

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 1884

**Served electronically at Salem, Oregon, 8/11/17, to:**

*Respondent's Attorney*

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Re: UM 1884, Complainant COTTONTAIL SOLAR LLC  
vs. PORTLAND GENERAL ELECTRIC COMPANY, Respondent

COTTONTAIL 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 1884 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 31, 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/Diane Davis for  
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.



1 Cottontail Solar has formed a legally enforceable obligation because it has been  
2 ready, willing, and able to sign a PPA with PGE since at least March 22, 2017, and has  
3 repeatedly and unequivocally committed itself to sell the net output to PGE at the  
4 Schedule 201 avoided cost rates and standard PPA terms and conditions in effect prior to  
5 June 1, 2017 (the “Pre-June 1 Rates and Terms”). PGE should be required to execute a  
6 PPA with Cottontail Solar at the Pre-June 1 Rates and Terms because the establishment  
7 of a legally enforceable obligation turns on Cottontail Solar’s commitment rather than  
8 PGE’s actions.

9 The concept of a legally enforceable obligation under PURPA exists precisely to  
10 prevent what PGE has sought to achieve here: preventing Cottontail Solar from  
11 obtaining a PPA on favorable terms. PGE’s actions seeking to prevent Cottontail Solar  
12 from entering into a PPA at the the Pre-June 1 Rates and Terms include, but are not  
13 limited to: 1) delaying the PPA negotiation process; 2) seeking interim and/or expedited  
14 relief to prevent Cottontail Solar from being able to execute a PPA and to lower rates;  
15 and 3) failing to inform Cottontail Solar about its filings seeking to change its Standard  
16 PPA rules and rates. These actions by PGE violated PURPA, the Commission’s and  
17 FERC’s rules and policies, and PGE’s own Schedule 201.

18 Among other things, PGE failed to meet its own Schedule 201 timeline after  
19 Cottontail Solar’s initial submission of information on March 22; ignored Cottontail  
20 Solar’s requests for expedited processing on May 23 and May 31; ignored Cottontail  
21 Solar’s requests for an executable PPA on May 23 and May 31; waited until May 31 to  
22 inform Cottontail Solar about its June 1 rate change; and completely ignored the partially  
23 executed PPA Cottontail Solar submitted on May 31.



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12

13 In support of this Complaint, Cottontail Solar alleges as follows:

14 **III. IDENTITY OF THE PARTIES**

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

18 2. Cottontail Solar, a limited liability company organized under the laws of  
19 Oregon, is the owner of the QF and will be the seller of the net output of the QF project.  
20 Cottontail Solar's address is c/o Steve Cohen, Sabal Solar Development LLC, 515 North  
21 Flagler Drive, Suite 203, West Palm Beach, Florida 33401

22 **IV. APPLICABLE STATUTES AND RULES**

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

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

1 regulations regarding its pro forma Open Access Transmission Tariffs (“OATT”) may  
2 also be involved.

### 3 V. JURISDICTION

4 5. FERC has adopted regulations and policies governing utility purchases  
5 from QFs under PURPA. 18 CFR 292.101-292.602. State regulatory agencies are  
6 required to implement FERC’s regulations. See 16 USC 824a-3(f); FERC v. Mississippi,  
7 456 U.S. 742, 751, 102 S. Ct. 2126 (1982). FERC’s rules provide each QF with the right  
8 to unilaterally create a legally enforceable obligation to sell its energy and capacity at  
9 projected avoided cost rates in effect on the date that the QF obligates itself to sell energy  
10 and capacity. 18 CFR 292.304(d)(2)(ii); FLS Energy Inc., 157 FERC ¶ 61,211 at PP 23-  
11 25 (2016).

12 6. Oregon law also includes a requirement that a QF has the right to legally  
13 obligate itself to sell its net output at a time prior to the delivery of its net output.  
14 Specifically, ORS 758.525(2)(b) provides: “At the option of the qualifying facility,  
15 exercised before beginning delivery of the energy or energy and capacity, such prices  
16 may be based on . . . [t]he projected avoided costs calculated at the time the legal  
17 obligation to purchase the energy or energy and capacity is incurred.” Thus, the  
18 “obligation to purchase power is imposed by law on a utility; it is not voluntarily  
19 assumed.” Snow Mountain Pine Co. v. Maudlin, 734 P.2d 1366, 84 Or. App. 590, 598  
20 (1987).

