

May 26, 2020

**Via Electronic Filing**

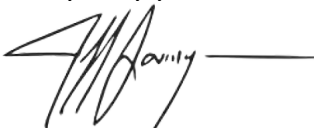
Public Utility Commission of Oregon  
Attn: Filing Center  
PO Box 1088  
Salem, OR 97308-1088

**Re: UM 2057 - St. Louis Solar, LLC v. Portland General Electric Company**

Attention Filing Center:

Enclosed for filing today in the above-named docket is Portland General Electric Company's Answer, Affirmative Defenses, and Counterclaim.

Thank you for your assistance.

Very truly yours,  
  
Jeffrey S. Lovinger

Attachment  
1003253

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UM 2057**

ST. LOUIS SOLAR, LLC,

Complainant,

vs.

PORTLAND GENERAL ELECTRIC  
COMPANY,

Defendant.

**PORTLAND GENERAL ELECTRIC  
COMPANY’S ANSWER,  
AFFIRMATIVE DEFENSES, AND  
COUNTERCLAIM**

Pursuant to ORS 756.512 and OAR 860-001-0400, defendant Portland General Electric Company (“PGE”) submits the following answer, affirmative defenses, and counterclaims (“Answer”) to the complaint (“Complaint”) filed by St. Louis Solar, LLC (“St. Louis Solar” or “Complainant”) on February 3, 2020.

**I. INTRODUCTION**

This dispute arises under the Standard Renewable In-System Variable Power Purchase Agreement (“PPA”) and the small generator interconnection agreement (“IA”) in effect between St. Louis Solar and PGE.

St. Louis Solar owns and operates a 2.2-megawatt solar qualifying facility (“Facility” or “Project”) and the associated interconnection equipment. The Project is interconnected to PGE’s St. Louis-West distribution feeder under the terms of the IA. St. Louis Solar is selling the net output of the Project to PGE under the terms of the PPA.

St. Louis Solar failed to complete construction and preparation of its Project and associated interconnection equipment until March 19, 2020. As a result, PGE could not place the

interconnection in-service until March 26, 2020. As a further result, St. Louis Solar could not achieve its commercial operation date (“COD”) until April 6, 2020.

Under Section 2.2.2 of the PPA, St. Louis Solar was required to achieve its COD by February 10, 2019. On February 11, 2019, PGE provided St. Louis Solar with notice that it was in default of Section 2.2.2 and that St. Louis Solar had until February 11, 2020, to cure the default or PGE could terminate the PPA. On April 3, 2019, PGE invoiced St. Louis Solar for \$12,569.94 in damages owned to PGE by St. Louis Solar under Section 9.2 of the PPA. On April 25, 2019, PGE invoiced St. Louis Solar for \$11,215.76 in damages owned to PGE by St. Louis Solar under Section 9.2 of the PPA. These are the only damages under Section 9.2 of the PPA invoiced by PGE. St. Louis Solar has paid the invoiced damages.

The interconnection work for which PGE was responsible under the IA was: (1) installing a new primary underground service including a bi-direction meter and metering CTs and PTs; (2) re-conductoring approximately 1,800 feet of existing distribution lines on the feeder; (3) replacing the St. Louis BR1 substation transformer fuse with a circuit switcher; (4) replacing the St. Louis BR1 substation transformer relay panels with two SEL-487E relay panels; and (5) installing a transfer trip protection scheme including a fiber optic communication cable between the substation and the Project.

St. Louis Solar was responsible for completing its Project, for completing its interconnection equipment (including a relay at which PGE could terminate the transfer trip fiber optic communication cable and Project fusing), for the relay settings on St. Louis Solar’s interconnection equipment, and for the safe and reliable wiring, configuration, and operation of its Project and interconnection equipment.

The fiber optic cable extending from the St. Louis substation to the Project as part of the required transfer trip protective scheme needs to cross an intervening railroad right-of-way. This required obtaining permits and right-of-way agreements from the holders of real property rights associated with the railroad right-of-way. PGE ascertained that the holders of the rights were the State of Oregon and the Pacific and Western Railroad (“PNWR”). PGE obtained the necessary permits and rights-of-way from the rights holders. This effort occurred from December of 2018 through October of 2019. PGE’s successful efforts to obtain permission to locate the fiber optic cable across the railroad right-of-way were reasonable and appropriate.

The IA includes a schedule of milestones that provided for PGE to complete interconnection facilities by September 27, 2019, and provided for PGE to place the interconnection in-service by October 31, 2019. PGE was not able to complete interconnection facilities by September 27, 2019, or place the interconnection in-service by October 31, 2019, because St. Louis Solar was not ready for PGE to complete the interconnection or place the interconnection in service until March 19, 2020. Once St. Louis Solar fulfilled its obligations and completed preparation of its Project and its interconnection equipment, PGE finished installation of the interconnection facilities and placed the interconnection in service on March 26, 2020.

PGE was not responsible, either as a matter of fact, or as a matter of legal obligation, for St. Louis Solar’s failure to have its Project or its interconnection equipment ready for commissioning before March 19, 2020. St. Louis Solar is responsible for delays in the completion of the interconnection facilities and for delays in the in-service date of the interconnection.

PGE would have been within its rights under the PPA to terminate the PPA on February 11, 2020. However, because the Project was constructed and appeared to be near completion in late 2019, and because PGE had completed its interconnection facilities and system upgrades in 2019,

PGE sought a resolution other than termination of the PPA on February 11, 2020, when it appeared that the interconnection would be in-service and the Project could achieve COD within a few days or weeks of February 11, 2020. As a result, PGE twice agreed to amend the PPA to extend the cure period for St. Louis Solar's breach of Section 2.2.2. PGE first agreed to extend the end of the cure period from February 11, 2020, to March 26, 2020. PGE then agreed to extend the end of the cure period from March 26, 2020, to April 9, 2020.

PGE has not breached the IA or the PPA. St. Louis Solar was in breach of the PPA for approximately 14 months. PGE charged and collected a total of \$23,785.70 in damages for that breach as expressly permitted by Section 9.2 of the PPA. St. Louis Solar admitted its breach by paying the damages invoices without objection. St. Louis Solar failed to timely complete its Project and its interconnection equipment and this delayed completion of interconnection facilities by PGE, delayed testing and commissioning of the interconnection, and delayed PGE's ability to place the interconnection in service. PGE has not violated any of its duties under the IA or PPA, under the Commission's rules, or under the statutes administered by the Commission.

PGE is asserting two counterclaims. PGE's first counterclaim seeks a Commission ruling that St. Louis Solar breached the PPA, that PGE was within its rights under the PPA to collect damages in the total amount of \$23,785.70, and that there is no basis to order PGE to reimburse those damages to St. Louis Solar. PGE's second counterclaim seeks a Commission ruling that PGE did not breach the IA or any duty under the IA and that the timing of PGE's completion of the interconnection facilities and of placing of the interconnection in service were appropriate given the timing of third-party permits to cross the railroad right-of-way and the timing of St. Louis Solar's completion of its Project and interconnection equipment.

This narrative introduction is intended as an overview of this case and PGE's position and is not an exhaustive statement of the facts or of PGE's legal positions, defenses, or claims. PGE reserves the right to assert all facts, defenses, and claims and to argue additional reasons why the Commission should deny or dismiss all claims for relief and all prayers for relief in the Complaint and grant PGE's counterclaims. PGE reserves the right to amend this Answer as may be necessary.

## **II. SERVICE**

Copies of all pleadings, motions, and correspondence should be served on PGE's counsel and representatives at the addresses below:

Donald Light  
Assistant General Counsel  
Portland General Electric Company  
121 SW Salmon Street, 1WTC1301  
Portland, OR 97204  
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Markowitz Herbold PC  
1455 SW Broadway, Suite 1900  
Portland, OR 97201  
Email: JeffreyLovinger@MarkowitzHerbold.com

## **III. ANSWER**

PGE denies all allegations contained in the Complaint except as hereafter expressly admitted.

Unless otherwise specified, the capitalized term "Paragraph" refers to the numbered paragraphs of the Complaint beginning on page six of the Complaint.

The first four pages of the Complaint contain a narrative introduction and legal argument. PGE does not understand the introduction to contain allegations requiring a response. PGE expects to respond to Complainant's narrative and legal arguments as part of dispositive motion practice, through declarations, written testimony or mutually agreed statement of undisputed facts or, if needed, at a hearing and briefing in this proceeding. In the event the Commission deems the introduction to contain allegations requiring a response, PGE denies the allegations.

In answer to some of the allegations contained in numbered Paragraphs, PGE has indicated that no response is required because the allegations are legal conclusions or legal arguments. If the Commission deems that responses are required in such instances, then PGE denies the allegations in question.

Some of the numbered Paragraphs in the Complaint characterize the contents of written communications exchanged by the parties. In answer to some of those numbered Paragraphs, PGE has noted that a copy of the written communication has been submitted to the Commission as an exhibit to this Answer. In those instances, PGE denies all the allegations in the associated numbered Paragraphs except to the extent that PGE expressly admits an allegation. The exhibits submitted by PGE are true and correct copies of the communications exchanged by the parties. While the exhibits are true and correct copies, this does not mean that PGE agrees with all positions stated in the communications attached as exhibits or that all exhibits were free from errors when originally created or communicated. PGE reserves the right to provide testimony, declarations, or other evidence regarding the accuracy of the information contained in any exhibit.

In response to the numbered Paragraphs of the Complaint, PGE answers as follows:

#### **IDENTITY OF THE PARTIES**

1. PGE admits the allegations in Paragraph 1.
2. PGE lacks information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 and therefore denies them.

#### **APPLICABLE STATUTES AND RULES**

3. The allegations in Paragraph 3 constitute legal conclusions or legal argument to which no response is required.

4. The allegations in Paragraph 4 constitute legal conclusions or legal argument to which no response is required.

#### **JURISDICTION**

5. The allegations in Paragraph 5 constitute legal conclusions or legal arguments to which no response is required.

6. The allegations in Paragraph 6 constitute legal conclusions or legal arguments to which no response is required.

7. The allegations in Paragraph 7 constitute legal conclusions or legal arguments to which no response is required.

8. The allegations in Paragraph 8 constitute legal conclusions or legal arguments to which no response is required.

9. The allegations in Paragraph 9 constitute legal conclusions or legal arguments to which no response is required.

#### **FACTUAL BACKGROUND**

10. PGE admits the allegations in Paragraph 10.

11. PGE admits St. Louis Solar requested a standard power purchase agreement from PGE. PGE is without sufficient information to form a belief as to whether St. Louis Solar requested a standard power purchase agreement on March 7, 2016.

12. PGE admits it received a small generator interconnection application from St. Louis Solar dated April 26, 2016.

13. PGE admits the allegations in Paragraph 13.

14. PGE admits that Section 2.2.1 of the PPA sets forth an initial delivery date of September 20, 2017.



15. PGE admits that Section 2.2.2 of the PPA sets forth a scheduled Commercial Operation Date (“COD”) of October 31, 2017.

16. PGE denies the allegations in Paragraph 16.

17. PGE admits it provided St. Louis Solar with a feasibility study. PGE is without sufficient information to form a belief as to when St. Louis Solar received the feasibility study.

