 and other QFs with its May 1 Update, Solar Limitation Filing and August Early Rate
9 Effective Date Request with the intention to prevent Volcano Solar from timely executing
10 a PPA.

11 83. PGE violated the Commission's rules and policies, FERC's rules and
12 policies, and Schedule 201 when it stated that no binding PPA will exist between PGE
13 and Volcano Solar unless and until PGE has provided Volcano Solar with an executable
14 PPA.

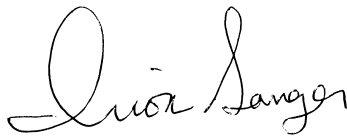
15 84. PGE violated the Commission's rules and policies, FERC's rules and
16 policies, and Schedule 201 when it stated that no binding PPA will exist between PGE
17 and Volcano Solar unless Volcano Solar and PGE both have executed the PPA.

18 85. PGE violated the Commission's rules and policies, FERC's rules and
19 policies, and Schedule 201 when it stated that it did not expect to provide and would not
20 provide an executable PPA before the Commission has ruled on PGE's motion for
21 interim relief in the Solar Limitation Filing.

- 1 2. Requiring PGE to purchase the net output of the Volcano Solar Project at the
- 2 currently effective Schedule 201 rates, and all the terms and conditions in the
- 3 partially executed final PPA;
- 4 3. Requiring PGE to enter into a PURPA PPA with Volcano Solar at the currently
- 5 effective Schedule 201 rates, and all the terms and conditions in the partially
- 6 executed final PPA;
- 7 4. Instituting penalties up to \$10,000 pursuant to ORS 756.990 against PGE and paid
- 8 by PGE's shareholders for each violation of ORS 758.525(2), 758.535(2)(b),
- 9 18 CFR 292.303(a), 292.304(d), and Commission Order Nos. 05-584 and 16-174.
- 10 5. Granting any other such relief as the Commission deems necessary.

Dated this 7th day of August, 2017.

Respectfully submitted,

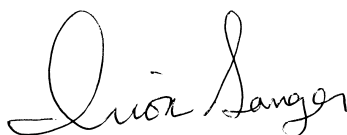


Irion A. Sanger
Sanger Law, PC
1117 SE 53rd Avenue
Portland, OR 97215
Telephone: 503-756-7533
Fax: 503-334-2235
irion@sanger-law.com

Of Attorneys for Volcano Solar

CERTIFICATE OF FILING

I certify that on August 7, 2017, I filed the foregoing Complaint on behalf of Volcano Solar with the Oregon Public Utility Commission by electronic communication as consistent with OAR 860-001-0170.

A handwritten signature in black ink, reading "Irion Sanger". The signature is written in a cursive style with a large initial "I".

Sanger Law, PC
1117 SE 53rd Avenue
Portland, OR 97215
Telephone: 503-756-7533
Fax: 503-334-2235
irion@sanger-law.com

Attachment A

Volcano Solar

Power Purchase Agreement

STANDARD RENEWABLE IN-SYSTEM VARIABLE POWER PURCHASE
AGREEMENT

[Redacted]

[Redacted]

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with a copy to: **TLS Capital, Inc**
3519 NE 15th Ave, #325
Portland, OR 97212

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

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

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

PGE

By: _____
Name: _____
Title: _____
Date: _____

Volcano Solar, LLC
(Name Seller)

