

**BEFORE THE PUBLIC UTILITY COMMISSION**

**OF OREGON**

UM 1903

**Served electronically at Salem, Oregon, 10/10/17, to:**

*Respondent's Attorney*

V. Denise Saunders  
Portland General Electric Company  
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*Complainant's Attorney & Representative*

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Ryan N. Meyer  
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Butler Solar, LLC  
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Re: UM 1903, Complainant BUTLER SOLAR, LLC,  
vs. PORTLAND GENERAL ELECTRIC COMPANY, Respondent

BUTLER 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 1903 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 October 30, 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

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

c: Barbara Parr, [barbara.parr@pgn.com](mailto:barbara.parr@pgn.com)

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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](http://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**

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

**I. INTRODUCTION**

This is a complaint (“Complaint”) filed by Butler Solar, LLC<sup>1</sup> (“Butler Solar” or “Complainant”) with the Oregon Public Utility Commission (“Commission”) under Oregon Revised Statute (“ORS”) 756.500 and Oregon Administrative Rules (“OAR”) 860-001-0170. Portland General Electric Company (“PGE”) has failed to comply with Oregon’s interconnection rules and its own study deadlines for the Butler Project, which is a qualifying facility (“QF”) under the Public Utility Regulatory Policies Act of 1978 (“PURPA”). Overall, PGE’s illegal delays and failures to establish reasonable deadlines has resulted in delays of 6 to 7 months. Butler Solar seeks the Commission’s assistance

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<sup>1</sup> Pacific Northwest Solar, LLC assigned its interests in the Butler Project to Butler Solar, LLC. As such, all references to Butler Solar shall also include its predecessor in interest, Pacific Northwest Solar.

to force PGE to timely process its interconnection, and ensuring that Butler Solar is held harmless from PGE's failure to comply with the law.

PGE failed to meet numerous small generator interconnection deadlines as required by OAR 860-082-0025(7)(g), and failed to provide appropriate notice of the delays. Butler Solar has not waived by agreement any of the small generator interconnection deadlines. PGE also failed to include a reasonable schedule in its Feasibility Study Agreement and has not made a reasonable and good faith effort to follow the schedules as set forth in its Feasibility, System Impact, and Facilities study agreements as required by OAR 860-082-0060.

Butler Solar made repeated attempts to confirm the receipt of its documents and to check on the status of PGE's review of those documents or the status of its studies. In response, PGE has repeatedly lost emails, lost letters and checks sent via U.S. mail, and delayed the interconnection process. In one instance, Butler Solar did not receive verification that its study deposit check was received by PGE until a month after it was sent.

Given PGE's missed deadlines, Butler Solar respectfully requests that the Commission: 1) confirm that PGE failed to meet applicable deadlines in the small generator interconnection rules, failed to reasonably and in good faith follow the schedules as set forth in its own Feasibility Study Agreement, both System Impact Study Agreements (there were two done for this Project), and Facilities Study Agreement, or provide appropriate notice of its delays; 2) confirm that PGE failed to include a reasonable schedule in its Feasibility Study Agreement; 3) confirm that PGE failed to appropriately assign the Butler Project an interconnection queue position; 4) require PGE

to timely complete the interconnection process; 5) require an extension of Butler Solar's 15-year fixed price guarantee under its Power Purchase Agreement ("PPA") with PGE because PGE's delays are resulting in a delay in the Butler Project's commercial operation date; and 6) fine PGE and impose any other such relief as warranted.

## **II. SERVICE**

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

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9450 SW Gemini Drive, #33304  
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rmeyer@pnw-solar.com

In support of this Complaint, Butler Solar alleges as follows:

## **III. IDENTITY OF THE PARTIES**

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

2. Butler Solar, a limited liability company organized under the laws of Oregon, is the controlling owner and manager of the Butler Project and will be the seller of the net output of the Butler Project. Butler Solar's address is 9450 SW Gemini Drive, #33304, Beaverton, OR 97008.

