BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1877-UM 1882, UM 1884-UM 1886, UM 1888-UM 1890

In the Matters of BOTTLENOSE SOLAR, LLC; VALHALLA SOLAR, LLC; WHIPSNAKE SOLAR, LLC; SKYWARD SOLAR, LLC; LEATHERBACK SOLAR, LLC; PIKA SOLAR, LLC; COTTONTAIL SOLAR, LLC; OSPREY SOLAR, LLC; WAPITI SOLAR, LLC; BIGHORN SOLAR, LLC; MINKE SOLAR, LLC; HARRIER SOLAR, LLC, Complainants, v. PORTLAND GENERAL ELECTRIC COMPANY, Defendant.	REPLY IN SUPPORT OF MOTIONS FOR LEAVE TO FILE AMENDED COMPLAINTS

I. INTRODUCTION

Pursuant to OAR 860-001-0420, Complainants respectfully file this Reply in support of their Motions for Leave to File Amended Complaints[1] filed on April 20, 2018. Portland General Electric Company ("PGE") filed a Response in Opposition on May 6, 2018. The Oregon Public

[1] Each of the Complainants filed a motion for leave to file an amended complaint. These motions are referred to collectively throughout this Reply as the "Motions for Leave to File Amended Complaints" or "Motions for Leave."

Utility Commission ("Commission") should grant each of Complainants' Motions for Leave to File Amended Complaints because justice so requires.

These cases ask that the Commission decide whether each of the Complainants formed a legally enforceable obligation ("LEO"). In making that determination, the Commission has the discretion to decide which avoided cost rates apply, depending on when the LEO was formed. The Complainants original and amended complaints both allege that they formed LEOs prior to an avoided cost rate reduction on June 1, 2017. There are no disputed contractual provisions other than the applicable rate and the Complainants have continued to commit themselves to sell their net output to PGE. Thus, the Commission should find that they have LEOs before June 1, 2017, and that the Complainants have exercised their power to determine the date for which avoided costs are calculated by obligating itself to provide power

If the Commission rules against the Complainants and concludes that they are not entitled to the pre-June 1, 2017 rates, then the Commission will be required to determine which avoided cost rate applies. The Complainants position is that in this circumstance they will then be eligible for rates in effect prior to the next avoided cost rate change on September 18, 2017. As the Commission will already need to set an applicable rate based on the facts alleged or proven at hearing, the Complainants do not believe that they are required to amend their Complaints to assert their rates to the post-June 1, 2017 and pre-September 18, 2017 rates. Both PGE and the Complaints have fully briefed this issue. However, it has come to the Complainants attention that PGE disagrees and believes that, if the Commission rules against the Complainants, then they are only eligible for the rates in effect at the time of the Commission's final order. This will likely be at least a year after the Complaints filed their original complaints. Therefore, the Complainants raised an alternative claim to make it clear that, if the Commission finds that any

one of the Complainants are not eligible for the pre-June 1, 2017 rates, then at a minimum they are eligible for the rates in effect prior to September 18, 2017.

The Complainants also amended their complaints to include additional facts regarding PGE's efforts to prevent the Complainants from entering into power purchase agreements ("PPAs") or otherwise forming LEOs. The Complainants believe that their execution of the partially executed PPAs is sufficient to form a LEO under Oregon and the Federal Energy Regulatory Commission's ("FERC's") policies. The Commission also allows a QF to establish a LEO by showing that the utility delayed or obstructed of progress toward obtaining a PPA. The original complaints raised a number of factual allegations regarding PGE's delays, which supported their second and third claims for relief. Subsequent to filing their Complaints, the Complainants attorneys discovered new facts. These included:

- Some of the complainants contacting PGE and confirming they established a LEO months earlier than identified in the original complaints;
- PGE historically entered into contracts much more quickly and in as little as 30 business days, including with at least one of the Complainants;
- That PGE either newly created its "three-stage process" or did not routinely apply it in the past;
- That at least one of the Complainants had a reasonable expectation that PGE would not follow a "three stage" process; and
- PGE's then Vice President of Power Supply informed at least one of the Complainants that PGE does not favor QFs, that PGE believes that developers are making a windfall and that PGE now has a new attorney to work alongside the PPA group to change its policy that will have the practical impact of slowing down the PPA process and ensuring that fewer QFs are able to execute PPAs.

