ALISHA TILL
Direct (503) 290-3628
alisha@mrg-law.com

March 23, 2018

VIA ELECTRONIC FILING

Attention: Filing Center
Public Utility Commission of Oregon
P.O. Box 1088
Salem, Oregon 97308-1088

Re: Docket UM 1894: Portland General Electric Company's Motion for Summary Judgment

Attention Filing Center:

Attached for filing in the above-captioned docket is a copy of Portland General Electric Company's Motion for Summary Judgment.

Please contact this office with any questions.

Sincerely,

Alisha Till
Legal Assistant

Attachment

BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UM 1894

Portland General Electric Company, Complainant v. Pacific Northwest Solar, LLC, Respondent.	**PORTLAND GENERAL ELECTRIC COMPANY'S MOTION FOR SUMMARY JUDGMENT**

1 Pursuant to Oregon Rule of Civil Procedure 47, OAR 860-001-0000(1), and the
2 Prehearing Conference Report and Ruling issued on March 6, 2018, Portland General Electric
3 Company (PGE) respectfully files this Cross-Motion for Summary Judgment. The central
4 question in this case is whether PGE's Standard Power Purchase Agreement (PPA) permits PNW
5 Solar, LLC (PNW Solar) to materially alter the nameplate capacities of its qualifying facilities
6 (QFs) prior to construction of the facilities and to amend its executed PPAs accordingly. PGE
7 contends that such action is not permitted.

8 PGE's Standard PPA is a product of the Public Utility Commission of Oregon's
9 (Commission) orders and rules implementing the Public Utility Regulatory Policies Act
10 (PURPA). At the Commission's direction, PGE revised its Standard PPA to allow an existing
11 QF to undertake efficiency upgrades or necessary equipment replacement and to increase its
12 nameplate capacity as a result, while continuing to receive the avoided cost prices in its executed
13 PPA. In adopting this policy, the Commission sought to allow needed upgrades and efficiency
14 improvements, and the Commission's decision contemplated nameplate capacity changes *only*
15 from such improvements to an existing facility—not from wholesale revisions to a project during
16 the pre-construction planning process, as PNW Solar proposes here. In addition, the plain

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Portland, OR 97205

1 language of PGE's Standard PPA authorizes only nameplate capacity increases from upgrades
2 and efficiency improvements to an operational QF.

3 If PNW Solar's projects and other QFs were permitted to materially revise their
4 nameplate capacities after executing PPAs, both PGE and its customers could be exposed to
5 substantial additional planning costs and almost 200 megawatts (MW) of unexpected mandatory
6 purchases at outdated and more expensive avoided cost prices. For all of these reasons, PGE
7 respectfully requests that the Commission grant PGE's motion for summary judgment and hold
8 that a QF is not permitted to materially change the nameplate capacity reflected in its executed
9 Standard PPA, except through necessary upgrades or efficiency improvements to an existing
10 facility.

I. UNDISPUTED FACTS

11 In the first half of 2016, PNW Solar executed Standard PPAs with PGE for six solar
12 QFs.[1] These PPAs reflected avoided cost rates approved by the Commission on August 25,
13 2015.[2] Between May and June of 2017—more than a year after executing the PPAs—PNW
14 Solar informed the PGE personnel responsible for QF contracting that it sought to materially
15 revise the nameplate capacity of four of its six QFs, as reflected in the table below.[3]

[1] Stipulated Facts for Cross-Motions for Summary Judgment (Stipulated Facts) ¶ 1 (Mar. 16, 2018).
[2] Stipulated Facts ¶ 2.
[3] Stipulated Facts ¶¶ 7 & 10.

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Solar Facility	Original Size	Requested Size	Change
Amity	4 MW	6 MW	+2 MW
Butler	4 MW	10 MW	+6 MW
Duus	10 MW	10 MW	none
Firwood	10 MW	10 MW	none
Starlight	4 MW	2.2 MW	-1.8 MW
Stringtown	4 MW	2.3 MW	-1.7 MW

PNW Solar has recently indicated that it no longer seeks to increase the size of the Amity project but will instead build that project at its original 4 MW capacity.[4] As a result, PNW Solar's currently-proposed changes would result in a net capacity increase of 2.5 MW[5]—an increase tied to the Butler project ***more than doubling*** the nameplate capacity reflected in its executed PPA.[6]

Critically, since the date that the Standard PPAs were executed, PGE's avoided cost prices have been updated three times—on June 7, 2016, on June 1, 2017, and again on September 18, 2017.[7] These changes resulted in substantially lower rates.[8] PNW Solar thus seeks to preserve its access to outdated avoided cost prices while modifying a key feature of its projects—the nameplate capacities reflected in its executed PPAs.