21 7. The Commission is the Oregon state agency that implements the state and  
22 federal PURPA statutes. ORS 758.505(3); OAR 860-029-0001; Snow Mountain, 84 Or.  
23 App. at 593. Public utilities are defined in ORS 758.505(7), and include PGE. Oregon

1 law provides that the “terms and conditions for the purchase of energy or energy and  
2 capacity from a qualifying facility shall . . . [b]e established by rule by the commission if  
3 the purchase is by a public utility.” ORS 758.535(2)(a). The Commission has the power  
4 and jurisdiction to hear complaints by QFs against public utilities, including PGE. ORS  
5 756.040, 756.500-756.558, and 758.505-758.555; OAR 860-001-0010(3), and 860-029-  
6 0030.

## 7 **VI. FACTUAL BACKGROUND**

8 8. The Cottontail Solar project will be a 2.2 megawatt (“MW”) nameplate  
9 solar generation facility located in Marion County, Oregon.

10 9. On March 22, 2017, Cottontail Solar provided information and materials  
11 required for a Standard PPA with PGE.

12 10. On March 24, 2017, PGE acknowledged receipt of Cottontail Solar’s  
13 application with a standard form email.

14 11. PGE’s March 24 email stated that PGE had received Cottontail Solar’s  
15 application on March 23, 2017, rather than March 22, 2017 when Cottontail Solar  
16 submitted the request. PGE stated that PGE would either provide a draft Standard PPA  
17 or request additional information by April 13, 2017. April 13, 2017 is sixteen business  
18 days from March 22, 2017.

19 12. Cottontail Solar was aware that PGE would make its annual cost rate  
20 update filing on May 1, 2017, and expected PGE’s avoided cost rate might change in the  
21 end of June 2017.

22 13. Cottontail Solar was aware that PGE’s integrated resource plan was  
23 scheduled for consideration at the August 8, 2017 Public Meeting, and expected any



1 acknowledgment to occur at the end of August 2017, resulting in PGE's avoided cost  
2 rates to be revisited about two months later, or the end of October 2017.

3 14. Over the course of the next several weeks, Cottontail Solar and PGE  
4 exchanged information and communicated regarding issues related to the sale of  
5 Cottontail Solar's net output to PGE, including but not limited to contract terms, required  
6 information, and project details.

7 15. On April 13, 2017, Cottontail Solar requested an update from PGE on its  
8 PPA request, noting that it believed PGE was required to provide Cottontail Solar with  
9 either a draft Standard PPA or clarifying questions by April 13, 2017.

10 16. Later that same day, on April 13, 2017, PGE sent Cottontail Solar a letter  
11 stating that Cottontail Solar's application was missing certain specific information, and  
12 requested certain additional information be filled in rather than including references to  
13 certain attached documents.

14 17. On April 26, 2017, Cottontail Solar submitted the additional information  
15 requestd by PGE.

16 18. On April 27, 2017, PGE acknowledged receipt of the additional  
17 information provided by Cottontail Solar. PGE incorrectly stated that Cottontail Solar's  
18 April 26 submission was in response to a May 16 letter rather than PGE's April 13 letter.  
19 PGE failed to provide a date by which it would send Cottontail Solar a draft PPA or  
20 request for additional or clarifying information.

21 19. On May 1, 2017, PGE filed its May 1 Update, which requested an  
22 effective date of May 17, 2017 for its updated avoided cost rates rather than the end of

1 June as Cottontail Solar expected. PGE's May 1 Update proposed to lower PGE's  
2 avoided cost rate significantly.

3 20. PGE never informed Cottontail Solar that it was planning to seek approval  
4 of its May 1 Update at the May 16, 2017 Public Meeting rather than the last Public  
5 Meeting scheduled in June as it had done in past years.