18. PGE admits it provided St. Louis Solar with a system impact study dated April 24, 2017. PGE is without sufficient information to form a belief as to when Complainant received the system impact study.

19. PGE admits the April 24, 2017, System Impact Study (“SIS”) states: “PGE estimates it will require approximately 12 months to design, procure and construct the facilities described in this report following the execution of an Interconnection Agreement. The schedule will be further developed and optimized during the Facility Study.” PGE denies any other allegations in Paragraph 19.

20. PGE denies the allegations in Paragraph 20.

21. PGE admits that by letter dated February 1, 2017, PGE agreed to St. Louis Solar’s January 27, 2017, request to extend the scheduled COD established by Section 2.2.2 of the St. Louis Solar PPA from December 31, 2016, to March 31, 2018. PGE denies any other allegations in Paragraph 21.

22. PGE admits that by letter dated February 1, 2017, PGE agreed to St. Louis Solar’s January 27, 2017, request to extend the scheduled COD under Section 2.2.2 of the St. Louis Solar PPA from December 31, 2016, to March 31, 2018. PGE denies any other allegations in Paragraph 22.

23. PGE denies the allegations in Paragraph 23.

24. PGE admits the allegations in Paragraph 24.

25. PGE admits the November 30, 2017, Facility Study states: “PGE estimates it will require approximately 18 months to design, procure and construct the facilities described in this report following execution of an Interconnection Agreement. PGE does not guarantee completion of any project on a targeted date as the schedule is dependent on a number of variables, including but not limited to, construction of other potential interconnection projects.” PGE denies any other allegations in Paragraph 25.

26. PGE denies the allegation that it signed an Interconnection Agreement on March 14, 2018. PGE signed the Interconnection Agreement on May 14, 2018. PGE admits St. Louis Solar signed the Interconnection Agreement on March 28, 2018.

27. PGE admits that Attachment D to the Interconnection Agreement is entitled “Scope of Work/Milestones” and lists 13 “Critical milestones” and the responsible party for each milestone.

28. PGE admits that Attachment D to the Interconnection Agreement: (a) includes milestone 11 stating “Interconnection Facilities Complete / 9-27-2019”; (b) lists PGE as the responsible party for milestone 11; (c) states there are ten milestones that are prerequisites to milestone 11; and (d) states: “PGE does not guarantee completion of any project on a targeted date as the schedule is dependent on a number of variables, including but not limited to, construction of other potential interconnection projects.” PGE denies any other allegations in Paragraph 28.

29. PGE admits that Attachment D to the Interconnection Agreement: (a) includes milestone 12 stating “Testing and Commissioning / 10-11-2019”; (b) lists St Louis Solar as the responsible party for milestone 12; (c) states that there are 11 milestones that are prerequisites to milestone 12, including milestone 11 described in PGE’s response to Paragraph 28; and (d) states: “PGE does not guarantee completion of any project on a targeted date as the schedule is dependent

on a number of variables, including but not limited to, construction of other potential interconnection projects.” PGE denies any other allegations in Paragraph 29.

30. PGE admits that Attachment D to the Interconnection Agreement: (a) includes milestone 13 stating “In-Service Date / 10-31-2019”; (b) lists PGE as the responsible party for milestone 13; (c) states that there are 12 milestones that are prerequisites to milestone 13; and (d) states: “PGE does not guarantee completion of any project on a targeted date as the schedule is dependent on a number of variables, including but not limited to, construction of other potential interconnection projects.” PGE denies any other allegations in Paragraph 30.

31. PGE admits St. Louis Solar executed the second amendment to the PPA on November 7, 2018, and that PGE executed the second amendment to the PPA on November 16, 2018. PGE denies any other allegations in Paragraph 31.

32. PGE admits that the second amendment of the PPA amended Section 2.2.1 of the PPA to change the date of initial delivery of Net Output from September 30, 2017 to January 10, 2019.

33. PGE admits that the second amendment of the PPA amended Section 2.2.2 of the PPA to change the scheduled COD from March 31, 2018, to February 10, 2019.

34. PGE admits the allegations in Paragraph 34.

35. PGE lacks information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 35 and therefore denies them.

36. PGE admits that on or before November 30, 2018, St. Louis Solar paid to PGE the “Remaining Balance of \$419,333” listed as item five on Attachment D to the Interconnection Agreement.

37. PGE admits that St. Louis Solar paid a total construction deposit of \$629,000 to PGE and that this included an amount of \$153,000 intended as a deposit against the estimated cost of communication requirements.

38. PGE denies the St. Louis Solar project was completed on December 15, 2018. PGE lacks information or knowledge sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 38 and therefore denies them.

39. PGE denies the allegations in Paragraph 39.

40. PGE denies the allegations in Paragraph 40.

41. PGE denies the allegations in Paragraph 41.

42. PGE denies the allegations in Paragraph 42.

43. PGE denies the allegations in Paragraph 43.

44. PGE admits the allegations in Paragraph 44.

45. PGE admits the allegations in Paragraph 45.

46. PGE admits the allegations in Paragraph 46.

47. PGE admits the allegations in Paragraph 47.

48. PGE admits the allegation in Paragraph 48.

49. PGE admits that on or about March 25, 2019, a PGE employee made statements to the effect of the statements alleged in Paragraph 49.

50. PGE admits that on or about March 25, 2019, a PGE employee made statements to the effect of the statements alleged in Paragraph 50.

51. PGE admits that on April 3, 2019, PGE sent St. Louis Solar an invoice for damages St. Louis Solar owed to PGE under Section 9.2 of the PPA. PGE denies it indicated it would be sending such invoices every month.

52. PGE admits that on April 25, 2019, PGE sent St. Louis Solar a second invoice for damages St. Louis Solar owed to PGE under Section 9.2 of the PPA.

53. PGE lacks information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 53 and therefore denies them.

54. PGE admits the allegations in Paragraph 54.

55. PGE lacks information or knowledge sufficient to form a belief as to the truth of the allegation that it is unclear to St. Louis Solar whether PGE attempted to send additional invoices and PGE therefore denies Paragraph 55.

56. PGE lacks information or knowledge sufficient to form a belief as to the truth of the allegation that it is unclear to St. Louis Solar whether PGE intends to send additional invoices and PGE therefore denies Paragraph 56.

57. PGE admits it has not agreed it will never send any future invoices to St. Louis Solar; PGE reserves the right to send invoices to St. Louis Solar as may be appropriate or necessary.

58. PGE admits that a letter dated August 14, 2019, from counsel for PGE to counsel for St. Louis Solar includes the language quoted in Paragraph 58.

59. PGE admits St. Louis Solar has communicated with PGE several times regarding interconnection.

60. PGE denies the allegations in Paragraph 60.

61. PGE denies the allegations in Paragraph 61.

62. PGE admits that on May 17, 2019, PGE informed St. Louis Solar's representatives that PGE applied for a railroad crossing permit in December of 2018.

63. PGE admits that a June 4, 2019, email from PGE employee Jordan Messinger to St. Louis Solar’s representatives, states: “I spoke with our Property Agent yesterday about the railroad crossing for the St Louis Solar project. She let me know that they have not made progress with the State Department of Lands, and are now attempting to file for a permit with ODOT. It appears that there is some confusion within the State as to which agency has jurisdiction in this case.” PGE denies any other allegations in Paragraph 63.

64. PGE denies the allegations in Paragraph 64.

65. PGE admits the allegations in Paragraph 65.

66. The allegations in Paragraph 66 characterize the content of a July 26, 2019, letter from counsel for St. Louis Solar to counsel for PGE (“July 2019 Letter”). A copy of the July 2019 Letter is attached to this Answer as Exhibit 1.

67. The allegations in Paragraph 67 characterize the content of the July 2019 Letter which is attached as Exhibit 1.

68. The allegations in Paragraph 68 characterize the content of the July 2019 Letter which is attached as Exhibit 1.

69. PGE admits the allegations in Paragraph 69.

70. The allegations in Paragraph 70 characterize the content of an August 14, 2019, letter from counsel for PGE to counsel for St. Louis Solar (“August 2019 Letter”). A copy of the August 2019 Letter is attached to this Answer as Exhibit 2.

71. The allegations in Paragraph 71 characterize the content of the August 2019 Letter which is attached as Exhibit 2.

72. The allegations in Paragraph 72 characterize the content of the August 2019 Letter which is attached as Exhibit 2.

73. The allegations in Paragraph 71 characterize the content of the August 2019 Letter which is attached as Exhibit 2.

74. PGE denies the allegations in Paragraph 74.

75. PGE admits that an October 7, 2019, email from PGE employee Jordan Messinger to St. Louis Solar representatives stated: “Below and attached, please find information regarding the status of our railroad crossing permit. As I mentioned on the phone, we are now just waiting for issuance of the permit by the railroad and already have the right-of-entry agreement and the additional permit required from Oregon Department of Transportation. Our fiber contractor is performing the adjacent work for this project, and will be able to complete this quickly once we have the permit in hand.” PGE denies any other the allegations in Paragraph 75.

76. PGE admits that an October 7, 2019, email from PGE employee Jordan Messinger to St. Louis Solar representatives stated: “Below and attached, please find information regarding the status of our railroad crossing permit. As I mentioned on the phone, we are now just waiting for issuance of the permit by the railroad and already have the right-of-entry agreement and the additional permit required from Oregon Department of Transportation. Our fiber contractor is performing the adjacent work for this project, and will be able to complete this quickly once we have the permit in hand.” PGE denies any other the allegations in Paragraph 76.

77. PGE denies the allegations in Paragraph 77.

78. PGE admits that on October 31, 2019, PGE informed St. Louis Solar that PGE had received the railroad permit required for the fiber optic work. PGE admits this was the last permission needed before fiber optic cable could be installed across the railroad right-of-way.

79. PGE admits that on November 25, 2019, PGE informed St. Louis Solar that PGE could not complete the installation of required fiber optic cable until St. Louis Solar completed the installation of a relay at St. Louis Solar's project.

80. PGE admits that St. Louis Solar was responsible for installing a relay at the St. Louis Solar project and PGE admits that its November 25, 2019, email indicated that PGE would have to wait to complete installation of fiber optic cable until St. Louis Solar completed installation of the required relay at the St. Louis Solar project. PGE denies any other the allegations in Paragraph 80.

81. PGE denies the allegations in Paragraph 81.

82. PGE admits that St. Louis Solar sent PGE an email on November 26, 2019, asserting St. Louis Solar's position that the interconnection agreement required PGE to install the relay.

83. PGE admits that on December 2, 2019, PGE sent St. Louis Solar an email responding to St. Louis Solar's November 26, 2019, email. PGE admits that its December 2, 2019, email indicated the relay was St. Louis Solar's responsibility. PGE admits its December 2, 2019, email provided a link to PGE's Distribution Interconnection Standards, which are publicly available on PGE's Open Access Same-Time Information System ("OASIS") webpage. PGE admits its December 2, 2019, email it did not cite Distribution Interconnection Standards published prior to 2019. PGE denies all other allegations in Paragraph 83.