## **IV. APPLICABLE STATUTES AND RULES**

3. The Oregon statutes expected to be involved in this case include: ORS 756.040-756.068, 756.500-756.558, 756.990, and 758.505-758.575. The Oregon rules expected to be involved in this case include: OAR 860-001, 860-029, and 860-082.

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

## V. JURISDICTION

5. FERC has adopted regulations and policies governing utility purchases from QFs under PURPA. 18 CFR 292.101-292.602. State regulatory agencies are required to implement FERC’s regulations. See 16 USC 824a-3(f); FERC v. Mississippi, 456 U.S. 742, 751, 102 S. Ct. 2126 (1982).

6. Specifically, the state agencies that implement PURPA have authority to determine the manner for payment of interconnection costs by QFs. 18 CFR 292.306.

7. The Commission is the Oregon state agency that implements the state and federal PURPA statutes. ORS 758.505(3); OAR 860-029-0001; Snow Mountain Pine Co. v. Maudin, 84 Or. App. 590, 593 (1987). Public utilities are defined in ORS 758.505(7), and include PGE. Oregon law provides that the “terms and conditions for the purchase of energy or energy and capacity from a qualifying facility shall . . . [b]e established by rule by the commission if the purchase is by a public utility.” ORS 758.535(2)(a). The Commission has the power and jurisdiction to hear complaints by QFs against public utilities, including PGE. ORS 756.040, 756.500-756.558, and 758.505-758.555; OAR 860-001-0010(3), and 860-029-0030.

## VI. FACTUAL BACKGROUND

8. The Butler Project will be a 10 megawatt (“MW”) nameplate solar generation facility located in Yamhill County, Oregon.

9. The Butler Project will interconnect with PGE.

10. On March 31, 2016, Butler Solar submitted an interconnection application for the Butler Project to PGE.

11. On April 21, 2016, PGE informed Butler Solar that the interconnection application was not complete.

12. On April 28, 2016, Butler Solar submitted all the required information to PGE to complete the Butler Project application.

13. On May 12, 2016, PGE confirmed the interconnection application was complete.

14. On June 6, 2016, PGE proposed that a scoping meeting be held on June 16, 2016, but Butler Solar staff was not available that day and requested an earlier time.

15. PGE held the scoping call on June 22, 2016.

16. On July 1, 2016, PGE provided an executable Feasibility Study Agreement to Butler Solar.

17. On July 18, 2016, Butler Solar executed the Feasibility Study Agreement, emailed it to PGE and mailed a check for \$1,000 for the deposit on the study.

18. On August 8, 2016, Butler Solar emailed PGE to confirm receipt of the executed Feasibility Study Agreements, but PGE claimed they had not been received.

19. On August 17, 2016, Butler Solar again emailed PGE to confirm they had received all the information and the deposit necessary to commence the Feasibility Study.

20. On August 18, 2016, PGE confirmed that it had received the executed Feasibility Study Agreement earlier and claimed that it had been misrouted.

21. The Feasibility Study Agreement provides, in section 7, that the study would be completed and transmitted within “30 calendar days” unless otherwise agreed,

and, in Attachment B, for at least “60 days” to complete the study from the time the executed agreement and deposit was received. The agreement did not provide a maximum amount of time by which the study would be completed but PGE stated that the study would be delivered by October 15, 2016 (60 calendar days from August 15, 2016).

22. Butler Solar is not aware of exactly when the Feasibility Study was completed because this information is within the exclusive control of PGE.

23. On October 25, 2016, PGE emailed Butler Solar the results of the Feasibility Study, 10 calendar days past the October 15, 2016 date PGE provided and a total of 99 calendar days after Butler Solar actually sent the agreement and deposit.

24. PGE never provided a formal Feasibility Study report, other than the October 25, 2016 email.

25. On January 25, 2017, PGE provided Butler Solar with an executable System Impact Study Agreement, three months after the Feasibility Study email was sent.

26. On January 30, 2017, Butler Solar executed and mailed the System Impact Study Agreement along with the study deposit.

27. The System Impact Study Agreement provides that the study will be completed and results provided to Butler Solar within 60 calendar days after the Agreement is signed by the parties.