6 21. Similarly, PGE never informed Cottontail Solar that it was planning to  
7 request an effective date of May 17, 2017 for its May 1 Update.

8 22. Cottontail Solar would have proceeded through its PPA negotiations more  
9 quickly, and may not have requested any changes to PGE's draft PPA, if it had been  
10 aware that PGE intended to request a May 17, 2017 effective date for its May 1 Update.  
11 Cottontail Solar was denied the opportunity to make decisions on the basis of complete  
12 information, because PGE did not share its plans with the QFs it was negotiating with.

13 23. Commission Staff considered addressing PGE's May 1 Update at the May  
14 30, 2017 Public Meeting, but ultimately moved that consideration to a Special Public  
15 Meeting on May 18, 2017 per PGE's request. Re Portland General Electric Company  
16 Updates Qualifying Facilities Avoided Cost Payments, Schedule 201, UM 1728, Special  
17 Public Meeting at 2:18 (May 18, 2017).

18 24. On or about May 1, 2017, PGE also decided to file a request for new solar  
19 QF limits, which is currently being reviewed under docket number UM 1845 ("Request  
20 for New Solar QF Limits"). PGE's Request for New Solar Limits would, among other  
21 things, declare that a solar QF project with a capacity above 100 kilowatts ("kW") is not  
22 eligible for a standard contract or standard prices from PGE if any owner of the solar QF  
23 project has requested or obtained standard prices from PGE for more than 10 MW of

1 solar QF capacity; or in the alternative, lower to 2 MW the eligibility cap for a solar QF  
2 project to obtain prices from PGE.

3 25. PGE's Request for New Solar Limits could affect Cottontail Solar's  
4 eligibility for standard avoided cost prices, if Cottontail Solar were not able to establish a  
5 legally enforceable obligation under PGE's Standard PPA terms and rates in effect on  
6 May 31, 2017.

7 26. PGE chose not to inform Cottontail Solar that it was planning to file the  
8 Request for New Solar QF Limits, or that PGE was planning to seek interim relief.

9 27. Cottontail Solar would have proceeded through its PPA negotiations more  
10 quickly, and may not have requested any changes to PGE's draft PPA, if it had been  
11 aware that PGE intended to file the Request for New Solar QF Limits. Cottontail Solar  
12 was denied the opportunity to make decisions on the basis of complete information,  
13 because PGE did not share its plans with the QFs it was negotiating with.

14 28. On May 16, 2017, PGE provided Cottontail Solar with a draft PPA.

15 29. On May 18, 2017, the Commission held a Special Public Meeting to  
16 consider PGE's May 1 Update, and allowed PGE's new, and substantially lower, avoided  
17 cost rates to go into effect on June 1, 2017. Re Portland General Electric Company  
18 Application to Update Schedule 201 Qualifying Facility Information, Docket No. UM  
19 1728, Order No. 17-177 (May 19, 2017).

20 30. After the May 18, 2017 Special Public Meeting, PGE chose not to inform  
21 Cottontail Solar that its updated Schedule 201 had been adopted, or that its avoided cost  
22 rates were going to drop substantially on June 1, 2017.

1           31.           On May 23, 2017, Cottontail Solar requested execution copies of the May  
2 16 draft with two minor edits: 1) removing point 7 from Exhibit C; and 2) updating the  
3 expected commercial operation date in Sections 2.2.1 and 2.2.2 to May 1, 2020.

4 Cottontail Solar indicated that its intention for revising the change requests was to avoid  
5 any substantive updates and proceed with executable PPAs the same week.

6           32.           On May 31, 2017, PGE sent Cottontail Solar a form email confirming that  
7 PGE did not anticipate executing a contract with Cottontail Solar before June 1, 2017, at  
8 which point PGE's avoided cost rates would change.

9           33.           PGE's May 31 email stated that Cottontail Solar would be eligible for  
10 prices at the time its PPAs were executed, and that Cottontail would not be eligible for  
11 PGE's Pre June 1 Rates and Terms.

