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July 20, 2017

Via Electronic Mail

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

Re: OPUC Docket No. UM 1844

Attention Filing Center:

Attached for filing in the above-captioned docket is an electronic version of *Evergreen BioPower, LLC's Answer to Portland General Electric Company's Counterclaim*.

Thank you in advance for your assistance.

Sincerely,



Ken Kaufmann
Attorney for Evergreen BioPower, LLC

Attach.

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

UM 1844

Evergreen BioPower, LLC

Complainant,

vs.

Portland General Electric Company

Respondent.

**EVERGREEN BIOPOWER, LLC'S
ANSWER TO PORTLAND GENERAL
ELECTRIC COMPANY'S
COUNTERCLAIM**

Evergreen BioPower, LLC (Evergreen) hereby answers the counterclaim of Portland General Electric Company (PGE) contained in *Portland General Electric's Answer to the Complaint* (Answer). Evergreen denies any allegation not specifically admitted herein.

Evergreen's Answers to PGE's Counterclaim

1. In response to the allegations in paragraph 49 of PGE's Answer, Evergreen states as follows: Evergreen admits it requested a Standard Renewable Off-System Non-Variable Power Purchase Agreement (PPA) on November 15, 2016. Evergreen admits that PGE requested additional information and Evergreen provided additional information about the Facility between December 16, 2016 and February 6, 2017. Evergreen does not know whether PGE provided Evergreen a draft PPA solely "based on the information provided by Evergreen" and therefore denies PGE's third sentence stating the same. Evergreen admits the final sentence but denies any implication that the point of delivery is an item PGE is permitted to negotiate under a standard contract.

2. In response to the allegations in paragraph 50 of PGE's Answer, Evergreen responds as follows:
- Evergreen denies "Evergreen's application for a PPA stated that the nameplate capacity of the turbine generator was 10 MW" as partial and misleading. In its first application to PGE, on November 15, 2016, Evergreen stated "Maximum kW output: 10,000 kW (turbine limited)". The next time Evergreen provided information to PGE, on December 27, 2016, it stated that the Nameplate Rating, in kW of the Facility was "10,000 [kW] Turbine Limited". "Turbine limited" discloses that other individual components of the facility may have greater than 10,000 kW capacity which is unusable due to the 10,000 kW nameplate capacity of the turbine.
 - Evergreen denies sentence 2 and sentence 3 in paragraph 50, because it does not know when PGE first became concerned about Evergreen's nameplate capacity; Evergreen admits that PGE provided Evergreen a general notice of unspecified concerns, on May 25, 2017, and admits PGE told Evergreen it questioned whether Evergreen's facility was less than 10,000 kW on May 31, 2017.
 - Evergreen denies sentence 4 in paragraph 50 (stating that "PGE agreed to execute the PPA with Evergreen with the specific understanding that Evergreen would work with PGE to resolve PGE's concerns regarding Evergreen's true nameplate capacity"). Evergreen's signing and delivering the executable standard contract to PGE on May 16, 2017 consummated the parties' standard contract; PGE's subsequent signature on May 31 was a mere

formality. On May 31, Evergreen specifically refused to renegotiate the May 16 PPA, but did respond promptly to PGE’s requests for further information about the Facility.

3. In response to the allegations in paragraph 51 of PGE’s Answer, Evergreen responds as follows:
 - Evergreen admits the allegation of the first sentence.
 - Evergreen denies that PGE “reminded Evergreen” before executing the PPA. PGE’s “reminder” occurred *after* the May 16 formation of the parties’ contract.
4. Evergreen denies all allegations in paragraph 52 of PGE’s Answer. Specifically:
 - Evergreen denies that the nameplate capacity of its facility exceeds 10 MW;
 - Evergreen denies that it modified its facility;
 - Evergreen denies that it attempted to evade the 10 MW eligibility cap; and
 - Evergreen denies that its warranty in Section 3.1.7 of the PPA is untrue.
5. In response to paragraph 53, Evergreen refers to and incorporates all of its previous paragraphs.
6. Evergreen denies the allegations of paragraph 54.

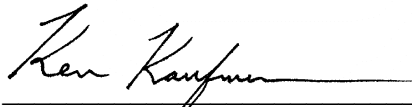
AFFIRMATIVE DEFENSES

7. Lack of Subject Matter Jurisdiction over post-formation contractual and quasi-contractual disputes.
8. Laches
9. Avoidance of Contract

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Dated this 20th day of July 2017.

Respectfully submitted,

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