28. Butler Solar is not aware of exactly when PGE received the executed System Impact Study Agreement or when the System Impact Study was completed because this information is within the exclusive control of PGE.

29. On May 8, 2017, PGE provided the System Impact Study.



30. On May 10, 2017, Butler Solar inquired about whether the System Impact Study results would need to be modified if the Butler Project were larger.

31. On May 15, 2017, PGE notified Butler Solar that it would need to conduct a new System Impact Study at the larger size.

32. On May 18, 2017, PGE provided a new System Impact Study Agreement for the re-study.

33. On May 22, 2017, Butler Solar executed and mailed the System Impact Study Agreement along with the study deposit for the Butler Project re-study.

34. The System Impact Study Agreement for the re-study provides that the study will be completed and results provided to Butler Solar within 30 calendar days after the Agreement is signed by the parties.

35. Butler Solar is not aware of exactly when PGE received the executed System Impact Study Agreement for the re-study or when the System Impact Study was completed because this information is within the exclusive control of PGE.

36. On July 3, 2017, PGE provided the System Impact Study for the re-study.

37. On July 13, 2017, PGE provided Butler Solar with a Facilities Study Agreement.

38. On July 14, 2017, Butler Solar executed the Facilities Study and mailed it on July 17, 2017.

39. The Facilities Study Agreement provides that it is to be completed within “60 days” of the date the executed agreement, deposit and other information requested in the agreement is received.

40. Butler Solar is not aware of whether the Facilities Study has been completed because this information is within the exclusive control of PGE.

41. As of the date of filing, PGE has not yet provided the Facilities Study to Butler Solar, and it has been more than 60 calendar days since PGE received the executed agreement, deposit, and information requested.

42. In total, PGE's delays have resulted in approximately 150 business days (230 calendar days) of delay.

43. Butler Solar requested that PGE amend its PPA to accommodate for PGE's delay.

44. On June 23, 2017, Butler Solar sent a letter to PGE explaining how the delays have harmed its Projects.

45. On July 21, 2017, PGE responded that there have only been a few delays.

46. PGE's small generator interconnection study agreements submitted to and approved by the Commission in AR 521, Order No. 09-350 provide that the Feasibility Study, System Impact Study, and Facilities Study shall be completed and the results transmitted to the Applicant within thirty (30) calendar days after the date the agreement is signed by the Parties unless the Parties agreed to an alternate schedule. PGE Compliance Filing August 21, 2009, AR 521 at 15, 20 & 24.

47. As of October 25, 2016, PGE did not maintain a posted queue for state jurisdictional interconnection requests.

48. As of October 25, 2016, PGE did not have queue numbers for state jurisdictional interconnection requests.

49. PGE later assigned Butler Solar a queue position because one is listed in the System Impact Study dated May 8, 2017.

## VII. LEGAL CLAIMS

### Complainant's First Claim for Relief

**Butler Solar is entitled relief because PGE failed to meet applicable deadlines in the small generator interconnection rules, failed to reasonably and in good faith follow the schedules as set forth in its Feasibility, System Impact, and Facilities Study Agreements, or provide appropriate notice of its delays.**

50. Butler Solar re-alleges all the preceding paragraphs.

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

52. PGE is obligated to make interconnections with any QF that may be necessary to accomplish the required purchases. 18 CFR 292.303(c); OAR 860-029-0030(3).

53. PGE is obligated to meet "all applicable deadlines in the small generator interconnection rules unless the deadlines have been waived by agreement." OAR 860-082-0025(7)(g).

54. If PGE cannot meet an applicable deadline, then PGE is obligated to provide written notice to Butler Solar explaining the reasons for the failure to meet the deadline and an estimated alternative deadline. OAR 860-082-0025(7)(g).

55. PGE is obligated to notify Butler Solar whether its interconnection application is complete within 10 business days of when the application is provided. OAR 860-082-0025(7)(a).

56. PGE violated the Commission's rules by not notifying Butler Solar as to whether its application was complete until 20 days after it was submitted.