12          34.           On May 31, 2017, Cottontail Solar reaffirmed its desire to sell power to at  
13 the Pre-June 1 Rates and Terms, and reiterated its understanding that the changes it had  
14 requested to the draft PPA on May 23, 2017 were not substantive.

15          35.           On May 31, 2017, Cottontail Solar executed the draft PPA with the two  
16 minor alterations previously requested on May 23, 2017. Attachment A to this  
17 Complaint is a true and correct copy of this partially executed PPA.

18          36.           On June 14, 2017, PGE responded by providing a revised draft PPA to  
19 Cottontail Solar.

20          37.           PGE's June 14 letter explained that it was providing a revised draft PPA,  
21 rather than a final draft PPA, because Cottontail Solar's May 23 request to revise the  
22 commercial operation date constituted a substantive change.

1        38.        PGE’s June 14 letter did not address Cottontail Solar’s May 23 request to  
2 expedite the process of receiving an executable PPA by avoiding any substantive  
3 changes.

4        39.        PGE’s June 14 letter also ignored that Cottontail Solar sent a partially-  
5 executed PPA to PGE on May 31, 2017.

6        40.        On June 30, 2017, PGE filed its Request for New Solar QF Limits.

7        41.        On June 30, 2017, PGE also filed a Motion for Interim Relief, and  
8 requested expedited consideration, asking the relief PGE requested as permanent relief  
9 also be granted during while the Commission consider PGE’s application. PGE  
10 requested the interim relief be effective on June 30, 2017.

11       42.        On August 4, 2017, Cottontail Solar sent PGE a demand letter requesting  
12 that PGE execute the partially executed final PPA or Cottontail Solar would file a  
13 complaint with the Commission.

14       43.        The August 4 letter expressed Cottontail Solar’s belief that PGE had a  
15 legally enforceable obligation to purchase Cottontail Solar’s full net output at the Pre-  
16 June 1 Rates and Terms

17       44.        The August 4 letter informed PGE that Cottontail Solar was willing to  
18 execute any of the various draft PPAs exchanged at the Pre-June 1 Rates and Terms.

19       45.        As of August 9, 2017, PGE has neither acknowledged receipt nor  
20 responded to Cottontail Solar’s demand letter.

1  
2  
3 **VII. LEGAL CLAIMS**

4 **Complainant's First Claim for Relief**

5 **Cottontail Solar is entitled to PGE's standard contract at the Pre-June 1 Rates and**  
6 **Terms because Cottontail Solar legally obligated itself to sell the net output prior to**  
7 **the filing of this Complaint, and before the Schedule 201 rates changed on June 1,**  
8 **2017**

9 46. Cottontail Solar re-alleges all the preceding paragraphs.

10 47. PGE has an obligation to purchase a QF's net output that is directly or  
11 indirectly made available to PGE. 18 CFR 292.303(a)&(d), 292.304(d); ORS  
12 758.525(2)(b), 758.535(2)(a)&3(b); OAR 860-029-0030(1).

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

19 49. The establishment of a legally enforceable obligation turns on the QF's  
20 commitment to sell its net output to the electric utility. FLS Energy, 157 FERC ¶ 61,211  
21 at P 24; JD Wind 1, LLC, 129 FERC ¶ 61,148, at P 25 (2009). A QF can establish a  
22 legally enforceable obligation by committing itself to sell power to an electric utility.  
23 FLS Energy, 157 FERC ¶ 61,211 at P 25; Cedar Creek Wind, LLC, 137 FERC ¶ 61,006  
24 at PP 36, 39 (2011); Snow Mountain, 734 P.2d at 1371.

25 50. A QF can require a utility to purchase its net output, even if the utility has  
26 refused to enter into a contract. Id. at 1370-71; FLS Energy, 157 FERC ¶ 61,211 at P 24;  
Murphy Flat Power, 141 FERC ¶ 61,145 at P 24 (2012); Grouse Creek, 142 FERC ¶

1 61,187 at P 38. A utility cannot refuse to sign a contract “so that a later and lower  
2 avoided cost is applicable.” FLS Energy, 157 FERC ¶ 61,211 at P 25; Cedar Creek  
3 Wind, 137 FERC ¶ 61,006 at P 36. Similarly, a QF cannot be required to tender an  
4 executed interconnection agreement to form a legally enforceable obligation because that  
5 requirement would allow “the utility to control whether and when a legally enforceable  
6 obligation exists.” FLS Energy, 157 FERC ¶ 61,211 at PP 23, 26.