By: _____
Name: *Troy Snyder*
Title: *Manager*
Date: *8/7/17*

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Contract Information	
a. Seller Legal Name	Volcano Solar, LLC
b. Type of facility (solar, or wind for example)	Solar
c. County and GPS Coordinate to 3 decimals	Marion - 45°01'32.2"N 122°59'24.6"W
d. State	Oregon
e. Name Plate Rating in kW	750
f. Section 1.11 Electric system to interconnect to and the Point of Delivery	PGE
g. Section 2.2.1 date to be begin delivery	11/30/2017
h. Section 2.2.3 date of Commercial Operation Date	12/31/2017
i. Section 2.3 Termination Date	20 Years from Effective Date
j. Corporation type	Limited Liability Corporation
k. State of organization	Oregon
l. Net Dependable Capacity in kW	750
m. Estimated average annual Net Output	731374
n. Maximum of kWh	1628620
o. Notice address line 1	Volcano Solar, LLC
p. Notice address line 2	C/O TLS Capital, Inc
q. Notice address line 3	7455 SW Bridgeport Road, Ste 220
r. Notice address line 4	Tigard, OR 97224
s. Copy to address line 1	TLS Capital, Inc
t. Copy to address line 2	3519 NE 15th Ave, #325
u. Copy to address line 3	Portland, OR 97212
v. Copy to address line 4	
w. On a separate sheet include a detailed facility description, including one-line diagram.	Attached
2. Status of Seller's incorporation	Filed - 1/23/17
3. Seller's financial statements:	
a. Income statement	N/A
b. Balance sheet	N/A
4. D & B report on seller, of the project sponsor if the seller is not in D & B	Does not exist
5. List of all entities with an ownership interest in the facility	TLS Capital, Inc
6. List all natural persons or persons or any legal entity or entities who:	TLS Capital, Inc & List of Entities on Attached List
a. Share common ownership with Seller	
b. Share common management with Seller	
c. Act jointly or in concert with Seller	
d. Exercise influence over the policies or actions of Seller	
7. The legal name of the manager of the Facility, if applicable	TLS Capital, Inc
8. Proof of site control (lease, title to land, property tax bill, or other)	Lease - Attached
9. FERC Form 556 and docket number as proof of submittal and acceptance by FERC	QF17-548-000 - Attached
10. Map adjoining QF sites owned by the same seller at this time, or within the past 12 months	Attached
11. Staffing plan for getting the project online	Hire EPC Contractor
12. Status of interconnection and transmission agreements	Interconnection Application Filed
13. Does Seller have FERC Market Based Rate Authority? If yes provide docket #	No
Generation information	
1. Motive force plan	Solar PV
2. Expected energy delivery start date	11/30/2017
3. Expected Availability of generation	90%
4. PVSyst (or equivalent) simulation results detail, including but not limited to:	
a. Annual MWh (AC) for the first calendar year of commercial operation and an annual degradation factor	1219
b. Average 24-hr profile of generation MWh (AC) for each month during the first calendar year	Attached
c. Maximum 24-hr profile of generation MWh (AC) for each month during the first calendar year	Attached
d. Maximum annual output (monthly MWh detail)	Attached
e. Loss Diagram	Attached
Location of facility	
1. GPS Coordinates (rounded to three decimal - please provide in decimal format)	45°01'32.2"N 122°59'24.6"W
2. Facility physical address	35th Ave NE, Keizer, OR
3. Legal description of parcel (proof of site control to be attached)	Marion County Taxlot # 062W19C00900
4. Aerial Facility site boundary map	Attached

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1. Generation	
a. PVSystem (or equivalent) simulation results detail, including but not limited to:	
i. Annual MWh (AC) for the first calendar year of commercial operation	1219
ii. Annual degradation factor	2.65
iii. Average 24-hr profile of generation MWh (AC) for each month during the first calendar year	Attached
iv. Expected Solar Capacity Factor	18.55%
v. Maximum annual output (monthly MWh detail)	Attached
iv. Loss Diagram	Attached
2. Description of Modules:	
a. Module type	Poly-crystalline
b. # of modules	3325
c. Max power voltage	36.6W
d. Max power current	9.18V
e. Max system voltage	1000V
f. Total DC system size	1,047,375
3. Description of Racking	
a. Racking	
i. Type: (fixed tilt, single-axis tracking, or dual-axis tracking, etc.)	Fixed
ii. Tilt angle (if fixed-tilt)	25
iii. Azimuth (default = south-facing)	180
4. Description of Inverters:	
a. Number of Inverters	1
b. Model	SMA SC-750US
c. Maximum Power (kW)	750 kW
d. Operating Voltage (VAC)	324V-396V
e. Max. Output Current (A)	1411 A
f. Rated DC Voltage	1000V
g. Rated DC current	1600A
h. Maximum Output (kW)	
g. Facility AC Capacity Rating	750
h. Inverter loading ratio	1.4/1.0
i. Facility AC rating	750
5. Description of transformers	
a. # of transformers	1
b. Model	Cooper 210-12
c. High Voltage Rating	
d. Low Voltage Rating	
e. MVA rating	
f. High voltage connection	
g. Low voltage connection	
6. Description of metering, communications, and monitoring	PGE Supplied
7. Description of station service requirements	PGE Supplied
8. Description and timeline of interconnection and transmission plan	Interconnection application submitted
9. Transaction Service Request Number, Interconnection Queue number, and System impact/interconnection study documentation	Interconnection Application Attached