PGE estimates that, if PNW Solar is permitted to revise the size of its projects as now proposed (not including the original 2 MW addition to Amity), these changes would result in an increased cost to PGE's customers of $5,354,282.[9] Moreover, if all pre-operational QFs subject to the identical Standard PPA provision at issue here were permitted to materially revise their

[4] Stipulated Facts ¶ 13.
[5] Stipulated Facts ¶ 14.
[6] *See* Stipulated Facts ¶ 10 (reflecting increase in Butler's size from 4 MW to 10 MW).
[7] Stipulated Facts ¶ 12.
[8] *See In the Matter of Portland General Electric Company Application to Update Schedule 201 Qualifying Facility Information*, Docket No. UM 1728 (PGE filings updating avoided costs and Orders approving the same).
[9] Stipulated Facts ¶ 14.

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capacity pre-construction, then PGE and its customers could be exposed to additional unplanned purchase obligations of up to 186 MW.[10]

PNW Solar argued that its proposal to re-size its projects is permitted under Section 4.3 of PGE's Standard PPA, which reads:

> Upon completion of construction of the Facility, Seller shall provide PGE an As-built Supplement to specify the actual Facility as built. Seller shall not increase the Nameplate Capacity Rating above that specified in Exhibit A or increase the ability of the Facility to deliver Net Output in quantities in excess of the Net Dependable Capacity, or the Maximum Net Output as described in Section 3.1.11 above, through any means including, but not limited to, replacement, modification, or addition of existing equipment, except with prior written notice to PGE. In the event Seller increases the Nameplate Capacity Rating of the Facility to no more than 10,000 kW pursuant to this section, PGE shall pay the Contract Price for the additional delivered Net Output. In the event Seller increases the Nameplate Capacity Rating to greater than 10,000 kW, then Seller shall be required to enter into a new power purchase agreement for all delivered Net Output proportionally related to the increase of Nameplate Capacity above 10,000 kW.[11]

On June 22, 2017, and again on July 21, PGE informed PNW Solar that PGE does not believe the Standard PPA permits a QF to materially change its nameplate capacity prior to construction, while retaining the right to superseded avoided cost rates.[12] On August 28, 2017, counsel for PNW Solar sent a demand letter stating that, if PGE did not accept the proposed nameplate capacity changes by September 1, 2017, PNW Solar would file a complaint in the circuit court seeking $3.75 million in damages, costs, and fees.[13] PGE then sought the Commission's review to resolve the parties' dispute and to confirm that PGE's Standard PPA,

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[10] *See* Stipulated Facts ¶ 15 (figure arrived at by calculating the total possible increases for all contracted, pre-operational QFs in the queue, according to the applicable thresholds for standard contracts).

[11] Stipulated Facts ¶ 4; *see also, e.g.*, Attachment A, Starlight PPA, Section 4.3.

[12] Stipulated Facts ¶¶ 9 & 11.

[13] A copy of the demand letter was attached to PGE's Complaint and Request for Dispute Resolution as Exhibit D. PNW Solar subsequently filed a Complaint at the circuit court seeking damages of $11.25 million. Summons and Complaint, *Pacific Northwest Solar v. Portland General Electric Co.,* Case No. 17-CV-38020 (Mult. Cnty. Cir. Ct. Sept. 6, 2017). The circuit court case has since been stayed.

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Portland, OR 97205

1 consistent with PURPA and the Commission's orders, does not permit a QF to materially revise
2 its nameplate capacity except as a result of efficiency improvements or other necessary upgrades
3 to existing facilities.[14]

II. DISCUSSION

4 Summary judgment is appropriate where "there is no genuine issue as to any material
5 fact" and "the moving party is entitled to prevail as a matter of law."[15] Here, the essential facts
6 described above are undisputed, and resolution turns on a single legal issue: whether Section 4.3
7 of PGE's Standard PPA permits a QF to materially revise its nameplate capacity prior to
8 construction, while maintaining its right to outdated avoided cost prices. The Commission
9 should find that PNW Solar's proposed changes are not permitted for three reasons.