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

18 52. The Commission has determined a legally enforceable obligation will be  
19 established “once a QF signs the final draft of an executable contract provided by a utility  
20 to commit itself to sell power to the utility.” Re Investigation Into QF Contracting and  
21 Pricing, Docket No. UM 1610, Order No. 16-174 at 3 (May 13, 2016). However, a  
22 legally enforceable obligation “may be established earlier if a QF demonstrates delay or  
23 obstruction of progress towards a final draft of an executable contract, such as a failure

1 by a utility to provide a QF with required information or documents on a timely basis.”

2 Id. This is exactly what has occurred in this case.

3 53. The Commission has determined that a PPA can be executed and a legally  
4 enforceable obligation can be created in less than two months. Re Investigation Into QF  
5 Contracting and Pricing, Docket No. UM 1610, Order No. 16-174 at 24, 27-28 (May 13,  
6 2016).

7 54. FERC has determined that a legally enforceable obligation can be created  
8 in about one month. Rainbow Ranch Wind, LLC, 139 FERC ¶ 61,077 at PP 2-5, 24  
9 (2012); Grouse Creek Wind Park, LLC, 142 FERC ¶ 61,187, at PP 37-43 (2013).

10 55. Cottontail Solar has continued to commit, and is still committing, itself to  
11 sell the net output of the Cottontail Solar project to PGE at the Pre-June 1 Rates and  
12 Terms, as set forth in the partially executed final PPA. These commitments include, but  
13 are not limited to Cottontail Solar’s request for an executable PPA on May 23, 2017,  
14 Cottontail Solar’s execution of the draft PPA on May 31, 2017, and Cottontail Solar’s  
15 demand letter on August 2, 2017.

16 56. Cottontail Solar has continued to commit, and is still committing itself to  
17 sell its net output to PGE at the Schedule 201 rates, terms, and conditions in the partially  
18 executed final PPA.

19 57. PGE is required to purchase the net output of the Cottontail Solar project  
20 at the Pre-June 1 Rates and Terms set forth in the partially executed final PPA, despite  
21 PGE’s refusal to execute the partially executed PPA.

22 58. Cottontail Solar’s repeated statements of commitment, execution of the  
23 executable final PPA, continuing commitment to sell the net output of the Cottontail



1 Solar project, and efforts to obtain PGE’s execution of the partially executed PPA  
2 establish a legally enforceable obligation at the Pre-June 1 Rates and Terms, and all the  
3 terms and conditions in the partially executed PPA.

4 **Complainant’s Second Claim for Relief**

5 **Cottontail Solar is entitled to PGE’s standard contract at the Pre-June 1 Rates and**  
6 **Terms because Cottontail Solar legally obligated itself to sell the net output prior to**  
7 **the filing of this Complaint, before the Schedule 201 rates changed on June 1, 2017,**  
8 **and PGE violated the OPUC’s and FERC’s policies and rules, and Schedule 201**

9  
10 59. Cottontail Solar re-alleges all the preceding paragraphs.

11 60. The Commission has established rules, policies, standard contracts, and  
12 rate schedules to facilitate and direct the process by which a QF and an Oregon electric  
13 utility enter into a contract. Re Investigation Relating to Electric Utility Purchases from  
14 QFs, Docket No. UM 1129, Order No. 05-584 at 6-12, 16 (May 13, 2005). The purpose  
15 of the Commission approving standard contacts and schedules for each utility is to pre-  
16 establish “rates, terms and conditions that an eligible QF can elect without any  
17 negotiation with the purchasing utility” and to “eliminate negotiations . . . .” Id. at 12, 16.