84. PGE denies the allegations in Paragraph 84. PGE's Distribution Interconnection Standards are publicly available and were available to St. Louis Solar before PGE emailed a link on December 2, 2019.



85. PGE lacks information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 85 and therefore denies them.

86. PGE denies the allegations in Paragraph 86.

87. PGE denies the allegations in Paragraph 87.

88. PGE admits that on December 31, 2019, PGE sent St. Louis Solar an email indicating that a PGE representative was planning to visit the St. Louis Solar project the next week “to review what work has been done” and that PGE’s representative would “reach out” to a St. Louis Solar representative “to schedule the visit.” PGE denies any other allegations in Paragraph 88.

89. PGE denies the allegations in Paragraph 89.

90. PGE admits that on January 8, 2020, St. Louis Solar sent PGE an email that stated: “We have installed the relay at St. Louis, can you please complete your side of the fiber work so we can get this system turned on?” PGE denies any other allegations in Paragraph 90.

91. PGE admits that on January 9, 2020, PGE sent St. Louis Solar an email stating that PGE was scheduling the fiber work and stating: “we still need to get a copy of your proposed relay settings for review by our protection group before we are able to authorize commercial operations by the facility.” PGE denies any other allegations in Paragraph 91.

92. PGE admits that on January 15, 2020, St. Louis Solar sent an email to PGE stating: “Can you please send an update on when a crew will be at St Louis to pull in and hook up the fiber line?” PGE denies any other allegations in Paragraph 92.

93. PGE admits that on January 15, 2020, PGE sent St. Louis Solar an email indicating that PGE was scheduling a line crew.

94. PGE admits that on January 15, 2020, PGE employee Jordan Messinger sent St. Louis Solar an email stating: “Prior to authorizing any commercial operations of this facility, we will need to review your proposed relay settings. At this time, all we have received is an email stating that you will adhere to our standards. Our engineers will need to see project specific relay settings prepared by a licensed engineer.” PGE denies any other allegations in Paragraph 94.

95. PGE admits that on January 16, 2020, St. Louis Solar sent an email to PGE. PGE denies that Paragraph 95 of the complaint accurately characterizes the contents of the January 16, 2020, email and PGE therefore denies the remaining allegations in Paragraph 95.

96. PGE admits that on January 20, 2020, PGE responded to St. Louis Solar’s January 16, 2020, email. PGE denies that Paragraph 96 of the complaint accurately characterizes the contents of PGE’s January 20, 2020, email and PGE therefore denies the remaining allegations in Paragraph 96.

97. PGE admits that on January 20, 2020, St. Louis Solar sent PGE an email stating: “We have already ordered these are we ready to go, can you please let us know when you can pull the fiber and hook up the relay?” PGE denies any other allegations in Paragraph 97.

98. PGE admits that as of February 3, 2020, the interconnection was not in service. PGE denies that it failed to meet its obligations under the Interconnection Agreement. The interconnection was not completed before February 3, 2020, because of delays caused by St. Louis Solar.

99. PGE denies the allegations in Paragraph 99.

100. PGE is without information as to what Complainant “believes” and Complainant’s beliefs are legally irrelevant, and PGE therefore denies the allegations in Paragraph 100.

101. PGE denies the allegations in Paragraph 101.

102. PGE denies the allegations in Paragraph 102.

103. PGE admits testing and commissioning follow completion of interconnection facilities; PGE denies that any of these tasks remain unfinished. PGE denies any other allegations in Paragraph 103.

104. PGE denies the allegations in Paragraph 104.

105. PGE denies the allegations in Paragraph 105.

106. PGE admits the allegations in Paragraph 106.

107. PGE admits the allegations in Paragraph 107

108. PGE admits the allegations in Paragraph 108.

109. PGE denies the allegations in Paragraph 109.

110. PGE denies the allegations in Paragraph 110.

111. PGE denies the allegations in Paragraph 111.

112. PGE admits the allegations in Paragraph 112.

113. PGE admits the allegations in Paragraph 113.

114. PGE admits the allegations in Paragraph 114.

115. PGE admits the allegations in Paragraph 115.

116. PGE admits the allegations in Paragraph 116.

117. PGE admits the allegations in Paragraph 117.

118. PGE denies the allegations in Paragraph 118. PGE's January 30, 2020, letter did not address a change in initial delivery date; rather PGE's letter proposed to extend by 45 days the deadline for St. Louis Solar to cure its default under the PPA.

119. PGE denies the allegations in Paragraph 119. PGE's January 30, 2020, letter did not address a change in scheduled COD; rather PGE's letter proposed to extend by 45 days the deadline for St. Louis Solar to cure its default under the PPA

120. PGE denies the allegations in Paragraph 120. PGE's January 30, 2020, letter did not address a change in the commencement date for fixed price payments; rather PGE's letter proposed to extend by 45 days the deadline for St. Louis Solar to cure its default under the PPA.

121. PGE denies that St. Louis Solar has suffered harm for which PGE is responsible.

122. PGE denies it is responsible for any lost months of fixed-price payments.

123. PGE admits that under the PPA, the Renewable Fixed Price Option is available for the first 15 years of the PPA term measured from the PPA effective date. PGE denies any other allegations in Paragraph 123.

124. The allegations in Paragraph 124 constitute legal conclusions or legal arguments to which no response is required.

125. PGE admits that the Commission order granting summary judgment to PGE in Docket No. UM 1931 is under appeal. PGE admits that the Commission order granting summary judgment to PGE in Docket No. UM 1805 and the subsequent and orders regarding reconsideration in Docket No. UM 1805 are under appeal. PGE denies that any Commission order interpreting the St. Louis Solar PPA specifically is under appeal.

126. The allegations in Paragraph 126 constitute legal conclusions or legal arguments to which no response is required.

127. PGE admits that in Order No. 17-256 issued on July 13, 2017, the Commission ordered PGE to "file revisions to Schedule 201 which shall include a revised standard contract

PPA with language consistent with our requirement that the 15-year term of fixed prices commences when the QF transmits power to the utility.”

128. PGE admits that Order No. 17-256 contains the language quoted in Paragraph 128.

129. The allegations in Paragraph 129 constitute legal conclusions or legal arguments to which no response is required. PGE denies that it is responsible for delaying St. Louis Solar’s power delivery or for any harm to St. Louis Solar.

130. PGE denies the allegations in Paragraph 130.

131. PGE admits that Docket No. UM 1931 was pending when PGE and St. Louis Solar amended the PPA effective November 16, 2018, and that Docket No. UM 1931 addressed the question of whether the 15-year fixed price period under PGE’s standard contract forms began to run at contract execution or at a later date such as the scheduled COD. PGE denies any other allegations in Paragraph 131.

132. The allegations in Paragraph 132 are speculation and PGE therefore denies them. Alternatively, the allegations in Paragraph 132 constitute legal conclusions or legal arguments to which no response is required.

133. PGE denies the allegations in Paragraph 133.

134. PGE admits that the language quoted in Paragraph 134 is contained in the November 16, 2018, agreement amending the St. Louis Solar PPA.

135. The allegations in Paragraph 135 constitute legal conclusions or legal arguments to which no response is required.

136. PGE denies the allegations in Paragraph 136.

137. PGE denies the allegations in Paragraph 137.

138. PGE denies the allegations in Paragraph 138.

139. PGE denies the allegations in Paragraph 139.

140. PGE denies the allegations in Paragraph 140.

141. PGE admits that the Commission has not ordered PGE to modify the date on which the 15-year fixed price period commences under the St. Louis Solar PPA. PGE denies any other allegations in Paragraph 141.

142. PGE admits that under the St. Louis Solar PPA, the 15-year period during which fixed prices are available begins on the date the contract was first executed by both parties (the contract Effective Date), which was June 10, 2016. PGE denies any other allegations in Paragraph 142.

143. PGE admits that on February 10, 2020, approximately 25 percent of the 15-year fixed price period under the St. Louis Solar PPA had run. PGE denies any other allegations in Paragraph 143.

144. The allegations of Paragraph 144 characterize the contents of the Second Amendment to the PPA. The allegations of Paragraph 144 constitute legal conclusions or legal arguments to which no response is required.

145. PGE admits that in a letter dated January 24, 2020, St. Louis Solar requested that PGE agree to amend the PPA to set the commencement date of the 15-year fixed price period “at least 92 from the Effective Date.” PGE denies that November 9, 2016, is 92 days after the June 10, 2016 effective date of the PPA. PGE admits that 92 days is approximately 3 months.

146. PGE denies the allegations in Paragraph 146. PGE denies it is responsible for harm to St. Louis Solar.

147. PGE lacks information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 147 and therefore denies them.

148. PGE denies the allegations in Paragraph 148.

149. PGE admits that PGE has not indicated it is willing to agree to amend the PPA to modify the date on which the 15-year fixed price period begins, which is the contract effective date.

150. PGE denies the allegations in Paragraph 150.

151. PGE admits that under the terms of the PPA, St. Louis Solar was required to make payments to PGE for St. Louis Solar's failure to achieve COD. PGE denies any other allegations in Paragraph 151.

152. PGE admits it sent St. Louis Solar an invoice dated April 3, 2019, in the amount of \$12,569.94 for payments owed to PGE by St. Louis Solar pursuant to Section 9.2 of the PPA. PGE admits the invoice stated the invoiced amount was due on April 30, 2019. PGE denies any other allegations in Paragraph 152.

153. PGE admits it sent St. Louis Solar an invoice dated April 25, 2019, in the amount of \$11,215.76 for payments owed to PGE by St. Louis Solar pursuant to Section 9.2 of the PPA. PGE admits the invoice stated the invoiced amount was due on or before May 5, 2019. PGE denies any other allegations in Paragraph 153.

154. PGE lacks information or knowledge regarding what St. Louis Solar knows and therefore denies the allegations in Paragraph 154.

155. PGE admits that as of February 3, 2020, PGE had invoiced St. Louis Solar for \$23,785.70 in payments owed to PGE by St. Louis Solar pursuant to Section 9.3 of the PPA and that this amount is more than \$23,000. PGE denies any other allegations in Paragraph 155.

156. PGE admits it has not agreed that St. Louis Solar does not owe PGE the amounts invoiced on April 3, 2019, and April 25, 2019.

157. PGE denies the allegations in Paragraph 157.

158. PGE lacks information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 158 and therefore denies them.

159. PGE lacks information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 159 and therefore denies them.

160. PGE denies the allegations in Paragraph 160.

161. PGE denies the allegations in Paragraph 161.

162. PGE denies the allegations in Paragraph 162.

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

163. In answer to the allegations in Paragraph 163, PGE repeats and realleges the responses made to all preceding Paragraphs.

164. The allegations in Paragraph 209 constitute legal conclusions or legal arguments to which no response is required.

165. PGE admits that PGE and St. Louis Solar have executed a Standard Renewable In-System Variable Power Purchase Agreement (herein the "PPA") and that under the PPA St. Louis Solar has committed to sell to PGE and PGE has committed to buy from St. Louis Solar the net output of St. Louis Solar's proposed Project.