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Volcano Solar, LLC			
Monthly Generation Profile			
AC System Output (kWh)			
Month	Year 1	Avg	Max
1	39,680	23,808	59,519
2	79,538	47,723	119,306
3	88,131	52,879	132,197
4	116,589	69,953	174,884
5	136,690	82,014	205,035
6	142,613	85,568	213,919
7	163,685	98,211	245,527
8	142,554	85,532	213,831
9	130,639	78,383	195,958
10	87,628	52,577	131,442
11	52,554	31,532	78,831
12	38,658	23,195	57,987
	1,218,957	731,374	1,828,436

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PVSYST V5.71		15/05/17 Page 1/3		
Grid-Connected System: Simulation parameters				
Project :	Volcano Solar			
Geographical Site	Portland, OR	Country	USA	
Situation	Latitude 45.5°N	Longitude	122.7°W	
Time defined as	Legal Time	Time zone	UT-8	
	Albedo	Altitude	50 m	
Meteo data :	Portland, OR, Synthetic Hourly data			
Simulation variant :	Volcano Solar			
	Simulation date	15/05/17 16h36		
Simulation parameters				
Collector Plane Orientation	Tilt	25°	Azimuth 0°	
Horizon	Free Horizon			
Near Shadings	No Shadings			
PV Array Characteristics				
PV module	Si-poly	Model	CS6X - 315P	
		Manufacturer	Canadian Solar Inc.	
Number of PV modules		In series	19 modules	
Total number of PV modules		Nb. modules	3325	
		Unit Nom. Power	315 Wp	
Array global power		Nominal (STC)	1047 kWp	
Array operating characteristics (50°C)		U mpp	618 V	
		I mpp	1521 A	
Total area		Module area	6380 m²	
		Cell area	5627 m²	
Inverter				
		Model	Sunny Central 750CP-US	
		Manufacturer	SMA	
Characteristics		Operating Voltage	545-620 V	
		Unit Nom. Power	750 kW AC	
PV Array loss factors				
Thermal Loss factor	Uc (const)	29.0 W/m²K	Uv (wind)	0.0 W/m²K / m/s
⇒ Nominal Oper. Coll. Temp. (G=800 W/m², Tamb=20°C, Wind=1 m/s.)			NOCT	45 °C
Wiring Ohmic Loss	Global array res.	7.1 mOhm	Loss Fraction	1.5 % at STC
Array Soiling Losses			Loss Fraction	3.2 %
Module Quality Loss			Loss Fraction	0.1 %
Module Mismatch Losses			Loss Fraction	2.0 % at MPP
Incidence effect, ASHRAE parametrization	IAM =	1 - bo (1/cos i - 1)	bo Parameter	0.05
System loss factors				
AC wire loss inverter to transfo	Inverter voltage	342 Vac tri	Loss Fraction	0.0 % at STC
	Wires	2 m 3x1200 mm²	Loss Fraction	0.1 % at STC
External transformer	Iron loss (24h connection)	1026 W	Loss Fraction	0.0 % at STC
	Resistive/Inductive losses	0.0 mOhm	Loss Fraction	0.0 % at STC
User's needs :	Unlimited load (grid)			

PVSYST V5.71		15/05/17 Page 2/3						
Grid-Connected System: Main results								
Project :	Volcano Solar							
Simulation variant :	Volcano Solar							
Main system parameters		System type	Grid-Connected					
PV Field Orientation		tilt	25°					
PV modules		Model	CS6X - 315P					
PV Array		Nb. of modules	3325					
Inverter		Model	Sunny Central 750CP-US					
User's needs		Unlimited load (grid)						
		azimuth	0°					
		Prom	315 Wp					
		Prom total	1047 kWp					
		Prom	750 kW ac					
Main simulation results		Produced Energy	1218957 kWh/year					
System Production		Specific prod.	1164 kWh/kWp/year					
		Performance Ratio PR	85.6 %					
Normalized productions (per installed kWp): Nominal power 1047 kWp								
Performance Ratio PR								
Volcano Solar								
Balances and main results								
	GlobHor	T_Amb	GlobInc	GlobEIR	E_Array	E_Grid	EPArray	EPYSysR
	kWh/m²	°C	kWh/m²	kWh/m²	kWh	kWh	%	%
January	27.0	4.90	34.5	33.2	3308	3149	15.03	14.32
February	48.0	6.70	62.2	56.1	5704	5562	15.92	14.57
March	91.0	7.80	106.1	104.4	10292	10093	14.69	14.45
April	123.0	10.50	131.5	127.5	12370	12067	14.72	14.38
May	169.0	13.90	171.5	165.4	15878	15359	14.24	14.01
June	194.0	16.40	191.5	179.9	18170	16173	14.23	13.91
July	190.0	18.00	196.1	189.0	17525	17120	14.00	13.69
August	164.0	18.60	173.4	168.0	15098	15307	14.15	13.89
September	115.0	16.20	124.7	120.4	12225	11942	14.22	13.88
October	74.0	12.20	84.0	80.7	8010	8540	14.70	14.32
November	33.0	8.20	42.1	40.6	3681	3620	14.61	14.25
December	22.0	6.00	31.3	30.1	2807	2628	14.60	14.17
Year	1245.0	11.70	1359.1	1315.2	125540	1218957	14.42	14.06
Legends: GlobHor Horizontal global irradiation T_Amb Ambient Temperature GlobInc Global incident on cell plane GlobEIR Effective Global, corr. for IAM and shadings E_Array Effective energy at the output of the array E_Grid Energy injected into grid EPArray Effic. Ecol array / rough area EPYSysR Effic. Ecol system / rough area								