18 61. PGE’s failure to abide by the terms of the Commission’s rules and  
19 policies, FERC’s rules and policies, and/or Schedule 201 can result in the creation of a  
20 legally enforceable obligation. Docket No. UM 1610, Order No. 16-174 at 3; Snow  
21 Mountain, 734 P.2d at 1371; International Paper v. PacifiCorp, Docket No. UM 1449,  
22 Order No. 09-439 at 6 (Nov. 4, 2009).

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

1           63.           PGE’s Schedule 201 includes timelines and requirements that a utility  
2 should follow when entering into a PPA with a QF 10 MWs and under. Pursuant to  
3 Schedule 201, “When all information required in the Standard PPA has been received in  
4 writing from the Seller, the Company will respond within 15 business days with a draft  
5 Standard PPA.”

6           64.           Schedule 201 also provides: “When both parties are in full agreement as to  
7 all terms and conditions of the draft Standard PPA, the Company will prepare and  
8 forward to the Seller a final executable version of the agreement within 15 business  
9 days.”

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

14          66.           The Commission’s rules and policies were to consider the utilities’ May 1  
15 Update at the last Public Meeting in June. See Re Portland General Electric Company  
16 Application to Update Schedule 201 Qualifying Facility Information, Docket No. UM  
17 1728, REC Comments at 6-7 (May 15, 2017); Re Portland General Electric Company  
18 Updates Qualifying Facilities Avoided Cost Payments, Schedule 201, UM 1728, Special  
19 Public Meeting at 5:58 (May 18, 2017).

20          67.           PGE’s previous May 1 Update filings confirm the Commission’s policy.  
21 In 2016, PGE requested an effective date of June 22, 2016, noting “Order No. 14-058  
22 directs the annual avoided cost update to be presented at a public meeting and have rates  
23 effective within 60 days of the May 1 filing. The last public meeting within 60 days of

1 May 1 is on June 21, 2016; hence the Company requests an effective date of June 22,  
2 2016.” Re Portland General Electric Company Application to Update Schedule 201  
3 Qualifying Facility Information, Docket No. UM 1728, PGE’s Application at 1 (April 29,  
4 2016). In 2015, after debate and clarification about when the May 1 Update should go  
5 into effect, PGE ultimately requested an effective date of June 30, 2015. Re Portland  
6 General Electric Company Application to Update Schedule 201 Qualifying Facility  
7 Information, Docket No. UM 1728, PGE’s Revised Application at 1 (June 29, 2015).

8 68. Based upon the Commission’s rules and policies, and PGE’s pattern of  
9 practice adhering to those policies, QFs had a reasonable expectation that the May 1  
10 Update would take effect in late June.

11 69. PGE’s request to deviate from the Commission’s policies and their own  
12 practice and hasten the effective date of its May 1 Update resulted in the establishment of  
13 a legally enforceable obligation because PGE sought to control when a legally  
14 enforceable obligation existed and delay progress toward a final executable contract so  
15 that a lower avoided cost rate was applicable. By no later than May 23, 2017, Cottontail  
16 Solar and PGE had agreed to all material terms and conditions, and Cottontail Solar  
17 requested an executable version of the PPA.

18 70. PGE has not provided an executable version on the PPA.

19 71. PGE violated Commission rules and policies, FERC’s rules and policies,  
20 and Schedule 201 when PGE ignored Cottontail Solar’s executed PPA of May 31, and  
21 provided a final draft PPA responsive to Cottontail Solar’s May 23 request instead.

22 72. By refusing to execute a PPA because of alleged concerns regarding  
23 requests that had been superseded by Cottontail Solar’s partially executed draft PPA

1 submission, PGE has attempted to control whether and when a legally enforceable  
2 obligation exists to sell its net output at the currently effective Schedule 201 rates, by  
3 delaying negotiations.

4 73. PGE violated the Commission's rules and policies, FERC's rules and  
5 policies, and Schedule 201 when it delayed and obstructed progress toward executing a  
6 PPA.

7 74. PGE violated the Commission's rules and policies, FERC's rules and  
8 policies, and Schedule 201 when it refused to provide an executable PPA or to execute  
9 the draft PPA.