166. The allegations in Paragraph 166 characterize Section 2.2.3 of the PPA which states: "Unless the Parties agree in writing that a later Commercial Operation Date is reasonable and necessary, the Commercial Operation Date shall be no more than three (3) years from the Effective Date. PGE will not unreasonably withhold agreement to a Commercial Operation Date that is more than three (3) years from the Effective date if the Seller has demonstrated that a later Commercial Operation Date is reasonable and necessary." St. Louis Solar's characterization of,



or conclusory statements regarding, the language of Section 2.2.3 of the PPA are legal argument or legal conclusions to which no response is required.

167. PGE denies the allegations in Paragraph 167.

168. PGE admits that PGE and St. Louis Solar entered into the second amendment to the PPA in November 2018 and that the amendment modified the scheduled COD in Section 2.2.2 of the PPA from March 31, 2018, to February 10, 2019.

169. PGE admits that in November 2018 PGE would not agree to an amendment that extended the scheduled COD to a date later than February 10, 2019.

170. PGE denies the allegations in Paragraph 170.

171. PGE denies the allegations in Paragraph 171.

172. PGE admits that the April 24, 2017, system impact study for the St. Louis Solar project states: “PGE estimates it will require approximately 12 months to design, procure and construct the facilities described in this report following the execution of an Interconnection Agreement. The schedule will be further developed and optimized during the Facility Study.” PGE denies any other allegations in Paragraph 172.

173. PGE admits that the November 30, 2017, facilities study for the St. Louis Solar project states: “PGE estimates it will require approximately 18 months to design, procure and construct the facilities described in this report following the execution of an Interconnection Agreement. PGE does not guarantee completion of any project on a targeted date as the schedule is dependent on a number of variables, including but not limited to, construction of other potential interconnection projects.” PGE denies any other allegations in Paragraph 173.

174. PGE denies the allegations in Paragraph 174.

175. PGE admits that with full execution of the interconnection agreement occurring in May 2018, if interconnection took 12 months from execution as estimated in the System Impact

Study, then interconnection would not be accomplished before a scheduled COD of February 10, 2019. PGE denies any other allegations in Paragraph 175.

176. PGE admits that with full execution of the interconnection agreement occurring in May 2018, if interconnection took 18 months from execution of the interconnection agreement, as estimated in the Facility Study, then interconnection would not be accomplished before a scheduled COD of February 10, 2019. PGE denies any other allegations in Paragraph 176.

177. PGE admits that Attachment D to the interconnection agreement states a milestone in-service date of October 31, 2019, and that if the interconnection was placed in service on October 31, 2019, the interconnection would not be in service before a scheduled COD of February 10, 2019. PGE denies any other allegations in Paragraph 177.

178. PGE admits that in negotiating the second amendment to the PPA, PGE would not agree to amend Section 2.2.2 of the PPA to extend the scheduled COD to a date later than February 10, 2019.

179. PGE denies the allegations in Paragraph 179.

180. PGE denies the allegations in Paragraph 180.

181. PGE admits that St. Louis Solar has requested that PGE agree to amend the PPA to modify the scheduled COD in Section 2.2.2 to a date later than February 10, 2019.

182. PGE denies the allegations in Paragraph 182.

183. PGE admits that it will not agree to amend the PPA to modify the scheduled COD in Section 2.2.2 to a date later than February 10, 2019.

184. PGE denies the allegations in Paragraph 184.

185. PGE denies the allegations in Paragraph 185.

186. PGE denies the allegations in Paragraph 186.

- 187. PGE denies the allegations in Paragraph 187.
- 188. PGE denies the allegations in Paragraph 188.
- 189. PGE denies the allegations in Paragraph 189.
- 190. PGE denies the allegations in Paragraph 190.

**Complainant's Second Claim for Relief**

191. In answer to the allegations in Paragraph 191, PGE repeats and realleges the responses made to all preceding Paragraphs.

192. The allegations in Paragraph 192 constitute legal conclusions or legal arguments to which no response is required.

- 193. PGE denies the allegations in Paragraph 193.
- 194. PGE denies the allegations in Paragraph 194.
- 195. PGE denies the allegations in Paragraph 195.
- 196. PGE denies the allegations in Paragraph 196.
- 197. PGE denies the allegations in Paragraph 197.
- 198. PGE denies the allegations in Paragraph 198.
- 199. PGE denies the allegations in Paragraph 199.
- 200. PGE denies the allegations in Paragraph 200.
- 201. PGE denies the allegations in Paragraph 201.
- 202. PGE denies the allegations in Paragraph 202.
- 203. PGE denies the allegations in Paragraph 203.
- 204. PGE denies the allegations in Paragraph 204.
- 205. PGE denies the allegations in Paragraph 205.
- 206. PGE denies the allegations in Paragraph 206.

- 207. PGE denies the allegations in Paragraph 207.
- 208. PGE denies the allegations in Paragraph 208.
- 209. PGE denies the allegations in Paragraph 209.
- 210. PGE denies the allegations in Paragraph 210.
- 211. PGE denies the allegations in Paragraph 211.
- 212. PGE denies the allegations in Paragraph 212.
- 213. PGE denies the allegations in Paragraph 213.
- 214. PGE denies the allegations in Paragraph 214.
- 215. PGE denies the allegations in Paragraph 215.
- 216. PGE denies the allegations in Paragraph 216.
- 217. PGE denies the allegations in Paragraph 217.
- 218. PGE denies the allegations in Paragraph 218.
- 219. PGE denies the allegations in Paragraph 219.
- 220. PGE denies the allegations in Paragraph 220.
- 221. PGE denies the allegations in Paragraph 221.
- 222. PGE denies the allegations in Paragraph 222.
- 223. PGE denies the allegations in Paragraph 223.

**Complainant's Third Claim for Relief**

224. In answer to the allegations in Paragraph 224, PGE repeats and realleges the responses made to all preceding Paragraphs.

225. The allegations in Paragraph 225 constitute legal conclusions or legal arguments to which no response is required.

226. PGE admits that PGE and St. Louis Solar executed an interconnection agreement. PGE denies that the purpose of the interconnection agreement was “PGE’s completion of the interconnection.”

227. PGE admits that Attachment D to the interconnection agreement includes a list of “critical milestones.”

228. The allegations in Paragraph 228 constitute legal conclusions or legal arguments to which no response is required.

229. PGE admits Attachment D to the interconnection agreement includes a milestone called “Interconnection Facilities Complete” with a date of September 27, 2019, and with PGE listed as the responsible party. PGE denies any other allegations in Paragraph 229.

230. PGE denies the allegations in Paragraph 230.

231. PGE admits that on February 3, 2020, the interconnection facilities for the St. Louis Solar interconnection were not complete; PGE denies that was PGE’s fault or a violation of the interconnection agreement or the Commission’s rules.

232. PGE denies the allegations in Paragraph 232.

233. PGE admits that Attachment D to the interconnection agreement includes a milestone called “In-Service Date” with a date of October 31, 2019, and with PGE listed as the responsible party. PGE denies any other allegations in Paragraph 233.

234. PGE admits the St. Louis Solar interconnection was not in service on or before October 31, 2019; PGE denies that was PGE’s fault or a violation of the interconnection agreement or the Commission’s rules.

235. PGE admits that on February 3, 2020, the St. Louis Solar interconnection was not in service; PGE denies this was PGE fault or a violation of the interconnection agreement or the Commission's rules.

236. PGE denies the allegations in Paragraph 236.

237. PGE denies the allegations in Paragraph 237.

238. PGE denies the allegations in Paragraph 238.

239. PGE denies the allegations in Paragraph 239.

240. PGE denies the allegations in Paragraph 240.

241. PGE denies the allegations in Paragraph 241.

242. PGE denies the allegations in Paragraph 242.

243. PGE denies the allegations in Paragraph 243.

#### **Complainant's Fourth Claim for Relief**

244. In answer to the allegations in Paragraph 244, PGE repeats and realleges the responses made to all preceding Paragraphs.

245. The allegations in Paragraph 245 constitute legal conclusions or legal arguments to which no response is required.

246. PGE denies the allegations in Paragraph 246.

247. PGE denies the allegations in Paragraph 247. PGE denies any fault for missing any milestones under Section D of the interconnection agreement and PGE did not guarantee that the milestone dates would be achieved.

248. PGE denies the allegations in Paragraph 248.

249. PGE denies the allegations in Paragraph 249.

250. PGE denies the allegations in Paragraph 250.

251. PGE denies the allegations in Paragraph 251.

**Complainant's Fifth Claim for Relief**

252. In answer to the allegations in Paragraph 252, PGE repeats and realleges the responses made to all preceding Paragraphs.

253. The allegations in Paragraph 253 constitute legal conclusions or legal arguments to which no response is required.

254. PGE denies the allegations in Paragraph 254.

255. PGE denies the allegations in Paragraph 255.

256. PGE denies the allegations in Paragraph 256.

257. PGE denies the allegations in Paragraph 257.

258. PGE denies the allegations in Paragraph 258.

259. PGE denies the allegations in Paragraph 259.

260. PGE denies the allegations in Paragraph 260.

261. PGE denies the allegations in Paragraph 261.

262. PGE denies the allegations in Paragraph 262.

263. PGE denies the allegations in Paragraph 263.

264. PGE denies the allegations in Paragraph 264.

265. PGE denies the allegations in Paragraph 265.

266. PGE denies the allegations in Paragraph 266.

267. PGE denies the allegations in Paragraph 267.

268. PGE denies the allegations in Paragraph 268.

269. PGE denies the allegations in Paragraph 269.

270. PGE denies the allegations in Paragraph 270.

271. PGE denies the allegations in Paragraph 271.

272. PGE denies the allegations in Paragraph 272.

**Complainant's Sixth Claim for Relief**

273. In answer to the allegations in Paragraph 273, PGE repeats and realleges the responses made to all preceding Paragraphs.

274. The allegations in Paragraph 274 constitute legal conclusions or legal arguments to which no response is required.

275. PGE denies the allegations in Paragraph 275.

276. PGE denies the allegations in Paragraph 276.

277. PGE denies the allegations in Paragraph 277.

278. PGE denies the allegations in Paragraph 278.

279. PGE denies the allegations in Paragraph 279.

280. PGE denies the allegations in Paragraph 280.

281. PGE denies the allegations in Paragraph 281.

282. PGE denies the allegations in Paragraph 282.

283. PGE denies the allegations in Paragraph 283.

**Claimants' Seventh Claim for Relief**

284. In answer to the allegations in Paragraph 284, PGE repeats and realleges the responses made to all preceding Paragraphs.

285. The allegations in Paragraph 285 constitute legal conclusions or legal arguments to which no response is required.

286. PGE denies the allegations in Paragraph 286.

287. PGE denies the allegations in Paragraph 287.



288. PGE denies the allegations in Paragraph 288.

289. PGE denies the allegations in Paragraph 289.

290. PGE denies the allegations in Paragraph 290.

291. PGE denies the allegations in Paragraph 291.

### **Complainant's Eighth Claim for Relief**

292. In answer to the allegations in Paragraph 292, PGE repeats and realleges the responses made to all preceding Paragraphs.