10 • ***First***, Section 4.3 implements a Commission order allowing nameplate capacity
11 changes resulting from necessary upgrades and efficiency improvements to
12 operational QFs and must be interpreted consistent with the Commission's directive.
13 The Commission's order underlying Section 4.3 sought to encourage QFs to make
14 "efficiency improvements" by allowing a QF to "*upgrade* operations and *continue to*
15 *receive* its existing contract price,"[16] but neither stated nor suggested that other
16 nameplate capacity changes are permissible.

17 • ***Second***, Section 4.3's plain language only authorizes increases to *an existing*
18 *facility's output*; it does not permit material, pre-construction changes in nameplate
19 capacity resulting from the QF's change of plans. As to two of the three projects, for

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[14] PGE's Complaint and Request for Dispute Resolution (Aug. 31, 2017).
[15] ORCP 47C.
[16] *In the Matter of the Public Utility Commission of Oregon Staff's Investigation Relating to Electric Utility Purchases from Qualifying Facilities*, Docket No. UM 1129, Order No. 06-538 at 37-39 (Sept. 20, 2006) (emphasis added).

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which PNW Solar proposes material *decreases* in nameplate capacity, Section 4.3 plainly contains no language authorizing such changes.

- ***Third***, allowing QFs to modify their agreed-upon nameplate capacities after executing PPAs would violate PURPA and Commission policy by encouraging QFs to prematurely sign contracts without sufficient study, and would harm PGE's customers by hindering PGE's resource planning processes and granting QFs outdated avoided cost prices.

For all of these reasons, the Commission should grant PGE's motion for summary judgment and hold that PNW Solar may not materially alter the nameplate capacities of its not-yet-operational QFs while maintaining its right to receive August 2015 vintage avoided cost prices.

A. Section 4.3 Implements Commission Order No. 06-538 and Must be Interpreted to Reflect the Commission's Intent.

The disputed language in Section 4.3 of PGE's Standard PPA was drafted to comply with Order No. 06-538 in Docket No. UM 1129[17]—Section 4.3 must therefore be interpreted in view of this crucial context. In UM 1129, parties and the Commission considered how necessary upgrades or efficiency improvements to an existing facility should be handled. The Commission framed the questions, described in "Issue 8," as follows:

1) "If a QF, under a standard contract, increases power output due to a facility change, *such as efficiency improvements or operation at a higher power factor*, . . . should [the QF] be compensated for power delivered above the facility's *originally designated nameplate capacity* at avoided cost rates"? If so, "should [the compensation] be at avoided cost rates that were effective when the

[17] Order No. 06-538 at 39.

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419 SW 11th Avenue, Suite 400
Portland, OR 97205

underlying contract was executed, or at avoided cost rates that are effective at the time the QF is *improved*"?[18]

2) "[W]hether a QF *that is operating* under a standard contract can permanently change its nameplate rating under the contract, in the event that the facility equipment is *upgraded*."[19]

The Commission's articulation of Issue 8 makes clear that it considered only the possibility of modifications to an existing facility when issuing Order No. 06-538. Indeed, if a QF may alter its nameplate capacity at any time, as PNW Solar appears to argue, there would have been no reason for the parties to raise or the Commission to consider the second question at all.

The UM 1129 Issues List and the parties' testimony further confirm that only necessary upgrades to existing facilities were contemplated. In the Issues List, the relevant question was posed as, "[c]an [a QF] change the generator nameplate rating *if equipment replacement is necessary*?"[20] In testimony addressing this issue, Staff recommended that the Commission "direct the utilities to amend their standard contracts" to allow for "additional generation *resulting from efficiency improvements or necessary equipment replacement*."[21] Staff explained its reasoning as follows:

> The QF cannot control *necessary equipment replacement*, and available turbine and generator sizes change over time. Also, the QF should not be penalized for *efficiency improvements*, whether through operational changes or upgraded equipment.[22]

[18] Order No. 06-538 at 37 (emphasis added).
[19] Order No. 06-538 at 37 (emphasis added).
[20] Order No. 06-586, App'x A at 5.
[21] Docket No. UM 1129, Staff/1000, Schwartz/64 (emphasis added).
[22] Docket No. UM 1129, Staff/1000, Schwartz/64-65 (emphasis added).