Unless the Commission determines that it is irrelevant that PGE decided to change its contracting process in a manner that was specifically intended to prevent these and other QFs from entering

into PPAs are irrelevant, then the Commission cannot grant PGE's Motion for Summary Judgment.

The fact that the amended complaints include a claim for the avoided cost rates in effect as of June 1, 2017 as an alternative to their original claim for pre-June 1 rates and added additional facts does not significantly expand the underlying cause of action. Both derive from PGE's failure to execute a power purchase agreement. PGE is not also prejudiced by the filing of amended complaints because it is still well before the close of evidence, PGE will have a reasonable opportunity to investigate and respond.

Complainants brought their Motions for Leave in April because they reasonably believed they were not permitted to bring the motions earlier in the proceedings. At the pre-hearing conference on February 9, 2018, PGE indicated that it did not think the amended complaints would make a bit of difference in the resolution of its Motion for Summary Judgment, which led the Complainants to believe that PGE had consented and waived its right to object to filing amended complaints. Additionally, while there was no schedule specifically adopted for the filing of amended complaints, the parties agreed that Complainants would not file their own motion for summary judgment while PGE was in a period of responding to another filing, and Complainants reasonably believed that this included the filing of amended complaints. Therefore, the timing of these motions for leave is not sufficient to deny leave to file amended complaints. As such, justice requires that the Commission allow Complainants to amend each of their complaints.

II. BACKGROUND

Complainants first informed PGE that they intended to file amended Complaints on or about January 23, 2018. The Complainants informed PGE that they planned to amend their

complaints, and explained it would be preferable to have a more orderly processing of pleadings in this proceeding through the following schedule: Complainants amending their complaints, PGE filing new answers, and then the parties could then decide whether the case should be resolved by motions or an evidentiary proceeding. PGE understood that it was at risk of its motion for summary judgment being mooted by new allegations or facts that could be raised in the amended complaints. PGE did not inform the Complainants that it would object to their amending the complaints.

The Complainants informed the Commission on February 2, 2018 of their intent to request leave to file amended complaints in their Response in Opposition to PGE's Motion to Stay Discovery and Procedural Schedule. At the February 9, 2018 prehearing conference, Administrative Law Judge ("ALJ") Allan J. Arlow sought to reach a resolution with the parties regarding the "blizzard" of filings that had occurred leading up to that prehearing conference and how to proceed given the facts that Complainants desired to file amended complaints, PGE had already filed a Motion for Summary Judgment, and Complaints wished to file their own Cross-Motion for Summary Judgment. Different schedules were discussed including essentially starting the case de novo with Complainants filing new complaints and giving PGE a chance to respond to those complaints. Complainants supported this approach, but PGE expressly rejected that approach, asserting that it did not think amended complaints would make "a bit of difference" in the resolution of PGE's Motion for Summary Judgment. ALJ Arlow sought to clarify PGE's position, and PGE appeared to agree that amended complaints could be filed before the Commission ruled on its Motion for Summary Judgment. Specifically, the dialogue at the February 9, 2018 prehearing conference was as follows:

ALJ Arlow: Well if you file a motion for summary judgment . . . we're going to have to rule on it at some point. I thought you might be in a position where you might have wanted to withdraw, but I guess that's not the case . . . You didn't want to wait and see what else would come down the pike first before filing a motion. That's right?

Mr. Lovinger: That's correct.