57. If PGE initially determines that Butler Solar's interconnection application is not complete, then PGE is obligated to provide a detailed list of the information needed to complete the application. OAR 860-082-0025(7)(a)(A).

58. Once PGE receives the listed information, Butler Solar's application is deemed complete. OAR 860-082-0025(7)(a)(A).

59. PGE violated the Commission's rules by not deeming Butler Solar's application as complete on the day it received the listed information.

60. PGE is obligated to schedule a scoping meeting within 10 business days after notifying an applicant that its application is complete. OAR 860-082-0060(5).

61. PGE violated the Commission's rules by scheduling the scoping meeting 39 business days after application was deemed complete under OAR 860-082-0025(7)(a)(A).

62. PGE is obligated to provide Butler Solar an executable Feasibility Study agreement within 5 business days of scoping meeting. OAR 860-082-0060(6).

63. PGE violated the Commission's rules by not providing Butler Solar with an executable Feasibility Study Agreement until 7 business days after the scoping meeting.

64. PGE is obligated to make reasonable, good-faith efforts to follow the schedule set forth in the Feasibility Study Agreement for completion of the study. OAR 860-082-0060(6)(d).

65. PGE violated the Commission's rules by providing an informal email that purports to be the Feasibility Study 10 calendar days after the date PGE committed to provide the Feasibility Study, and 99 calendar days after Butler Solar sent the required Agreement and deposit.

66. PGE is obligated to provide the Feasibility Study within 5 business days after completion. OAR 860-082-0060(6)(g).

67. If PGE completed the Feasibility Study more than 5 business days prior to the date it provided it to Butler Solar, then PGE violated the Commission's rules.

68. PGE is obligated to provide Butler Solar with an executable System Impact Study Agreement within 5 business days after completion of the Feasibility Study. OAR 860-082-0060(7).

69. PGE violated the Commission's rules by not providing the first System Impact Study Agreement to Butler Solar until 58 business days after the Feasibility Study was provided.

70. PGE is obligated to make reasonable, good-faith efforts to follow the schedule set forth in the System Impact Study Agreements for completion of the studies. OAR 860-082-0060(6)(d).

71. PGE violated the Commission's rules by providing the first System Impact Study 38 calendar days after the 60 calendar day period detailed in the Agreement lapsed.

72. PGE violated the Commission's rules by providing the second System Impact Study (for the Butler Project re-study) 12 calendar days after the 30 calendar day period detailed in the Agreement lapsed.

73. PGE is obligated to provide the System Impact Study within 5 business days after completion. OAR 860-082-0060(7)(g).

74. If PGE completed either the first or the second System Impact Studies more than 5 business days prior to the date it provided the studies to Butler Solar, then PGE violated the Commission's rules.

75. PGE is obligated to provide Butler Solar with an executable Facilities Study Agreement within 5 business days of completion of the System Impact Study. OAR 860-082-0060(8).

76. PGE violated the Commission's rules by not providing the Facilities Study Agreement to Butler Solar until 7 business days after the second System Impact Study results were provided.

77. PGE is obligated to make reasonable, good-faith efforts to follow the schedule set forth in the Facilities Study Agreement for completion of the study. OAR 860-082-0060(8)(d).

78. PGE violated the Commission's rules by not delivering the Facilities Study results within 60 calendar days of the date PGE received the agreement, deposit, and requested information, as provided in the Facilities Study Agreement.

79. PGE continues to violate the Commission's rules by not delivering the Facilities Study results.

80. Butler Solar is entitled to relief because of PGE's failure to meet numerous small generator interconnection deadlines as required by OAR 860-082-0025(7)(g) and the study agreements, to provide appropriate notice of the delays, and to otherwise timely process and complete the interconnection agreement process.

### **Complainant's Second Claim for Relief**

**Butler Solar is entitled relief because PGE failed to maintain a queue of pending interconnection applications and failed to appropriately assign Butler Solar's queue position.**

81. Butler Solar re-alleges all the preceding paragraphs.

82. PGE is obligated to assign a queue position to Butler Solar once PGE deems Butler Solar's application complete. 860-082-0025(7)(b).