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419 SW 11th Avenue, Suite 400
Portland, OR 97205

1 The Commission agreed, concluding that "a QF may *upgrade operations* and continue to
2 receive its existing contract price for all power delivered up to 10 MW[.]"[23] The Commission
3 emphasized that "[i]t was not our intent to discourage QF operators from upgrading their
4 facilities."[24] The Commission then ordered each electric utility to revise its Standard PPA to
5 include "rates, terms and conditions that are consistent with the policy decisions made in this
6 order."[25] At the Commission's direction, PGE revised its Standard PPA, including Section 4.3,
7 to conform to the Commission's decision.[26] The Commission accepted PGE's revised Standard
8 PPA as conforming to the Commission's order.[27]

9 Section 4.3 of PGE's Standard PPA thus must be interpreted in light of the Commission's
10 specific direction and statement of approval.[28] It is the Commission that, pursuant to combined
11 federal and state direction, "establish[es] standard contract rates, terms, and conditions" for the
12 sale of QF energy.[29] As a result, the Commission expects that the terms of a utility's standard
13 contract will be interpreted "consistent with, or in the spirit of, [the Commission's] general
14 conclusions about implementation of PURPA."[30]

15 Here, the Commission's stated intent is unambiguous. The Commission adopted a policy
16 allowing QFs to increase their nameplate capacities due to necessary efficiency or operational

[23] Order No. 06-538 at 39 (emphasis added).
[24] Order No. 06-538 at 39.
[25] Order No. 06-538 at 67.
[26] At the time, the section was titled Section 4.4.
[27] Order No. 07-065 ("Based on Staff's finding, we conclude that PGE's supplemental Advice No. 06-26 should be approved and allowed to go into effect."); *see also* Staff's Memorandum dated January 29, 2007 to Admin. Hearings Division re PGE's 1/23/07 Compliance supplemental filing of advice no. 06-26 to Order No. 06-538 (Feb. 1, 2007) ("I find the amended filing complies with Order No. 06-538.").
[28] *State v. Gaines*, 346 Or 160, 171 (2009) (noting that the starting point for interpretive inquiries is the "text and context").
[29] Docket No. UM 1129, Order No. 05-584 at 39 (May 13, 2005). PURPA requires electric utilities to purchase QF generation at set prices, calculated in accordance with rules adopted by the Federal Energy Regulatory Commission (FERC). In addition to this federal direction, Oregon legislation requires the Commission to establish "the terms and conditions for the purchase of energy" from QFs, consistent with "applicable standards required by [PURPA]." *Snow Mountain Pine Co. v. Mauldin*, 84 Or App 590, 594 (1987).
[30] Order No. 06-538 at 8.

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419 SW 11th Avenue, Suite 400
Portland, OR 97205

improvements made to existing facilities *only*. The text of the Commission's order, and the record in the underlying docket, evince no intention to authorize QFs to simply change their minds about their nameplate capacity after executing a PPA but before constructing the facility—as PNW Solar seeks to do here. Indeed, the Commission's and parties' clear focus on how to handle capacity changes resulting from necessary equipment replacement or efficiency upgrades strongly suggests that any other material changes in capacity were not—and are not—permitted, and that Section 4.3 was not drafted to allow planning-stage revisions like those proposed by PNW Solar. Moreover, nothing in the Commission order provides any basis for a QF to unilaterally reduce the nameplate capacity of its facility, as PNW Solar proposes for two of the projects at issue.

B. The Plain Language of Section 4.3 and of the PPA as a Whole Authorizes Only Nameplate Capacity Increases Resulting from Upgrades or Efficiency Improvements to an Existing QF.