Therefore, it appears that PGE originally did not object to amended complaints being filed prior to a ruling on its Motion for Summary Judgment. Further, in that prehearing conference no schedule was specifically set for filing amended complaints, but it was noted that Complainants could make their additional allegations in their response to PGE's Motion for Summary Judgment and Complainants agreed not to file their own Cross-Motion for Summary Judgment while PGE was in a period of responding to another filing. The Complainants agreed to this restriction because PGE asserted that it did not want to be responding to both the Complainants' Response to PGE's Motion for Summary Judgment and the Complainants Cross-Motion for Summary Judgment. Complainants also assumed that PGE did not want to simultaneously respond to amended complaints. Therefore, Complainants would have requested leave to file their amended complaints much earlier but reasonably believed that they could not under the adopted procedural schedule.

III. ARGUMENT

A. The Commission Does Not Follow Rigid or Formalistic Pleading and Liberally and Freely Allows Complainants to Amended Their Pleadings

Under ORCP 23A a pleading may be amended after a responsive pleading has been served either by consent of the parties or by leave of the court, and leave shall be freely given

when justice so requires.[2] Under the ORCP, pleadings may be amended at any time, even after judgment.[3] The types of amendments that occur after judgment are different however, often made under ORCP 23B, which allows amendment to conform the complaint to the evidence when issues not raised by the pleadings are tried by express or implied consent of the parties.[4] However, a complaint before the Commission may only be amended at any time before the completion of taking of evidence by order of the Commission including by making additional claims so long as the defendant is given an opportunity to investigate and respond to those additional allegations and even if it means that the final hearing needs to be continued.[5]

The Commission follows the ORCP in contested cases unless inconsistent with Commission rules, a Commission order, or an ALJ ruling.[6] As just noted, the Commission has a specific statutory direction regarding the handling of amended pleadings and there is nothing more specific in the Commission rules regarding amended Complaints.

The Commission has, however, established additional rules governing its pleading requirements under Oregon Administrative Rule ("OAR") 860-001-0400. These rules provide more detailed requirements. OAR 860-001-0400 states "complaints, and other initiating pleadings must include: [parties' contact information]; A clear and concise statement of the

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2 ORCP 23A.

3 See Safeport, Inc. v. Equip. Roundup & Mfg., 184 Or App 690 (2002).

4 ORCP 23B.

5 ORS 756.500(4) ("The complaint may, at any time before the completion of taking of evidence, be amended by order of the commission. However, if a charge not contained in the original complaint or a prior amended complaint is sought to be made by any such amendment, the defendant shall be given a reasonable time to investigate the new charge and answer the amended complaint. The final hearing shall, if necessary, be continued until some date after the defendant has had a reasonable time to investigate and be prepared to meet the amended complaint.").

6 OAR 860-001-0000(1).

authorization, action, or relief sought; Appropriate references to the statutory provision or other authority under which the filing is made; and Other information as required by the Commission's rules."[7] As OAR 860-001-0400, illustrates the Commission's rules are also simple, basic, and straightforward, and do not include any additional pleading requirements with respect to the number of claims alleged or the number of remedies sought. OAR 860-001-0000(1) states that "[t]he Commission will liberally construe these rules to ensure just, speedy, and inexpensive resolution of the issues presented."

The Commission's rules for filing complaints against regulated utilities are different than Oregon's court rules because they are intended for different audiences. The majority of complaints filed against PGE at the Commission are consumer complaints by pro se customers of regulated utilities, and are meant to be handled expeditiously. Requiring hyper-technical pleading rules would set a dangerous precedent that could permit PGE to collaterally attack customer complaints. There is simply no way a pro se customer would ever be able to obtain Commission resolution of their dispute if they needed to comply with PGE's views regarding amending complaints.

Finally, it is worth noting that PGE does not always follow the rigid pleading standards that are required for state court pleadings. For example, PGE recently filed complaints against QFs regarding a contract interpretation issue. PGE did not bother to separately enumerate any specific facts as is required in state court but simply filed a narrative document more akin to a legal brief than a complaint.[8] PGE only insists on formalistic process when it seeks to prevent

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7 OAR 860-001-0400(2).

