

ORDER NO. **18 369**

ENTERED: **OCT 09 2018**

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 1894

PORTLAND GENERAL ELECTRIC  
COMPANY,

Complainant,

v.

PACIFIC NORTHWEST SOLAR, LLC,

Defendant.

ORDER

DISPOSITION: APPLICATION FOR RECONSIDERATION AND REHEARING  
DENIED

**I. SUMMARY**

We deny Pacific Northwest Solar, LLC's (PNW Solar's) request for reconsideration and rehearing of Order No. 18-284.

**II. BACKGROUND AND PROCEDURAL HISTORY**

As relevant here, PNW Solar executed standard contract power purchase agreements (PPAs) with Portland General Electric Company (PGE) for six solar qualifying facilities (QFs). The prices that PGE was obligated to pay to PNW Solar under the PPAs for the output of each facility were the avoided cost prices we approved on August 25, 2015.

In those executed contracts, PNW Solar identified specified nameplate capacities of 4 megawatts (MW) for three facilities—Butler, Starlight and Stringtown. Prior to the execution of the contracts by both parties, the parties had no discussions that might have put PGE on notice that PNW Solar had any intention to construct the facilities other than as specified in the contracts.

Following the parties' execution of PNW Solar's PPAs, we approved new renewable avoided cost prices for PGE on June 7, 2016, June 1, 2017, and September 18, 2017.

In January, February, and May of 2017, PNW Solar advised PGE that the nameplate capacity ratings for the three QFs would be changed as follows:

<b>Solar Facility</b>	<b>Original Size</b>	<b>Requested Size</b>	<b>Change</b>
Butler	4 MW	10 MW	+6 MW
Starlight	4 MW	2.2 MW	-1.8 MW
Stringtown	4 MW	2.3 MW	-1.7 MW

On July 21, 2017, PGE notified PNW Solar that it did not believe that PNW Solar's QFs were entitled to materially change their nameplate capacities and remain entitled to the contract execution date avoided cost prices. Unable to resolve the dispute between them, PGE filed this complaint on August 31, 2017.

In Order No. 18-284, we agreed with PGE's assertion that PNW Solar's proposed actions would be in violation of the executed PPAs for the subject facilities. On August 13, 2018, PNW Solar filed a request for reconsideration and rehearing, to which PGE filed a response on August 28, 2018.

### **III. DISCUSSION**

#### **A. Positions of the Parties**

PNW Solar asks that we clarify Order No. 18-284 by providing answers to the following questions regarding the consequences to PNW Solar:

- If the Butler facility is constructed at 10 MW, rather than 4 MW, or the Stringtown and Starlight facilities are constructed at lower capacities, what avoided cost rates apply?
- If the Butler facility is constructed at 10 MW, can it keep the original avoided cost pricing for the first 4 MW and establish a legally enforceable obligation (LEO) with new prices for the additional 6 MW or does it need to enter into a new PPA for all 10 MW?
- Whether the limitations listed in our order "operate to further limit the plain language of the PPA for when increases are allowed, or whether that is dicta;" and
- What qualifies as a non-material change, material change, or an upgrade?<sup>1</sup>

PNW Solar asserts that it is indisputable that it can change its nameplate capacities—the only question is "under what circumstances?"<sup>2</sup> PNW Solar asserts that our order did not

<sup>1</sup>PNW Solar Application for Reconsideration and Rehearing at 1-2 (Aug 13, 2018).

<sup>2</sup> *Id.* at 2.

completely answer that question and will therefore spawn more litigation, unless clarified now. PNW Solar again renews prior arguments we previously rejected in Order No. 18-025, that we lack jurisdiction in this case and asserts that we have failed to provide clear and understandable answers to the questions presented above. PNW Solar argues that each QF facility is entitled to the avoided cost rates in effect on the day it notified PGE of the intended nameplate capacity change and should “not be penalized for attempting to obtain judicial resolution”<sup>3</sup> of the question.

PNW Solar also argues that our description of the three elements necessary to allow a QF to increase its nameplate capacity or output beyond that specified in the PPA appears nowhere in the PPA and may thus be merely *dicta* as opposed to an express limitation. PNW Solar argues that we erred because we went on to “look beyond the terms and conditions of the standard PPA” while saying that was not necessary. It thus seeks a definitive decision so that “there is a well-developed and clear record in the event of any appeal.”<sup>4</sup>

PGE objects to PNW Solar’s request, and contends no clarification of Order No. 18-284 is needed. PGE also argues that we should decline to comment on hypothetical scenarios or enter into abstract semantic discussions regarding specific contractual terms.

In response to PNW Solar’s hypothetical questions, PGE argues that any changes to the nameplate capacities specified in the PPAs would violate Sections 3.1.8 and 3.1.11 of the agreement, and, pursuant to Section 9, PNW Solar would be in default, providing grounds for PGE to terminate the agreement and require that new PPAs be executed at current avoided cost prices. PGE further argues that PNW Solar did not establish a LEO with respect to any of the subject projects at their new capacities merely by providing non-binding notice of its intent to change its projects’ nameplate capacities.

Finally, PGE asks that we reject PNW Solar’s repeated attack on our prior order regarding the questions of personal and subject matter jurisdiction, as well as PNW Solar’s complaints about our contract interpretation methodology and support.

## **B. Applicable Law**

Any party may seek reconsideration or rehearing of any Commission order within 60 days from the date of service.<sup>5</sup> We may grant an application for reconsideration if there is shown to be (1) newly-available evidence essential to the decision, (2) a change

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<sup>3</sup> *Id.* at 4-5.

<sup>4</sup> *Id.* at 8-9.

<sup>5</sup> ORS 756.561(1).

in law or policy since the order was issued, (3) an error of law or fact in the order, or (4) good cause for further examination of an issue essential to the decision.<sup>6</sup>

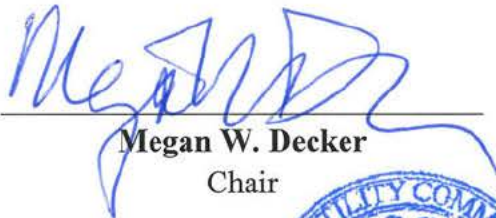
### **C. Resolution**

We find that PNW Solar has failed to provide sufficient grounds for reconsideration and rehearing and deny its application in its entirety. PNW Solar does not assert that newly-available evidence has been discovered since Order No. 18-284 was entered. Rather, we are asked to provide responses about potential actions that PNW Solar might take. PNW Solar's hypothetical scenarios are beyond the scope of the stipulated facts underlying this complaint, and we decline to address them. Similarly, PNW Solar does not assert a change in law or policy, nor does it assert an error of law or fact. Finally, we find no good cause to further examine this matter, as our prior order addressed each issue essential to our decision.

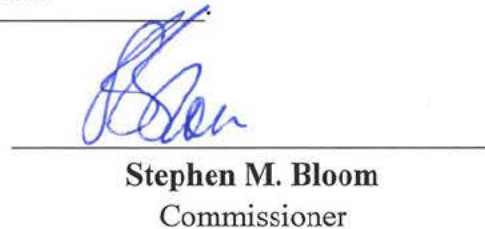
### **IV. ORDER**

IT IS ORDERED that the application for reconsideration and rehearing filed by Pacific Northwest Solar, LLC is denied.

Made, entered, and effective OCT 09 2018

  
**Megan W. Decker**  
Chair



  
**Stephen M. Bloom**  
Commissioner

  
**Letha Tawney**  
Commissioner

A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480-183.484.

<sup>6</sup> OAR 860-001-0720(3).