A careful reading of the plain language of Section 4.3 and related terms in PGE's Standard PPA demonstrates that Section 4.3 does not support PNW Solar's position that it may modify its QFs' nameplate capacities pre-construction and keep its outdated avoided cost prices. As an initial matter, it is important to note that Section 4.3 consistently describes increases—not decreases—in nameplate capacity,[31] and at no point does Section 4.3—or any other section of the PPA—allow for or otherwise contemplate a decrease in nameplate capacity. Nonetheless, two of the three projects for which PNW Solar has requested changes would *decrease* their nameplate capacities—changes clearly not permitted under the PPA. In fact, as explained below, the plain language of PGE's Standard PPA does not permit any of the changes proposed by PNW Solar.

[31] Stipulated Facts ¶ 4.

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Portland, OR 97205

1 2 *i. PGE's Standard PPA does not permit material changes to the Nameplate Capacity Rating of a pre-operational QF.*

3 The plain language of Section 4.3—along with related portions of the PPA—indicates
4 that a QF may neither materially decrease *nor* increase its Nameplate Capacity Rating before or
5 during construction. The first sentence of Section 4.3 requires that, "[u]pon completion of
6 construction," a QF must "provide an As-built Supplement to specify the actual Facility as
7 built."[32] The Standard PPA defines "As-built Supplement" to mean a "supplement to Exhibit
8 A," and Exhibit A is the "Description of Seller's Facility."[33] Importantly, Exhibit A specifies the
9 amount of energy output the facility is capable of producing,[34] and the Nameplate Capacity
10 Rating listed in the recitals of the PPA explicitly incorporates by reference the description in
11 Exhibit A.[35] Clearly, a "supplement" to the description meant to "specify" the Facility as built
12 does not entail altering the description. "Supplement" means "something that completes or
13 makes an addition,"[36] and "specify" means "to name or state explicitly or in detail."[37] "Specify"
14 does not mean "to alter." Thus, the "As-built Supplement" (which is the exclusive means for a
15 QF to amend the PPA to account for the Facility's design "as built" upon completion of
16 construction) can contain additional details regarding the description of the Facility and may
17 include a minor change to the Facility's Nameplate Capacity Rating. However, the plain
18 language of PGE's Standard PPA provides that, "upon completion of construction," a QF's
19 capacity—as memorialized in the As-built Supplement—may not reflect a material change from
20 the Nameplate Capacity Rating of the Facility specified in the PPA.

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[32] Stipulated Facts ¶ 4.
[33] *See, e.g.*, Attachment A at 1, Starlight PPA, Section 1.1 (definition of As-built Supplement); Attachment A at 19, Starlight PPA, Exhibit A.
[34] *See, e.g.*, Attachment A at 19, Starlight PPA, Exhibit A.
[35] *See, e.g.*, Attachment A at 1, Starlight PPA Recitals.
[36] https://www.merriam-webster.com/dictionary/supplement.
[37] https://www.merriam-webster.com/dictionary/specify.

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Portland, OR 97205

1 PGE's interpretation is further supported by the language in Section 4.3 indicating that a
2 nameplate capacity change can occur only to the completed "Facility."[38] Consistent with this
3 reading, the "increases" described in Section 4.3 include increases to a capacity rating "greater
4 than 10,000 kW,"[39] but Section 3.1.7 of the PPAs requires that the QF warrant that "the Facility
5 has a Nameplate Capacity Rating *not* greater than 10,000 kW."[40] The only way to cohere these
6 provisions is to interpret the PPA as requiring that, upon completion of construction, the
7 Nameplate Capacity Rating be "not greater than 10,000 kW" with the possibility of later
8 "increases" as described in Section 4.3. PNW Solar's alternative reading—that the QF can make
9 the increases described in Section 4.3 *prior* to completion of construction—renders Section 3.1.7
10 a nullity, because it would mean that a QF could unilaterally increase its capacity above 10 MW
11 prior to completion of construction, regardless of the warranty in Section 3.1.7. Thus, Section
12 4.3 does not permit PNW Solar to materially revise the Nameplate Capacity Rating in its
13 executed PPA prior to beginning construction.