8 Portland Gen. Elec. Co. v. Pac. N.W. Solar, Docket No. UM 1894, PGE Complaint (Aug. 31, 2017)

other parties, rather than itself, from being able to obtain Commission resolution of their disputes.

B. The Commission Should Grant Leave to Amend the Complaints Prior to Ruling on the Motions for Summary Judgment

When a party requests leave to amend its complaint after a dispositive motion has been filed, the judge as the discretion to permit the amendment prior to issuing its ruling on the motion.[9] This is true even where the motion has been fully briefed and the judge has given preliminary rulings that the motion would be successful but before entry of its written disposition.[10] In this case, the Complainants gave ample notice of their desire to file amended complaints, the parties discussed it with the ALJ at a prehearing conference, and PGE agreed to proceed with its motion for summary judgment in spite of the amended complaints. Therefore, it is appropriate for the Commission, in its discretion, to allow the amended complaints before issuing a ruling on the motions for summary judgment.

C. PGE Appears to Have Previously Consented to the Filing of Amended Complaints

PGE stated at the February 9, 2018 prehearing conference that it did not think amended complaints would make a bit of difference in the resolution of its Motion for Summary Judgment. ALJ Arlow asked whether PGE wanted to wait to see what the amended complaints

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9 Hagen v. Shore, 140 Or App 393, 397-98 (1996) ("The allowance of amendments to pleadings after the filing of potentially dispositive motions--and, indeed, after preliminary rulings on such motions--but before the entry of some written disposition, is a matter committed to the trial court's discretion. ORCP 23 A. See, e.g., Cole v. Zidell Explorations, Inc., 275 Or 317, 322 (1976) (trial court did not err in permitting amendment after submission of motion for judgment on the pleadings); Enertrol Power Monitoring Corp. v. State of Or., 116 Or App 502, 505 (1992) (trial court did not abuse discretion in denying leave to amend after summary judgment motion hearing occurred")").

10 Id. at 397.

alleged before filing its motion, but PGE refused. Complainants noted that they intended to make additional factual allegations and additional claims as a part of the amended complaints and that PGE's motion does not address and cannot address all of the additions.

But PGE still asserted that it wanted to move forward with its Motion for Summary Judgment. PGE suggested that Complainants could assert whatever would be in the amended complaints in their Response to PGE's Motion for Summary Judgment. Complainants did just that,[11] and in response, PGE asserted that to raise this claim "at such a late date and without any motion for leave to amend the complaints is prejudicial to PGE's defense of these cases."[12] Under the procedural schedule adopted at the pre-hearing conference on February 9, 2018 Complainants agreed not to file their own Cross-Motion for Summary Judgment while PGE was in a period of responding to another filing, so Complainants reasonably believed that this also included the filing of amended complaints. Complainants then brought these Motions for Leave after PGE was no longer in a period of responding.

As it appears that PGE did not oppose the filing of amended complaints, PGE should be prevented from now opposing the amended complaints. If PGE had indicated earlier that it opposed amended complaints, then Complainants could have requested that ALJ Arlow adopt a different procedural schedule that allowed for briefing on the issue of the whether amended complaints should be filed prior to all the filings related to the motions for summary judgment. But since PGE appeared to consent to the filing of amended complaints, Complainants agreed to

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11 See e.g. Complainants' Response to PGE's Motion for Summary Judgment at 34 ("Complainants, at a minimum, formed LEOs after June 1, 2017 but before September 18, 2017").

12 PGE's Reply in Support of its Motion for Summary Judgment at 33-34.

proceed with the briefing on the motions for summary judgment including asserting the issues that would be in the amended complaints in response to PGE's Motion for Summary Judgment. Now that PGE has changed its position, it is in the interest of justice to allow Complainants leave to file amended complaints.