293. The allegations in Paragraph 293 constitute legal conclusions or legal arguments to which no response is required.

294. PGE denies the allegations in Paragraph 294.

295. PGE denies the allegations in Paragraph 295.

296. PGE denies the allegations in Paragraph 296.

297. PGE denies the allegations in Paragraph 297.

298. PGE denies the allegations in Paragraph 298.

299. PGE denies the allegations in Paragraph 299.

300. PGE denies the allegations in Paragraph 300.

301. PGE denies the allegations in Paragraph 301.

302. PGE denies the allegations in Paragraph 302.

### **Prayer for Relief**

303. PGE does not understand the prayers for relief (paragraphs 303 to 324 of the Complaint) to contain allegations requiring a response, but to the extent they do, PGE denies all allegations contained in St. Louis Solar's Prayers for Relief and requests that the Commission deny the relief requested.

#### IV. PGE'S FACTUAL ALLEGATIONS

304. PGE realleges all the preceding paragraphs.

305. In 2016, St. Louis Solar requested a standard renewable power purchase agreement from PGE for a proposed 2.2 MW solar qualifying facility (previously and subsequently referred to as the "Project").

306. In 2016, after it requested a standard renewable power purchase agreement for the Project, St. Louis Solar filed an application to interconnect the Project to PGE's St. Louis-West distribution feeder ("Interconnection Application").

307. St. Louis Solar and PGE entered into a Standard Renewable In-System Variable Power Purchase Agreement (previously and subsequently referred to as the "PPA") effective June 10, 2016 (the "PPA Effective Date").

308. In Section 2.2.2 of the PPA, St. Louis Solar selected a scheduled COD of October 31, 2017.

309. On February 1, 2017, St. Louis Solar and PGE agreed to amend Section 2.2.2 of the PPA to change the scheduled COD from October 31, 2017, to March 31, 2018 (previously and subsequently referred to as the "First Amendment to the PPA").

310. On April 24, 2017, PGE completed its system impact study of the St. Louis Solar interconnection ("SIS").

311. The SIS states: "PGE estimates it will require approximately 12 months to design, procure and construct the facilities described in this report following the execution of an Interconnection Agreement. The schedule will be further developed and optimized during the Facility Study."

312. On November 30, 2017, PGE completed its facility study of the St. Louis Solar interconnection ( “Facility Study”).

313. The Facility Study states that the St. Louis Solar interconnection will require the following interconnection facilities and system upgrades: (1) a new primary underground service including a bi-direction meter, CT’s and PT’s; (2) re-conductor of approximately 1,800 feet of existing distribution lines on the feeder; (3) replacement of the St. Louis BR1 substation transformer fuse with a circuit switcher; (4) replacement of the St. Louis BR1 substation transformer relay panels with two SEL-487E relay panels; and (5) installation of a transfer trip protection scheme with a fiber optic communication cable from the substation to the Project.

314. The Facility Study states: “PGE estimates it will require approximately 18 months to design, procure and construct the facilities described in this report following execution of an Interconnection Agreement. PGE does not guarantee completion of any project on a targeted date as the schedule is dependent on a number of variables, including but not limited to, construction of other potential interconnection projects.”

315. On May 14, 2018, St. Louis Solar and PGE entered into an interconnection agreement (previously and subsequently referred to as the “IA”). .

316. The IA includes Attachment A which indicates that PGE will install the following interconnection facilities and system upgrades: (1) a new primary underground service including a bi-direction meter, CT’s and PT’s; (2) re-conductor of approximately 1,800 feet of existing distribution lines on the feeder; (3) replacement of the St. Louis BR1 substation transformer fuse with a circuit switcher; (4) replacement of the St. Louis BR1 substation transformer relay panels with two SEL-487E relay panels; and (5) installation of a transfer trip protection scheme with a fiber optic communication cable from the substation to the Project.

317. The IA includes Attachment A, which states: “The Interconnection Customer will acquire all necessary property rights and permits for the construction of the required facilities as well as distribution line easements (meeting PGE requirements), including easements for PGE’s owned underground cable route for the new service.”

318. The IA includes Attachment B, which states: “The Applicant will acquire all necessary property rights and permits for the construction of the required facilities as well as distribution line easements (meeting PGE requirements), including easements for PGE’s owned underground cable route for the new service.”

319. The IA includes Attachment D, a document entitled *Scope of Work/Milestones*, which states: “In-Service Date: October 31, 2019” and lists 13 milestones with their associated dates and the party responsible for each milestone.

320. Attachment D to the IA includes: milestone (6) which states “Distribution Design Complete / 11-23-2018” and lists PGE as the responsible party; milestone (7) which states “Substation Design Complete / 11-23-2018” and lists PGE as the responsible party; milestone (8) which states “Communication Design Complete / 12-31-2018” and lists PGE as the responsible party; and milestone (9) which states “PGE Construction scheduled / 12-31-2018” and lists PGE as the responsible party.

321. Attachment D to the IA includes milestone (10) which states “Switchgear Installed and Inspected / 8-30-2019” and lists St. Louis Solar as the responsible party.

322. Attachment D to the IA includes milestone (11) which states “Interconnection Facilities Complete / 9-27-2019” and lists PGE as the responsible party.

323. Attachment D to the IA includes milestone (12) which states “Testing and Commissioning / 10-11-2019” and lists St. Louis Solar as the responsible party.

324. Attachment D to the IA includes milestone (13) which states “In-Service Date / 10-31-2019” and lists PGE as the responsible party.

325. Attachment D to the IA also states: “PGE does not guarantee completion of any project on a targeted date as the schedule is dependent on a number of variables, including but not limited to, construction of other potential interconnection projects.”

326. PGE achieved milestones 6, 7, 8 and 9 on or before the dates listed in Attachment D to the IA.

327. St. Louis Solar and PGE entered into an agreement entitled “Second Amendment to Standard Renewable In-System Variable Power Purchase Agreement” effective November 16, 2018 (previously and subsequently referred to as the “Second Amendment to the PPA”).

328. Under the Second Amendment to the PPA, St. Louis Solar and PGE agreed to amend Section 2.2.1 of the PPA to change the initial delivery date from September 30, 2017, to January 10, 2019.

329. Under the Second Amendment to the PPA, St. Louis Solar and PGE agreed to amend Section 2.2.2 of the PPA to change the scheduled COD from March 31, 2018, to February 10, 2019.

330. Under the Second Amendment to the PPA, St. Louis Solar and PGE agreed to amend the PPA as follows: “During the Term, in the event the Oregon Public Utility Commission orders PGE to amend the Agreement to modify the commencement date for the Standard Fixed Price Option pricing set forth in the Schedule, the parties agree to utilize October 31, 2017 (the original scheduled commercial operation date for the Project) as the commencement date for such Standard Fixed Price Option pricing, rather than any modified dates set forth in this Second Amendment to the Agreement.”

331. On February 11, 2019, PGE sent St. Louis Solar a letter providing notice pursuant to Section 9.2 of the PPA that St. Louis Solar was in breach of the PPA for failure to achieve the scheduled COD of February 10, 2019, stated in Section 2.2.2 of the PPA, as amended. The letter stated that if St. Louis Solar is unable to cure the default by February 11, 2020, PGE may immediately terminate the PPA.

332. On April 3, 2019, PGE sent St. Louis Solar an invoice in the amount of \$12,569.94 for damages pursuant to Section 9.2 of the PPA.

333. On April 25, 2019, PGE sent St. Louis Solar an invoice in the amount of \$11,215.76 for damages pursuant to Section 9.2 of the PPA.

334. PGE has not invoiced St. Louis Solar for any additional damages under Section 9.2 of the PPA because there were no other periods between breach for failure to achieve scheduled COD and cure of that breach during which market rates exceeded contract rates leading to damages under Section 9.2 of the PPA.

335. St. Louis Solar timely paid PGE the full amount owed to PGE as damages under Section 9.2 and reflected in the April 3, 2019, and April 25, 2019, invoices.

336. By February 27, 2019, PGE had completed construction of the required interconnection facilities and system upgrades at the substation, including: (A) replacement of the St. Louis BR1 substation transformer fuse with a circuit switcher; and (B) replacement of the St. Louis BR1 substation transformer relay panels with two SEL-487E relay panels.

337. On May 17, 2019, St. Louis Solar and PGE held a meeting to discuss the interconnection of the Project to the Feeder. One issue discussed was the fiber optic cable from the substation to the Project required as part of the transfer trip protective scheme. PGE noted the fiber optic cable needed to cross a railroad right-of-way located between the substation and

the Project. PGE indicated that it had applied for a railroad crossing permit, learned that the railroad has transferred the right-of-way to the State of Oregon, and that PGE was working to determine what was required from the State of Oregon for the fiber optic cable to cross the railroad right-of-way.

338. On June 4, 2019, PGE employee Jordan Messinger sent an email to St. Louis Solar representatives stating: “I spoke with our Property Agent yesterday about the railroad crossing for the St Louis Solar project. She let me know that they have not made any progress with the State Department of Lands, and are now attempting to file for a permit with ODOT. It appears that there is some confusion within the State as to which agency has jurisdiction in this case.”

339. On July 26, 2019, counsel for St. Louis Solar sent a letter to counsel for PGE (the “July 26, 2019, Letter”). A copy of the July 26, 2019, Letter is attached to this Answer as Exhibit 1.

340. The July 26, 2019, Letter asserts that “[s]ince the end of December 2018, St. Louis Solar has been ready to be energized, and waiting on PGE to complete its interconnection, so that it can begin to sell power under the PPA.”

341. The July 26, 2019, Letter asserts “[b]ut for PGE’s mistakes, the interconnection should have been completed.”

342. The interconnection could not have been completed by June 26, 2019, because St. Louis Solar had not completed its responsibilities by that date and the Project was not ready to energize by that date.

343. The interconnection also could not have been completed by June 26, 2019, because the holders of rights to an intervening railroad right-of-way had not yet provided permission for PGE’s fiber optic cable to cross the railroad right-of-way through an underground conduit.

344. PGE did not prevent the interconnection from being completed on or before June 26, 2019.

345. PGE did not prevent the interconnection from being completed before October 31, 2019, or before March 19, 2020.

346. PGE did not commit mistakes, take actions, or fail to take actions that it was required to take, which prevented the interconnection from being completed: (A) on or before June 26, 2019; (B) on or before October 31, 2019; or (C) on or before March 19, 2020.

347. By letter dated August 14, 2019, counsel for PGE responded to the July 26, 2019, Letter. A copy of this August 14, 2019, letter (the “August 14, 2019, Letter”) is attached to this Answer as Exhibit 2.

348. In the August 14, 2019, Letter, PGE denied that it was responsible for delays in the implementation of the IA or that the interconnection should have been completed by July 26, 2019, and PGE articulated what it had done to date to seek permission to cross the railroad right-of-way and why those actions were reasonable and appropriate.