14 *ii. PGE's Standard PPA permits only those material changes to an operational QF's*
15 *Nameplate Capacity Rating that result from upgrades or efficiency improvements.*

16 Section 4.3 further makes clear that any change to an existing QF's Nameplate Capacity
17 Rating may *only* result from upgrades or efficiency improvements. Section 4.3 specifically lists
18 as examples of permissible changes those resulting from "replacement, modification, or addition
19 of existing equipment."[41] Even though this list is not exhaustive, under the logical interpretive

[38] Stipulated Facts ¶ 4 ("Seller shall not increase the Nameplate Capacity Rating above that specified in Exhibit A or increase the ability of the Facility to deliver Net Output . . ."); *see, e.g.*, Attachment A at 1 & 3, Starlight PPA, Section 1.10 (tying the definition of "Facility" to "the meaning set forth in the Recitals") & Recitals (defining the facility as "a solar energy generation facility for the generation of electric power located in Washington County, Oregon with a Nameplate Capacity Rating of 4,000 kilowatt ('kW'), as further described in Exhibit A" that the QF "intends to construct").
[39] Stipulated Facts ¶ 4.
[40] *See, e.g.*, Attachment A at 8, Starlight PPA, Section 3.1.7 (emphasis added).
[41] Stipulated Facts ¶ 4.

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419 SW 11th Avenue, Suite 400
Portland, OR 97205

1 principle of *noscitur a sociis,*[42] it illustrates the general type of changes authorized—namely,
2 upgrades to existing facilities. Each of these examples describes an instance in which an existing
3 facility is upgraded or otherwise improved, showing that permissible capacity increases "through
4 any means" should be limited to increases to a completed facility that result from upgrades or
5 efficiency improvements.

6 Moreover, the Section's repeated emphasis on increases (and lack of any reference to
7 decreases) further illustrates that Section 4.3 is concerned with changes resulting from efficiency
8 or operational upgrades *only*. As the Commission has explained, improvements or upgrades to
9 operating facilities will *increase* the facilities' output and typically its Nameplate Capacity
10 Rating as well.[43] PNW Solar's proposal to both increase and decrease its facilities' nameplate
11 capacities is not authorized by Section 4.3.

12 In sum, the plain language of PGE's Standard PPA only authorizes changes to the
13 nameplate capacity of existing facilities resulting from upgrades or efficiency improvements and
14 does not support PNW Solar's view that its executed PPAs permit it to materially alter its
15 projects prior to construction—including more than doubling the nameplate capacity of one
16 project—as a result of the vagaries of the project planning and design process.

17 **C. Allowing QFs to Materially Modify Their Facilities' Output At Will Undermines**
18 **Clear and Reliable Resource Planning and Could Expose Customers to Substantial**
19 **and Unpredictable Cost Increases.**

20 Allowing PNW Solar—and other QFs—to modify their facilities' output prior to
21 construction and for reasons other than necessary upgrades, efficiency improvements, or

[42] *State v. McCullough*, 347 Or 350, 361 n.8 (2009) (describing the principle "an old maxim which summarizes the rule *both of language and of law* that the meaning of words may be indicated or controlled by those with which they are associated") (emphasis added) (quoting *Nunner v. Erickson*, 151 Or 575, 609 (1935)); *see also Black's Law Dictionary* 1084 (7th ed. 1999) ("A canon of construction holding that the meaning of an unclear word or phrase should be determined by the words immediately surrounding it.").

[43] *See* Order No. 06-538 at 37 (discussing a QF that "*increases* power output due to a facility change, such as efficiency improvements or operation at a higher power factor," and determining that the QF should "be compensated for power delivered *above* the facility's originally designated nameplate capacity").

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419 SW 11th Avenue, Suite 400
Portland, OR 97205

1 equipment replacement, would undermine PGE's standard contracting process and would harm
2 PGE's customers by hindering resource planning and exposing customers to substantial and
3 unpredictable cost increases.
4 PGE has implemented—and the Commission has endorsed—a fair and orderly process
5 and timeline through which PGE can obtain the information required to prepare a standard
6 contract and the parties can enter a PPA.[44] PGE requires a QF to submit key information about
7 the project—including its nameplate capacity—at the outset of the contracting process, and the
8 parties then exchange draft PPAs to ensure all terms are accurate.[45] Only once a QF has
9 executed a final executable PPA does the QF establish a Legally Enforceable Obligation (LEO)
10 and lock in the avoided cost prices applicable at that time.[46]
11 If QFs are permitted to materially modify their agreed-upon output at will *after* executing
12 a PPA, then QFs will be encouraged to prematurely enter standard contracts in order to secure
13 avoided cost prices—after which they could freely raise or lower their capacity as they more
14 fully evaluate their projects' plans. By locking in rates far in advance of a facility's realistic
15 development and then altering a key characteristic of the facility, a QF obtains outdated and
16 inaccurate prices for new PURPA generation—a result contrary both to PURPA, which
17 specifically prohibits utilities from paying QFs more than the utility's avoided cost in order to
18 preserve customer indifference,[47] and to the Commission's "overriding goal to accurately assess
19 avoided costs on an ongoing basis."[48]