D. The Leave to File Amended Complaints is Properly Requested Prior to the Close of Evidence Under the Commission's Statutory Direction

Complainants' Motions for Leave come prior to the close of evidence as required by the Commission's specific statutory direction. ORS 756.500(4) allows the Commission to grant leave to amend a complaint at any time prior to the close of evidence, provided that "if a charge not contained in the original complaint or a prior amended complaint is sought to be made by any such amendment, the defendant shall be given a reasonable time to investigate the new charge and answer the amended complaint."

Complainants make these Motions for Leave prior to the close of evidence and they do not oppose giving PGE a reasonable time to investigate any new charges and answer the amended complaint. Therefore, pursuant to the Commission's statutory direction, the Commission should allow the amendments and allow PGE a reasonable time to investigate and answer.

E. Justice Requires that Leave Be Granted

It is in the interests of justice to grant Complainants' Motions for Leave to File Amended Complaints under the factors set forth in case law. The Oregon Court of Appeals adopted a four-factor test for determining whether a trial court abused its discretion in granting or denying a motion for leave to amend a complaint: "(1) the nature of the proposed amendments and their relationship to the existing pleadings; (2) the prejudice, if any, to the opposing party; (3) the

timing of the proposed amendments and related docketing concerns; and (4) the colorable merit of the proposed amendments."[13]

Complainants alternative claim for relief is sufficiently related to the existing pleading and in fact, relies on the same facts set forth in the existing pleading. Complainants' initial complaints all stated a cause of action to form a LEO. The specific claim for the pre-June 1, 2017 avoided costs rates is based upon facts alleged in the initial complaints (including facts that occurred after June 1 but prior to the time the Complaint was filed).[14] The new claim for post-June 1, 2017 avoided cost rates is related to the same "cause of action" to form a LEO and relies on the same facts alleged in the initial complaints. While there are additional factual allegations in the amended complaints, those allegations support both the claims for pre-June 1 and post-June 1, 2017 rates.

Contrary to PGE's assertion, pleadings may be amended to include new claims, but when a pleading contains a new claim the timing of that amendment becomes particularly important. PGE appears to confuse a cause of action with the individual claims.[15] A "cause of action" is defined as "a group of operative facts giving rise to one or more bases for suing; a factual situation that entitles one person to obtain a remedy in court from another person."[16] Therefore, in these cases the cause of action is the PGE's failure to enter into an executable PPA, and the

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13 Safeport, Inc. v. Equip. Roundup & Mfg., 184 Or App 690, 699 (2002).

14 See e.g. Bottlenose Solar v. PGE, UM 1877, Initial Complaint ¶¶ 54-67 (Aug. 7, 2017).

15 See PGE's Response in Opposition to Complainants' Motion for Leave to Amend Complaints at 7 ("trial courts have ample discretionary authority to allow amendments, provided the proffered amendment does not substantially change the *cause of action* . . . In the instant cases, Complainants seek to . . . add an entirely new *claim* for relief.") (citations and quotations omitted) (emphasis added).

16 Black's Law Dictionary 102 (4th pocket ed. 2011).

claims for pre-June 1 rates or post-June 1 rates are simply alternative remedies. There is not a new cause of action. In any event, the Commission's specific statutory direction expressly allows a complaint to be amended to include additional "charges" so long as the defendant has an opportunity to answer it.[17] A "charge" is defined, in part, as "an incumbrance, lien, or *claim*."[18]

The fact that an amended complaint contains a new claim just makes the timing of that amendment more relevant because the opposing party needs an opportunity to respond. Under ORS 756.500(4) the Commission must allow a response if a new charge is added. Here, Complainants were up front about wanting to add a new claim and the ALJ even asked PGE if it wanted an opportunity to respond before filing a motion for summary judgment, but PGE refused. Since, PGE will have an opportunity to file an amended answer, there is no reason to deny the Motions for Leave on the grounds that a new claim is being added.[19]

Additionally, PGE is not prejudiced by the proposed amendment because PGE had ample notice of the amendment. In Forsi, the plaintiff requested leave to amend her complaint on the day before trial, but despite the late timing the Oregon Court of Appeals found it persuasive that she had provided warning to defendant of her intention to do so.[20] Here, Complainants first

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17 ORS 756.500(4).