349. In the August 14, 2019, Letter, PGE explained: “PGE has been working diligently and in good-faith to construct and install all required facilities by the September 27, 2019 milestone. Immediately after the detailed design work was completed in December 2018, PGE reviewed the Marion County Tax Assessor’s property records to determine who owned the railroad. The County’s records indicated the owner was BNSF Railway Company (BNSF). PGE contacted BNSF to request authorization to locate the communication line across the railroad property. Less than two weeks later, BNSF informed PGE that it had conveyed the railroad property to the State of Oregon. PGE contacted the Oregon Department of Transportation (ODOT) to request authorization to locate the communication line across the railroad property.



After a number of months, ODOT informed PGE that BNSF had conveyed the real property associated with the railroad to the State of Oregon and conveyed the tracks and an exclusive, permanent easement to use the railroad corridor to the Pacific and Western Railroad (PNWR). ODOT informed PGE that it would need to apply to both ODOT and PNWR for permission to cross the railroad property. On July 22, 2019, PGE applied to both ODOT and PNWR for such authorization. PGE is currently waiting for the requested authorization from these two property owners.”

350. The August 14, 2019, Letter further explained: “PGE completed its detailed engineering design of the interconnection as scheduled. Those designs called for installation of a transfer trip protective scheme with a fiber optic communication line. The fiber optic line must cross a railroad. Immediately following completion of detailed design, PGE reviewed county records to determine who owned the railroad. Those records indicated BNSF owned the railroad and PGE immediately contacted BNSF, was rapidly informed by BNSF that the railroad had been transferred to the State of Oregon, and PGE then contacted the State of Oregon seeking authorization to cross the railroad. The State of Oregon took a number of months to provide PGE with information regarding what permits or authorizations are required, but once Oregon did so, PGE immediately applied for those authorizations. PGE has not delayed the process of seeking authorization to cross the railroad and has acted appropriately and consistent with the interconnection schedule agreed to by the parties.”

351. In the August 14, 2019, Letter: (A) PGE refused to grant the requests or demands made by St. Louis Solar in the July 26, 2019, Letter; (B) PGE reserved its right to assert all facts and defenses in response to any complaint that St. Louis Solar might file; and (C) PGE requested

that St. Louis Solar provide PGE with written notice of intent to file any complaint and a copy of any complaint at least 14 days before filing a complaint with any tribunal.

352. On September 7, 2019, PGE's fiber optic contractor began to install the fiber optic cable from the substation to the Project and installed the cable up to the railroad right-of-way.

353. By email dated October 7, 2019, PGE employee Jordan Messinger informed St. Louis Solar's representatives that PGE had the required right-of-entry agreement and the additional permit required from the Oregon Department of Transportation to cross the railroad right-of-way and was only waiting on the issuance of a permit by the railroad, PNWR.

354. By email dated October 31, 2019, PGE employee Jordan Messinger informed St. Louis Solar's representatives that PGE had received the permit required from the railroad and that PGE's contractor was mobilizing to complete the required boring under the railroad right-of-way.

355. By November 13, 2019, PGE's fiber optic contractor had completed boring under the railroad right-of-way and had installed the fiber optic cable under the railroad right-of-way.

356. On November 15, 2019, PGE coordinated with St. Louis Solar to schedule a time for PGE to pull the fiber optic cable to the Project.

357. PGE's communications technicians were scheduled to pull the fiber optic cable to the St. Louis Solar Project site on November 25, 2020, and November 26, 2020. When PGE's communications technicians arrived at the Project site on November 25, 2020, they discovered that St. Louis Solar had not yet completed its Project or installed required relays as part of the required customer-owned interconnection equipment on the customer's side of the point of interconnection. As a result, PGE's communications technicians could not complete installation of the fiber optic cable or tie in the cable to St. Louis Solar's Project or St. Louis Solar's interconnection equipment.

358. By email dated November 25, 2019, PGE employee Jordan Messinger informed St. Louis Solar's representatives that the Project was not ready to receive PGE's fiber optic cable because St. Louis Solar had not yet installed a required relay at the Project site.

359. On November 25, 2019, PGE had pulled the fiber optic cable through to St. Louis Solar's Project but could not terminate the cable and complete its installation until St. Louis Solar provided the necessary relay as part of St. Louis Solar's Project or related interconnection equipment.

360. By email dated November 26, 2019, St. Louis Solar representative Mike Wardlaw stated to Mr. Messinger that St. Louis Solar's interpretation of the IA was that PGE would install the required relay panel.

361. By email dated December 2, 2019, Mr. Messinger stated to Mr. Wardlaw: "PGE does not provide relays for the customer facility. We provide a fiber patch panel (meet-me cabinet) that allows us to install fiber jumpers to the customer owned relays. Relay panels are part of the engineered design of the solar facility and should be selected by the design professional. PGE does define the criteria that the relays must meet, but otherwise selection is up to the facility owner. Please see Section 2.5.6 of the PGE Distribution Interconnection Standards (Link provided below)." The email provided the following link to PGE's publicly posted Distribution Interconnection Standards:

[http://www.oasis.oati.com/woa/docs/PGE/PGEdocs/PGE\\_Distribution\\_Interconnection\\_Standards.pdf](http://www.oasis.oati.com/woa/docs/PGE/PGEdocs/PGE_Distribution_Interconnection_Standards.pdf)

362. By email dated December 2, 2019, St. Louis Solar sent PGE data sheets on the relay that St. Louis Solar proposed to install.

363. By email dated December 5, 2019, PGE confirmed to St. Louis Solar that the relay proposed by St. Louis Solar was adequate and requested that St. Louis Solar provide PGE with the relay settings St. Louis Solar proposed to use so that PGE could review and approve the settings.

364. By email dated December 5, 2019, St. Louis Solar asked PGE if St. Louis Solar could use the default relay settings described in PGE's Distribution Interconnection Standards document.

365. By email dated December 9, 2019, PGE informed St. Louis Solar that it needed to hire a licensed engineer to prepare relay setting specific to the St. Louis Solar Project.

366. On February 5, 2020, PGE's relay technician met with St. Louis Solar at the Project site. There was no power at the site and no settings programed into St. Louis Solar's relays.

367. On February 5, 2020, PGE's protection engineer and distribution engineer determined that the fuse at the St. Louis Solar Project was not adequate to protect PGE's system from faults.

368. On February 4, 2020, PGE's communications technician completed the fiber optic terminations at St. Louis Solar's relays.

369. On February 12, 2020, St. Louis Solar and PGE entered into the Third Amendment to Standard Renewable In-System Variable Power Purchase Agreement which extended the period for St. Louis Solar to cure the existing breach under Section 2.2.2, from February 11, 2020, to March 26, 2020.

370. On February 17, 2020, St. Louis Solar provided PGE with St. Louis Solar's proposed relays settings.

371. On February 18, 2020, PGE's protection engineer reviewed the proposed settings and concluded that the setting was acceptable to PGE. PGE's distribution engineer further noted that the settings would not allow the Project to operate under normal conditions and recommended that St. Louis Solar consider revising the settings to correct this result.

372. On February 24, 2020, St. Louis Solar proposed revised relay settings.

373. In late February 2020, PGE worked with St. Louis Solar to review and approve several proposals from St. Louis Solar regarding replacement of St. Louis Solar's Project fuse.

374. On March 3, 2020, PGE confirmed to St. Louis Solar that its revised relay settings were acceptable.

375. On March 3, 2020, in order to allow St. Louis Solar to use the fuse that would fit in St. Louis Solar's existing equipment, PGE agreed to design and install fusing modifications on the St. Louis-West feeder to protect PGE's other customers from the St. Louis Solar Project.

376. On March 3, 2020, St. Louis Solar installed new fuses in its equipment.

377. On March 17, 2020, PGE performed the newly agreed work on the feeder to address fusing modifications. When PGE's line crew and relay technician arrived to perform this feeder work and to begin the relay testing and commissioning, PGE learned that St. Louis Solar had removed its Project transformer and that the Project was not complete or ready to test, interconnect, or generate. St. Louis Solar claimed it would have its transformer reinstalled the same day and PGE's relay technician remained on site to test the facility once the transformer was reinstalled, but St. Louis Solar did not reinstall the transformer on March 17, 2020.

378. On March 18, 2020, PGE's relay technician and line crew returned to the Project site to energize the interconnection and begin testing. However, when PGE's relay technician attempted to start testing, the technician found that St. Louis Solar's Project site only had single phase power due to a St. Louis Solar wiring error with the facility transformer. PGE's technician stayed on site while St. Louis Solar corrected its wiring error and once the phase issue was corrected, PGE's relay technician started testing and commissioning on March 18, 2020, only to find that St. Louis Solar's relay was wired incorrectly and would lose power after a trip command. At that point on March 18, 2020, PGE's project manager sent the relay technician away and

notified St. Louis Solar that no further testing could be performed until St. Louis Solar corrected its faulty wiring. PGE's project manager also clarified to St. Louis Solar that PGE's field technicians and engineers were not able to provide design or installation advice or assistance for the Project as had been requested by St. Louis Solar on multiple occasions.

379. On March 19, 2020, St. Louis Solar informed PGE that it had corrected the wiring issues at the Project.

380. On March 25, 2020, St. Louis Solar and PGE entered into the Fourth Amendment to Standard Renewable In-System Variable Power Purchase Agreement, which extended the period for St. Louis Solar to cure the existing breach under Section 2.2.2, from March 26, 2020, to April 9, 2020.

381. On March 26, 2020, PGE's relay technician returned to the Project site and completed energizing, testing, and commissioning the interconnection.

382. The interconnection was completed and in-service effective March 26, 2020.

383. PGE was not responsible for delays in the completion of interconnection facilities or delays in placing the interconnection in service.

384. St. Louis Solar did not have a functional relay, functional three-phase power, or a functional transformer at the Project as late as March 17, 2020. St. Louis Solar did not correct all of its wiring problems or have a functional Project and functional interconnection equipment before March 19, 2020.

385. PGE worked in good faith with St. Louis Solar and agreed to make new, additional changes to PGE's system in March 2020, to allow St. Louis Solar to use fuses at the Project that were not adequate to project PGE's system without the additional modifications to PGE's system.

386. PGE energized, tested, commissioned and placed the interconnection in service on March 26, 2020, which was within one-week of the date St. Louis Solar finally completed work on its Project and interconnection equipment on March 19, 2020.

## **V. AFFIRMATIVE DEFENSES**

387. Without assuming the burden of proof on any issue for which Complainant has the burden, PGE alleges the following defenses and affirmative defenses.

### **1. First Affirmative Defense – Violation of OAR 860-082-0085**

388. PGE realleges all the preceding paragraphs.

389. Complainant's third through seventh claims for relief allege that PGE violated its obligations under the IA or the Commission's rules addressing the IA.

390. Complainant's prayer for relief contained in the following Paragraphs seek relief related to or arising out of an alleged violation of the IA: Paragraph 303; Paragraph 307; Paragraph 308; Paragraph 309; Paragraph 310; Paragraph 311; and Paragraph 316.

391. OAR 860-082-0085 establishes a process that an interconnection customer or interconnection applicant must follow to file a complaint for the enforcement of an interconnection agreement.

Complainant's Complaint did not comply with or follow the requirements of OAR 860-082-0085.

392. Complainant has not complied with OAR 860-082-0085(2) because Complainant did not give at least 10 days prior written notice to PGE and the Commission that Complainant intended to file a complaint for enforcement of the IA.