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[44] *See* Docket No. UM 1129, PGE's Advice No. 06-26 and Cover Letter (stating that Schedule 201 was modified, pursuant to Order No. 06-538, "to incorporate additional information about the process and requirements for entering into a standard or negotiated power purchase agreement"); and Schedule 201, Sheets 201-2 and 201-3 (requiring a QF to provide all project information necessary to prepare a draft standard contract); *see also In the Matter of Public Utility Commission of Oregon Staff Investigation Into Qualifying Facility Contracting and Pricing*, Docket No. UM 1610, Order No. 16-174 at 24 (May 13, 2016).
[45] *See* Order No. 16-174 at 24.
[46] Order No. 16-174 at 27.
[47] 18 CFR § 292.304.
[48] Order No. 05-584 at 29.

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419 SW 11th Avenue, Suite 400
Portland, OR 97205

1 Allowing QFs to change their minds about a key component of their executed PPAs also
2 undermines PGE's resource planning process at additional cost to customers. When QFs request
3 standard contracts prior to undertaking careful planning and analysis, the result is an unreliable
4 queue of executed QF contracts, which the utility must plan for—creating substantial uncertainty
5 and unnecessary administrative costs for customers. As noted above, if the Commission permits
6 QFs with executed PPAs to revise their nameplate capacities at will, up to 186 MW of
7 unexpected and unplanned-for capacity could soon be added to PGE's mandatory purchase
8 obligation. Such a fluctuation in PGE's resource queue would place inordinate burdens on both
9 PGE and its customers, as a result of QFs' inadequate advance planning.
10 For these reasons, the Commission should require PNW Solar to either maintain its QFs'
11 nameplate capacities as specified in the executed PPAs or terminate its existing PPAs and begin
12 the process of executing new PPAs—with updated nameplate capacities—at the avoided cost
13 prices applicable when a new LEO is established. Any other outcome would incentivize QFs to
14 request PPAs prior to conducting adequate and responsible planning, knowing that they can lock
15 in a price first and then conduct a thorough analysis and alter the nameplate capacity of their
16 facilities later—to the substantial detriment of customers.

III. CONCLUSION

17 PNW Solar is not permitted to materially revise the nameplate capacities reflected in its
18 executed PPAs while retaining the right to outdated avoided cost prices because (1) the
19 Commission order underlying Section 4.3 specifically permitted nameplate capacity changes
20 resulting from necessary upgrades to existing facilities only; (2) the plain language of Section 4.3
21 only authorizes increases to constructed facilities as a result of efficiency or operational
22 improvements; and (3) allowing QFs to modify their agreed-upon nameplate capacities at will
23 for any reason would violate PURPA and Commission policy by encouraging QFs to
24 prematurely sign contracts without sufficient study, thereby avoiding the most current and

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1 accurate avoided cost prices and incurring unnecessary and unpredictable costs for customers.
2 For these reasons, and because there are no material disputed facts, PGE is entitled to judgment
3 as a matter of law.

Dated March 23, 2018

McDOWELL RACKNER GIBSON PC

Lisa F. Rackner
Shoshana J. Baird
419 SW 11th Avenue, Suite 400
Portland, Oregon 97205
Telephone: (503) 595-3925
Facsimile: (503) 595-3928
dockets@mrg-law.com

Attorneys for Portland General Electric Company

David White
Associate General Counsel
121 SW Salmon Street, 1WTC1301
Portland, Oregon 97204
Telephone: (503) 464-7701
david.white@pgn.com

Portland General Electric Company