18 Black's Law Dictionary 108 (emphasis added).

19 Additionally, PGE's argument that these new claims would inject a new element of damage does not make any sense. PGE argues that to expose it to the avoided costs rates in effect between June 1, 2017 and September 18, 2017 injects a new element of damage. These rates are not damages. It is simply the contract price. As PGE is aware, the Commission does not have the statutory authority to award damages, and any damages claims would need to be raised in a subsequent complaint in state or federal court. Re Columbia Basin Elec. Coop. v. PacifiCorp, dba Pacific Power and North Hurlburt Wind LLC, Docket No. UM 1670, Ruling at 5 (April 28, 2014).

20 Forsi v. Hildahl, 194 Or App 648, 653 (2004) ("Third, plaintiff did propose her amendment rather late in the proceedings. As noted, however, she did so after providing warning before trial of her intention to do so.").

indicated their desire to file amended complaints on February 2, 2018, and expressly stated that it involved adding new claims at the pre-hearing conference on February 9, 2018. That Complainants filed for amended complaints in April is not an effort to prejudice PGE or delay the proceedings. Complainants preferred to proceed under the ALJ's suggested procedure of starting de novo so that the parties could avoid the situation they currently find themselves: where PGE's has a pending (and fully briefed) motion for summary judgment that does address the new claim. Each day of delay in this proceeding actually prejudices Complainants because it makes it less likely that the projects will be constructed. It is clear now that PGE wanted to pursue this procedural schedule so that it could challenge the amended complaints at a later date and further delay the proceeding.

Finally, the colorable merit of the proposed amendments weighs in favor of granting leave to amend. It does not take a great stretch of imagination to see that an alternative claim for post-June 1 avoided cost rates is meritorious, especially considering that PGE itself noted that under various scenarios an executable PPA would have been due to Complainants at various dates following June 1, 2017.[21] Therefore, it is in the interests of justice to grant Complainants' Motions for Leave to File Amended Complaints.

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[21] See PGE's Motion for Summary Judgment at 11 ("If each of the 12 Complainants had accepted all of the terms and conditions in their draft PPAs and requested executable PPAs on the day they received the draft PPAs from PGE, then the *earliest* each QF would have been entitled to an executable PPA would have been after the June 1 rate change"); Id. at 13 ("the *earliest* that each Complainant would have been entitled to an executable PPA would have been 15 business days later on July 6, 2017").

F. That Complainants Amended Facts Could Have Been Discovered Earlier is not Grounds for Denying Leave to Amend

Even if Complainants' should have been aware of the new facts alleged in the amended complaints prior to February 2018, that does not justify denying amendment at this stage in the proceeding. The case PGE cites to for denial on these grounds involved a motion to amend at trial right after plaintiff rested, and plaintiff sought to amend to conform her case to the evidence that came to light at trial.[22] The Oregon Supreme Court specifically stated "[w]here the party seeking the amendment has reasonable means of learning or has knowledge *prior to trial* of the circumstances which make it desirable for him to amend, a slight chance that the other party will be prejudiced will justify a refusal of the requested amendment."[23] That is presumably because the party should have discovered the evidence during the discovery process so, or as the Oregon Supreme Court noted in Cutsforth, "the plaintiff could have deposed the [witness] more thoroughly."[24] Additionally, both of these cases involved amendments to conform the complaint to evidence at trial under ORCP 23B.

These cases are distinguishable in two important ways: 1) they are made well in advance of the close of evidence, and 2) they are not amendments to conform the complaint to evidence under ORCP 23B. In these cases, the parties have not conducted much discovery at all because it has been stayed and final hearing date is not set. What has occurred in these cases is exactly what the Oregon Supreme Court was attempting to encourage in Quirk and Cutsforth: that the parties discover additional evidence *before trial*. Here, between the filing of the complaints in

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22 Quirk v. Ross, 257 Or 80, 83 (1970).
23 Id. at 83-84.
24 Custforth v. Kinzua Corp., 267 Or 423, 434 (1973).