393. Complainant has not complied with OAR 860-082-0085(2) because Complainant did not identify the provisions in the IA that Complainant alleges were or are being violated and

the specific acts or failure to act that caused or are causing the violations, and whether Complainant anticipates requesting temporary or injunctive relief.

394. Complainant has not complied with OAR 860-082-0085(2) because Complainant did not serve notice on PGE and its designated recipients of notice as required by the rule.

395. Complainant has not complied with OAR 860-082-0085(3)(a) because the Complaint did not contain a statement of specific facts demonstrating that the complainant conferred with defendant in good faith to resolve the dispute, and that despite those efforts the parties failed to resolve the dispute.

396. Complainant has not complied with OAR 860-082-0085(3)(b) because Complainant did not include a copy of the written notice required by Section (2) of OAR 860-082-00785, indicating that the Complainant intends to file a complaint for enforcement.

397. Complainant has not complied with OAR 860-082-0085(3)(c) because Complainant did not include a copy of the IA or the portion of the IA that Complainant contends PGE violated or is violating.

398. Complainant has not complied with OAR 860-082-0085(3)(d) because Complainant did not provide a statement of facts or law demonstrating GE's failure to comply with the IA and Complainant's entitlement to relief.

399. Complainant has not complied with OAR 860-082-0085(3)(d) because Complainant did not provide a statement indicating that the remedy sought is consistent with the dispute resolution provisions in the IA, if any.

400. Complainant has not complied with OAR 860-082-0085(3)(d) because Complainant did not support statements of fact with written testimony with affidavits made by persons competent to testify and having personal knowledge of the relevant facts.



401. Complainant has not complied with OAR 860-082-0085(3)(f) because Complainant did not provide an executive summary, filed as a separate document not to exceed 8 pages, outlining the issues and relief requested.

402. Complainant has not complied with OAR 860-082-0085(3)(g) because Complainant did not include any motions for affirmative relief, filed as a separate document and clearly marked.

403. The third through seventh claims for relief under the Complaint and the prayers for relief identified in Paragraph 390 above should all be dismissed as unauthorized and in violation of the requirements of OAR 860-082-0085.

## **2. Second Affirmative Defense – Lack of Standing**

404. PGE realleges all the preceding paragraphs.

405. Complainant's eighth claim for relief asserts that PGE has violated ORS 746.040 by engaging in unjust and unreasonable practices with respect to St. Louis Solar and other interconnection customers.

406. Complainant's prayer for relief in Paragraphs 321 seeks an order finding PGE in violation of its obligation to refrain from engaging in unjust and unreasonable practices with respect to its customers, including interconnection customers, and the public generally.

407. Complainant's prayer for relief in Paragraphs 322 seeks an order requiring PGE to refrain from engaging in unjust and unreasonable practices with respect to its customers, including interconnection customers, and the public generally.

408. Complainant lacks standing to bring claims on behalf of other interconnection applicants, on behalf of other interconnection customers, or on behalf of customers generally.

409. Complainant's eighth claim for relief and Complainant's prayers for relief in Paragraphs 321 and 322 should be dismissed because Complainant lacks standing to bring the claims and prayers.

### **3. Third Affirmative Defense – Mootness**

410. PGE realleges all of the preceding paragraphs.

411. The following allegations, claims, and prayers for relief anticipate that PGE would terminate or seek to terminate the PPA on or after February 11, 2020, for failure to timely cure St. Louis Solar's February 11, 2019, breach of Section 2.2.2: Paragraph 105; Paragraph 111; Paragraph 186; Paragraph 198; Paragraph 199; Paragraph 200; and Paragraph 305.

412. Those allegations, claims, and prayers for relief are all moot because PGE entered into two amendments to the PPA to extend the cure period through April 9, 2020, and St. Louis Solar achieved COD on April 6, 2020, and timely cured its February 11, 2019, default under Section 2.2.2.

413. PGE worked in good faith with St. Louis Solar to extend the cure period and to allow St. Louis Solar to achieve COD and cure the breach without resort to termination of the PPA.

414. PGE has not terminated the PPA for breach of Section 2.2.2 and does not anticipate that it will do so.

415. PGE requested that St. Louis Solar amend its Complaint to eliminate its moot allegations, claims, and prayer for relief related to termination of the PPA, but St. Louis Solar refused to do so.

416. The Commission should deny as moot the following claims and prayers for relief related to termination of the PPA: the second claim for relief, prayer for relief 305, and any other

aspect of a claim for relief or prayer for relief that assumes PGE has or may terminate the PPA for uncured breach of Section 2.2.2..

#### **4. Fourth Affirmative Defense – Preemption**

417. PGE realleges all preceding paragraphs.

418. Pursuant to Section 210(e) of the Public Utility Regulatory Policies Act of 1978 (“PURPA”), the Commission is prohibited from engaging in utility-type regulation of an executed and effective QF power purchase agreement.

419. The prohibition on utility-type regulation of an executed and effective QF power purchase agreement means that the Commission is prohibited by federal law from modifying the terms of an executed and effective PGE standard power purchase agreement.

420. The St. Louis Solar PPA is an executed and effective PGE standard power purchase agreement with a QF.

421. Section 210(e) prohibits the Commission from modifying the scheduled COD established by Section 2.2.2 of the PPA.

422. Section 210(e) preempts the Commission’s authority to modify the scheduled COD established by Section 2.2.2 of the PPA.

423. Section 210(e) prohibits the Commission from modifying the Termination Date established by Section 2.3 of the PPA.

424. Section 210(e) preempts the Commission’s authority to modify the Termination Date established by Section 2.3 of the PPA.

425. Under the PPA, the start date of the 15-year fixed-price period is the PPA Effective Date. Section 210(e) prohibits the Commission from modifying the start date of the 15-year fixed-price period under the PPA.

426. Under the PPA, the start date of the 15-year fixed-price period is the PPA Effective Date. Section 210(e) preempts the Commission's authority to modify the start date of the 15-year fixed-price period under the PPA.

**5. Fifth Affirmative Defense – Breach of Contract**

427. PGE realleges all preceding paragraphs.

428. Complainant materially breached the PPA by failing to achieve scheduled COD on or before February 10, 2019.

**6. Sixth Affirmative Defense – Failure to Perform Condition Precedent**

429. PGE realleges all preceding paragraphs.

430. Complainant materially failed to complete its Project and interconnection equipment before September 27, 2019.

431. Complainant materially failed to complete its Project and interconnection equipment before October 31, 2019.

432. Complainant materially failed to complete its Project and interconnection equipment before March 19, 2020.

433. Complainant's completion of its Project and interconnection equipment was a necessary precondition to PGE's responsibility to complete the interconnection facilities and place the interconnection in-service.

434. Because of Complainant's failure to complete its Project and interconnection equipment before March 19, 2020, PGE did not have an obligation to complete the interconnection facilities by September 27, 2019, and PGE did not have an obligation to place the interconnection in-service by October 31, 2019.

435. Because Complainant did not complete its Project and interconnection equipment until March 19, 2020, PGE satisfied its obligations under the IA by completing all interconnection facilities, except the termination of the fiber optic cable at the Project, before September 27, 2019, by completing termination of the fiber optic cable at the Project on February 4, 2020, and placing the interconnection in service on March 26, 2020.

## **7. Seventh Affirmative Defense – Ripeness**

436. PGE realleges all preceding paragraphs.

437. In Paragraph 309 of the Complaint, Complainant asks the Commission to extend the start of the 15-year fixed price period under the PPA from the Effective Date of the PPA (June 10, 2016) to the date the interconnection was placed in service (March 26, 2020).

438. Complainant seeks this result because Complainant claims PGE delayed the interconnection process and thereby harmed Complainant by effectively reducing the number of years it can sell Project net output under the fixed prices found in the PPA,

439. If the 15-year fixed price period begins on the PPA Effective Date of June 10, 2016, then it will end on June 10, 2031. If the start of the 15-year fixed price period is moved to the interconnection in-service date of March 26, 2020, then the period will end on March 26, 2035. In effect, Complainant asserts it will be harmed if it is not allowed to sell at fixed contract prices from June 11, 2031, through March 26, 2035. This is a speculative and contingent claim. It is not presently known whether contract prices will exceed market prices from June 11, 2031, to March 26, 2035. It is also not known whether the St. Luis Solar project will continue to generate power or to sell to PGE after June 11, 2031.

440. In Paragraphs 310 and 311 of the Complaint, Complainant prays for alternative variations of this outcome where the start of the 15-year fixed price period is extended to reflect

the amount of time between the date the interconnection was scheduled to be complete (e.g., October 31, 2019) and the date the interconnection was actually placed in service (e.g., March 26, 2020). These approaches also assume harm that is speculative and contingent.

441. It will not be known until at least June 1, 2031, whether Complainant will suffer any harm by not having a 15-year fixed-price period that extends further than 15-years from the PPA Effective Date. Complainant's claims and prayers to extend the start date of the 15-year fixed price period are therefore not ripe and should be denied.

## **VI. COUNTERCLAIMS**

For PGE's Counterclaims, PGE alleges as follows:

### **A. Identity of the Parties**

442. St. Louis Solar is a limited liability company formed under the laws of the state of Oregon. St. Louis Solar's address registered with the Oregon Secretary of State is: 1327 SE Tacoma Street, #235, Portland, Oregon 97202. The Registered Agent for St. Louis Solar is Cogency Global Inc., 698 12th Street SE, Suite 200, Salem, Oregon 97301.

443. PGE is an investor-owned public utility regulated by the Public Utility Commission of Oregon ("Commission") under ORS Chapter 757. PGE is headquartered at 121 SW Salmon Street, Portland, Oregon 97204.

### **B. Jurisdiction and Applicable Law**

444. The Commission has jurisdiction to adjudicate PGE's counterclaim under ORS 756.500.

445. This case involves the interpretation of the Commission's rules and orders implementing the Public Utility Regulatory Policies Act ("PURPA") (16 U.S.C. 824a-3) and associated state law (ORS 758.505 to ORS 758.555).

446. Pursuant to ORS 756.500, the Commission has authority to resolve disputes between parties whose business or activities are regulated by statutes under the Commission’s jurisdiction. The Commission is vested with authority to implement PURPA and the Federal Energy Regulation Commission’s (“FERC”) implementing regulations (*see* 16 U.S.C. 824a-3(f)), and, under state law, to establish “the terms and conditions for the purchase of energy or energy and capacity from a qualifying facility . . . .” ORS 758.535(2)(a).

447. The Commission has promulgated small generator interconnection rules and codified those rules at OAR 860-082-0010 to OAR 860-082-0085. Those rules govern Complainant’s application to interconnect a proposed small generator to PGE’s electric system. The Commission has the jurisdiction and authority to resolve disputes regarding the Commission’s small generator interconnection rules.

448. Given the authority vested in the Commission, the Commission has jurisdiction to resolve disputes between PGE and St. Louis Solar relating to interconnection of a qualifying facility under PURPA.