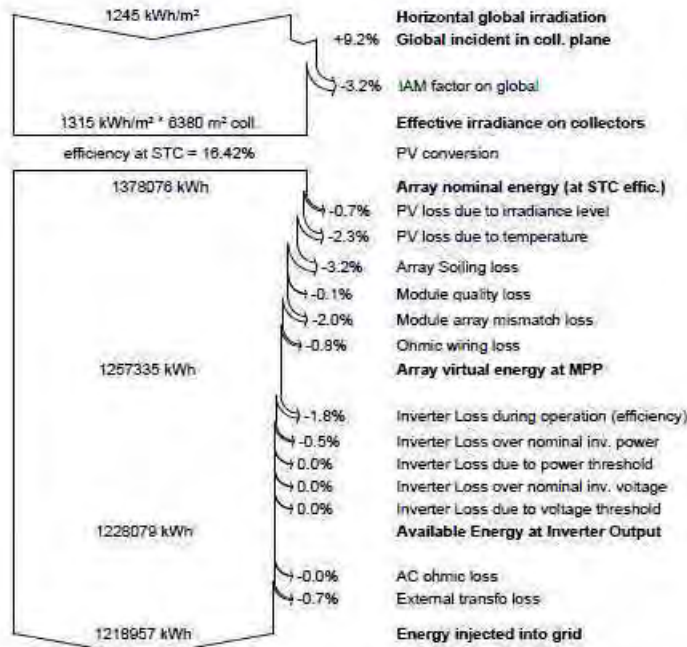
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Grid-Connected System: Loss diagram

Project : Volcano Solar
Simulation variant : Volcano Solar

Main system parameters	System type	Grid-Connected		
PV Field Orientation	tilt	25°	azimuth	0°
PV modules	Model	CS6X - 315P	Pnom	315 Wp
PV Array	Nb. of modules	3325	Pnom total	1047 kWp
Inverter	Model	Sunny Central 750CP-US	Pnom	750 kW ac
User's needs	Unlimited load (grid)			

Loss diagram over the whole year





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Exhibit C			
Required Testing			
Required start-up test are those checks and tests necessary to determine that all features and equipment, systems, and subsystems have been properly designed, manufactured, installed and adjusted, function properly, and are capable of operating simultaneously in such condition that the Facility is capable of continuous delivery into BPA/EIM/PGE's electrical system for delivery to PGE, which may include but are not limited to (as applicable) the following:			
1. Safety plan during startup and commissioning (including the expected number of individuals covered)			
2. Review of all QA/QC testing			
3. Confirm testing and energizing inverters in conformance with manufacturer's recommended procedures; note operating voltages; and confirm inverter is performing as expected			
4. Energizing transformers			
5. Under full sun conditions, and after at least 15 minutes of operation, taking and recording PV Plant operating data—such as but not limited to MWDC, MWAC, VDC, VAC, IDC, IAC, Solar Radiation, etc.			
6. Testing the system control and monitoring system to verify that it is performing correctly			
7. Testing the communication system for offsite monitoring and all requirements of the Western Energy Imbalance Market			
8. Testing the Plant metering and protective relaying to verify they meet utility requirements			
9. Documentation of successful startup and commissioning procedure			
10. Written notification submitted by Contractor to Owner that the completion of Acceptance Testing and Commissioning has occurred			
11. Testing to meet the requirements of Section 1.5.3.			

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