August 2017 and February 2018 (5 months) Complainants conducted a more thorough review of their records and the resources available to them and came up with additional facts supporting their claims. That they could have done that review earlier is not, by itself, grounds for denying leave to amend.

Further under ORS 756.500(4), the Commission may allow amendment before the close of evidence, presumably because during the course of discovering the "evidence" additional facts will come to light. The Commission may never face the situation posed in Quirk and Cutsforth because it appears that ORS 756.500(4) would not permit an amendment in the middle of a or after a final hearing. Therefore, the fact that Complainants may have discovered these new facts earlier is not grounds for denying leave to amend.

Finally, amended complaints would not be necessary but for the fact that PGE filed a motion for summary judgment. A complaint is not required to identify each and every factual allegation in support of the claims for relief. The Complainants second and third claims for relief request that the Commission find that they formed LEOs because they unequivocally committed themselves and PGE violated the OPUC's and FERC's policies and rules, and Schedule 201, including but not limited to PGE's delays, obstructions of progress and surprise regulatory filings. The facts that these efforts were directed by the highest levels of PGE's executive team and that they constituted a major change in contracting policy do not alter the fundamental claims for relief, but are new facts that demonstrate that PGE specifically intended to delay and obstruct progress toward completion of a PPA. Unless the Commission finds PGE's past actions to more reasonably contract and the Complainants reliance on those actions, as well as PGE's specific intent irrelevant, then the Commission must deny PGE's motion for summary judgment.

G. In the Alternative, the Commission Could Find that Amending the Complaints Is Unnecessary

The Complainants do not believe that they are required to amend their complaints to be entitled to rates post-June 1 but prior to September 18, 2017. They only did so because PGE's position is that the Complainants will only be eligible for the rates at the time the Commission issues its final order.[25] The Commission has recognized that the Oregon Court of Appeals "concluded that a QF has the power to determine the date for which avoided costs are calculated by obligating itself to provide power."[26] When resolving a dispute and identifying the date upon which the QF has formed a LEO, the Commission explained that by filing a complaint, "the QF and the utility will have the opportunity to fully explain any concerns and present arguments regarding the formation of a LEO and an avoided cost price to be applied."[27] Regardless of whether the complaints are amended, the Commission will need to make a determination regarding the avoided cost that will be applied. Therefore, if the Complainants are not allowed to amend their complaint to add their fourth alternative claim for relief, then the Commission should conclude that it will allow the Complainants and PGE to freely argue what the appropriate avoided cost rate will be, including that it should be the rates post-June 1 and prior to September 18, 2017.

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25 As PGE's rates are expected to change later this month or earlier next month, according to PGE the Complainants will not even be eligible for the current rates. PGE's view is that a QF should be penalized for filing and litigating a complaint and should potentially experience multiple rate reductions that occur over the passage of time. This is will provide a powerful incentive for QFs to acquiesce to even the most unreasonable utility demands because the risks associated with filing a complaint could be too great.

26 Re Investigation Into QF Contracting and Pricing, Docket No. UM 1610, Order No. 16-174 at 24 (May 13, 2016).

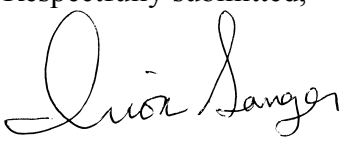
27 Id. at 27-28.

IV. CONCLUSION

The proposed amendments do not significantly expand the underlying cause of action that PGE failed to execute a power purchase agreement. PGE is not prejudiced because PGE will have a reasonable opportunity to investigate and respond, and PGE even appeared to consent to the filing of amended complaints at the February 9 prehearing conference. The timing of these motions for leave or fact that Complainants could have discovered the new facts earlier is not sufficient to deny leave to file amended complaints. As such, justice requires that the Commission allow Complainants to amend each of their complaints.

Dated this 14th day of May 2018.

Respectfully submitted,



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