83. PGE violated the Commission's rules by not assigning Butler Solar's Butler Project a queue position.

84. Butler Solar is entitled to relief because PGE failed to maintain a queue and failed to assign the Butler Project a queue position.

### **Complainant's Third Claim for Relief**

**Butler Solar is entitled relief because PGE failed to include a reasonable schedule in its Feasibility Study.**

85. Butler Solar re-alleges all the preceding paragraphs.

86. PGE is obligated to include in its Feasibility Study Agreement, a reasonable schedule for completion of study. OAR 860-082-0060(6)(a).

87. It is not reasonable to have a Feasibility schedule that provides "at least 60 days" to complete with no end date by which completion is required.

88. PGE violated the Commission's rules by not including a reasonable schedule in its Feasibility Study Agreement because it provides no end date on the obligation to complete.

89. Butler Solar is entitled to relief because PGE's Feasibility Study Agreement schedule is not reasonable because it did not provide a reasonable method for

calculating the due date, and this unclear schedule make it difficult to track the interconnection process and allows PGE to delay the process.

### **Complainant's Fourth Claim for Relief**

**Butler Solar is entitled to an extension of its 15-year fixed price guarantee under its PPA if PGE's action cause Butler Solar's date of commercial operation to be delayed.**

90. Butler Solar re-alleges all the preceding paragraphs.

91. PGE has taken the position that the Butler Solar PPA only provides fifteen years of fixed prices from the date of contract execution rather than power deliveries.

92. The Butler Solar PPA was executed on January 26, 2016.

93. If the Butler Solar PPA only provides fifteen years of fixed prices from the date of contract execution, then PGE's delays will result in the loss of at least 230 calendar days of fixed price power deliveries.

94. If PGE's actions result in delay in the date of Butler Solar's commercial operation, the 15-year fixed price guarantee period should be extended by at least the same amount.

95. Butler Solar is entitled to relief because PGE's delays in the interconnection process have caused or may result in the delay of Butler Solar's 15-year fixed price guarantee period.

### **VIII. PRAYER FOR RELIEF**

WHEREFORE, Butler Solar respectfully requests the Commission issue an order:

1. Finding PGE in violation of applicable deadlines in the small generator interconnection rules.



2. Finding PGE in violation of the requirement to reasonably and in good faith following the schedules as set forth in its own Feasibility Study Agreement, System Impact Study Agreements, and Facilities Study Agreement.
3. Finding PGE in violation of its obligation to assign Butler Solar's Butler Project an interconnection queue position.
4. Finding PGE in violation of its obligation to include a reasonable schedule in its Feasibility Study Agreement.
5. Requiring PGE to timely complete the interconnection process consistent with the applicable deadlines in the small generator interconnection rules, including but not limited to a reduction in the time to complete the interconnection process due to PGE's delays.
6. Requiring an extension of Butler Solar's 15-year fixed price guarantee under its PPA with PGE if PGE's delays result in a delay in the Butler Project's commercial operation date.
7. Instituting penalties up to \$10,000 pursuant to ORS 756.990 against PGE and paid by PGE's shareholders for each violation of ORS 758.525(2), 758.535(2)(b)&(3)(b), 18 CFR 292.303(a)&(c), 292.304(d), OAR 806-029-0030(1)&(3), 806-082-0025(7), 806-082-0060(5)-(8), and Commission Order Nos. 09-350.
8. Granting any other such relief as the Commission deems necessary.

Dated this 9th day of October, 2017.

Respectfully submitted,

A handwritten signature in black ink that reads "Irion Sanger". The signature is written in a cursive style with a large initial "I" and a long, sweeping underline.

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Of Attorneys for Butler Solar

**CERTIFICATE OF FILING**

I certify that on October 9, 2017, I filed the foregoing Complaint on behalf of Butler Solar with the Oregon Public Utility Commission by electronic communication as consistent with OAR 860-001-0170.



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