10 75. PGE's violations of the Commission's rules and policies, FERC's rules  
11 and policies, and Schedule 201, and Cottontail Solar's execution of the draft PPA,  
12 continuing commitment to sell the net output of the Cottontail Solar project, and efforts  
13 to obtain PGE's signature resulted in a legally enforceable obligation at the previously  
14 effective Schedule 201 rates, and all the terms and conditions in the partially executed  
15 PPA.

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

17 **Cottontail Solar is entitled to PGE's standard contract at the Pre-June 1 Rates and**  
18 **Terms because Cottontail Solar legally obligated itself to sell the net output prior to**  
19 **the filing of this Complaint, before the Schedule 201 rates changed on June 1, 2017,**  
20 **and the Commission cannot changes policies and rules, and Schedule 201 to prevent**  
21 **Cottontail Solar from obtaining a legally enforceable obligation**  
22

23 76. Cottontail Solar re-alleges all the preceding paragraphs.

24 77. The Commission cannot revise its own rules or policies to lower the size  
25 threshold, impose an ownership cap, adopt an early avoided cost rate reduction, or make  
26 other changes in a manner that effectively prevents a qualifying facility from committing

1 itself to sell the net output of its project or otherwise creating a legally enforceable  
2 obligation.

3 78. The Commission cannot change policies and practices to hasten the  
4 effective date of its May 1 Update to prevent the establishment of a legally enforceable  
5 obligation because the Commission cannot control when a legally enforceable obligation  
6 existed and delay progress toward a final executable contract so that a lower avoided cost  
7 rate is applicable.

8 79. The Commission's actions allowing PGE to shorten the time available to  
9 QFs to conclude their negotiations with PGE before the effective date of its May 1  
10 Update resulted in the establishment of a legally enforceable obligation, because it  
11 allowed PGE to delay progress toward a final executable contract so that a lower avoided  
12 cost rate was applicable.

13 80. Cottontail Solar's execution of the draft PPA, continuing commitment to  
14 sell the net output of the Cottontail Solar project, and efforts to obtain PGE's signature  
15 resulted in a legally enforceable obligation at the previously effective Schedule 201 rates,  
16 and all the terms and conditions in the partially executed PPA, despite the Commission  
17 allowing the May 1 Update to change rates on June 1, 2017.

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

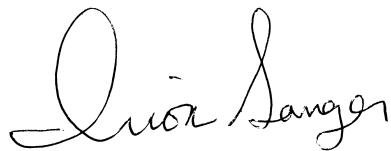
19 WHEREFORE, Cottontail Solar respectfully requests the Commission issue an  
20 order:

21 1. Finding PGE in violation of: 1) the mandatory purchase obligation of the Oregon  
22 PURPA; 2) the mandatory purchase obligation of the federal PURPA; 3) FERC's

- 1 PURPA regulations, policies, and orders; 4) the Commission's PURPA  
2 regulations, policies, and orders; and 5) PGE's Schedule 201;
- 3 2. Requiring PGE to purchase the net output of the Cottontail Solar project at the  
4 Pre-June 1 Rates and Terms in the partially executed PPA;
- 5 3. Requiring PGE to enter into a PURPA PPA with Cottontail Solar at the Pre-June  
6 1 Rates and Terms, and all the terms and conditions in the partially executed PPA;
- 7 4. Instituting penalties up to \$10,000 under ORS 756.990 against PGE and paid by  
8 PGE's shareholders for each violation of ORS 758.525(2), 758.535(2)(b), 18 CFR  
9 292.303(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 10th day of August, 2017.

Respectfully submitted,



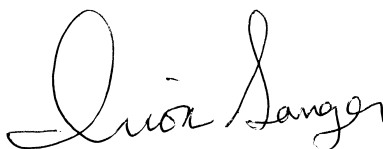
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Of Attorneys for Cottontail Solar

## CERTIFICATE OF FILING

I certify that on August 10, 2017, on behalf of Cottontail Solar, I filed the foregoing Complaint with the Oregon Public Utility Commission by electronic communication consistent with OAR 860-001-0170.



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