449. The Oregon statutes relevant to this case include ORS 756.500 to ORS 756.610 and ORS 758.505 to ORS 758.555. The Oregon rules relevant to this case include those within Divisions 1 and 82 of Chapter 860 of the Oregon Administrative Rules.

### **C. PGE’s Factual Allegations**

450. PGE re-alleges all of the preceding paragraphs.

### **D. PGE’s First Claim for Relief – St. Louis Solar Breached the PPA.**

451. PGE re-alleges all of the preceding paragraphs.

452. St. Louis Solar was in breach of Section 2.2.2 of the PPA from February 11, 2019, until April 6, 2020.

453. PGE was within its rights under Section 9.2 of the PPA to charge St. Louis Solar damages in the amount of \$12,569.94 on April 3, 2019, and in the amount of \$11,215.76 on April 25, 2019.

454. St. Louis Solar admitted its breach by paying the damages invoices without objection.

455. There is no basis to require PGE to reimburse these damages to St. Louis Solar.

456. PGE is entitled to relief in the form of an order of the Commission interpreting the PPA and concluding that PGE acted consistent with the PPA when it declared a breach of Section 2.2.2. on February 11, 2019, and when it invoiced and collected a total of \$23,785.70 in damages for that breach as provided for by Section 9.2 of the PPA.

457. PGE respectfully requests that the Commission enter an order that PGE is not required to agree to any further modification of the scheduled COD, the 15-year fixed prices period, or the termination date under the St. Louis Solar PPA.

**E. PGE's Second Claim for Relief – PGE Satisfied its Obligations Under the IA and the Commission's interconnection rules**

458. PGE has interconnected the St. Louis Solar Project to PGE's St. Louis-West feeder.

459. PGE has complied with the small generator interconnection rules.

460. PGE has complied with its obligations under the St. Louis Solar IA.

461. On or before September 27, 2019, PGE completed installation of all interconnection facilities called for by the IA, except the fiber optic cable associated with transfer trip.

462. PGE could not complete the installation of the fiber optic cable on or before September 27, 2019, because St. Louis Solar did not properly install a required relay as part of the Project or as part of St. Louis Solar's interconnection equipment until DATE, 2020, at the earliest.



463. PGE could not place the interconnection in service on or before October 31, 2019, because St. Louis Solar did not complete and properly wire its Project or its interconnection equipment until March 19, 2020.

464. PGE placed the interconnection in service on March 26, 2020, within one-week of St. Louis Solar completing and satisfactorily wiring the Project and St. Louis Solar's interconnection equipment.

465. PGE respectfully requests that the Commission enter an order that PGE complied with its obligations under the IA by placing the interconnection in service on March 26, 2020, after St. Louis Solar completed prerequisite work on March 19, 2020.

## **VII. PGE'S PRAYERS OF RELIEF**

PGE respectfully requests that the Commission:

466. Deny St. Louis Solar's Claims for Relief and dismiss the Complaint with prejudice.

467. Grant PGE's Counterclaims and issue an order holding: (A) that St Louis Solar breached the PPA; (B) that PGE is entitled to the \$23,785.70 in damages collected because of that breach; (C) that PGE is not required to agree to extend the COD, extend the Termination Date, or extend the 15-year fixed-price period under the PPA; and (D) that PGE complied with its obligations under the IA and the Commission's rules when PGE completed placed the St. Louis Solar interconnection in-service on March 26, 2020.

468. Grant any other relief as the Commission deems necessary and appropriate.

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Dated: May 26, 2020.

Respectfully submitted,

**MARKOWITZ HERBOLD PC**

*s/ Jeffrey S. Lovinger*

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Attorneys for Portland General Electric Company

**EXHIBIT 1**

JULY 26, 2019 LETTER FROM ST. LOUIS SOLAR TO PGE

UM 2057

*St. Louis Solar, LLC*

v.

*Portland General Electric Company*

PGE's Answer, Affirmative Defenses, and Counterclaim

# Sanger Thompson PC

1041 SE 58th Place, Portland, OR 97215

tel (503) 756-7533 fax (503) 334-2235 irion@sanger-law.com

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July 26, 2019

## Via Email

Donald Light  
Portland General Electric Company  
121 SW Salmon Street  
Portland, OR 97204

RE: St. Louis Solar Project

Dear Mr. Light:

I am sending this letter regarding St. Louis Solar, LLC (“St. Louis Solar”) with which Portland General Electric Company (“PGE”) has executed a standard power purchase agreement (“PPA”) under Schedule 201 under the Public Utility Regulatory Policies Act of 1978 (“PURPA”). St. Louis Solar requests that PGE: 1) timely complete the interconnection and/or allow St. Louis Solar to complete the interconnection; 2) refund St. Louis Solar all Start-Up Lost Energy payments made to date; 3) stop invoicing St. Louis Solar for Start-Up Lost Energy; and 4) extend both the Commercial Operation Date (“COD”) and Termination Date for every day of delay between the date St. Louis Solar was energized and the date that PGE completes the interconnection. If PGE is not willing to immediately refund and cease invoicing St. Louis Solar for Start-Up Lost Energy and engage in discussions regarding the St. Louis Solar’s other requests, then St. Louis Solar will seek legal remedies before the appropriate tribunal after August 14, 2019. As PGE has violated its obligations under PURPA, it will owe St. Louis Solar treble damages for certain violations of law.

Since the end of December 2018, St. Louis has been ready to be energized, and waiting on PGE to complete its interconnection, so that it can begin to sell power under its PPA. During that time, PGE has encountered numerous issues in getting the interconnection completed. For example, and most recently, PGE has determined that the path it was on with respect to gaining authorization to run a communications line across a railroad was misguided, and that it would need to start the process over. This is after PGE spending several months working with a railroad that it turned out does not have rights to the property in any event, and agencies that did not have jurisdiction over the issue. It also appears that PGE did not consider other options, such as a radio connection, suggested by St. Louis Solar that would have allowed it to complete this work more quickly and efficiently, without the need to cross the railroad line. But for PGE’s mistakes, the interconnection should have been completed.

PGE – St. Louis Solar  
July 26, 2019  
Page 2 of 3

During the time since St. Louis Solar has been ready for energization (but for PGE's completion of the interconnection), a few significant events have occurred. First, the project's scheduled COD of February 10, 2019 passed. Second, PGE has begun assessing Start-Up Lost Energy Value payments against the project. These have been significant, and the project has paid them in order to try to simply continue to work toward energization and avoid disputes with PGE. It did so with the expectation that its ability to energize the project was imminent.

Under the interconnection agreement between the project and PGE, PGE is required to complete the interconnection by October 31, 2019. Although that is still a few months away, Neighborhood Power is not willing to simply wait for that time to come before demanding action by PGE. PGE has a duty to seek to complete the interconnection in a timely manner, and the interconnection should have been able to be completed many months ago. Now that the project has been informed that PGE's completion of its interconnection is once again being pushed out beyond the project's expectations, and given that the delay is caused by PGE's ineffective approach to seeking the authorizations it believed it needed, St. Louis Solar is no longer willing to simply wait until PGE completes the interconnection while it continues to suffer damages due to its delayed energization date and the assessment of lost energy charges by PGE.

St. Louis Solar asks that PGE take the following actions:

First, PGE should timely complete the interconnection and/or provide St. Louis Solar with the authority to manage and complete the interconnection if PGE is unable to do so.

Second, PGE should provide a refund of the payments that the project has made for Start-Up Lost Energy Value assessed by PGE. The only reason that the project has not been able to be energized is because of delays in the interconnection process, and PGE is therefore not entitled to insist on payment of damages that are caused by its own inaction or shortcomings. These penalties should not have been assessed under the circumstances.

Third, PGE should make it clear that it will not assess penalties against the project until after PGE completes the interconnection, if any are warranted for failure to deliver beyond that date.

Fourth, PGE should extend the scheduled COD in the contract and the term of the contract to recognize the delays that have been caused by PGE in interconnecting the project since the project was otherwise ready for energization in December 2018. St.


PGE – St. Louis Solar  
July 26, 2019  
Page 3 of 3

Louis Solar is currently in a position of appearing to be in default because of PGE's actions, and the scheduled COD should be revised so that St. Louis Solar is no longer in such a position. PGE should extend the term of the contract by revising the Termination Date to recognize a project right to deliver power at 15 years of fixed prices beginning on the date of energization.

We want to be clear that the project looks forward to energization, and hopes that it can reach a resolution of these concerns with PGE on a timely basis, as set out in this letter. However, we also want to be clear that the project is ready to file a complaint with the appropriate tribunal related to PGE's actions and inaction if a resolution is not able to be reached. Please do not consider the issues raised in this letter as necessarily including all issues that we may raise in such a complaint, as Neighborhood Power and the project reserve their rights to raise all issues related to its projects, including the St. Louis Solar project. We ask that you respond to this letter by August 14, 2019 to let us know if PGE is willing to refund and stop invoicing for Start-Up Lost Energy Value and engage in discussions regarding St. Louis Solar's requests, or we may proceed with filing a complaint.

Please feel free to reach out with any questions.

Sincerely,



Irion A. Sanger

cc: Stephen Gates, Neighborhood Power

**EXHIBIT 2**

AUGUST 14, 2019 LETTER FROM PGE TO ST. LOUIS SOLAR

UM 2057

*St. Louis Solar, LLC*

v.

*Portland General Electric Company*

PGE's Answer, Affirmative Defenses, and Counterclaim



**Jeffrey S. Lovinger | Lawyer**  
JeffreyLovinger@MarkowitzHerbold.com

August 14, 2019

**Via Email and U.S. Mail**

Irion A. Sanger  
Sanger Thompson PC  
1041 SE 58th Place  
Portland, OR 97215  
irion@sanger-law.com

**Re: St. Louis Solar Project**

Dear Mr. Sanger:

This responds to your letter of July 26, 2019, regarding the St. Louis Solar Project (Project). Portland General Electric Company (PGE) has worked in good-faith to implement the Interconnection Agreement between PGE and St. Louis Solar, LLC (St. Louis Solar). The interconnection is proceeding consistent with the schedule of milestones agreed to by the parties and PGE remains committed to the goal of placing the interconnection in service by October 31, 2019.

Because the interconnection process is on schedule and PGE has not delayed the process, PGE cannot agree to St. Louis Solar's demand to refund Start-Up Lost Energy payments previously made, to stop invoicing for potential future Start-Up Lost Energy payments, or to extend the scheduled Commercial Operation Date or Termination Date under the power purchase agreement (PPA) between PGE and St. Louis Solar.

**Background**

PGE and St. Louis Solar entered into an Interconnection Agreement on March 28, 2018. The Interconnection Agreement includes as Attachment D a scope of work and schedule of milestones agreed by the parties. A copy of the schedule of milestones is attached as Enclosure 1.



Irion Sanger  
August 14, 2019  
Page 2

Under this agreed schedule, PGE was responsible for beginning its detailed engineering designs by May 26, 2018, for completing its distribution and substation designs by November 23, 2018, and for completing its communication design by December 31, 2018. PGE timely completed these detailed engineering designs in November and December 2018.

Under the agreed schedule, PGE is responsible for constructing and installing the required interconnection facilities and distribution system upgrades between December 31, 2018, and September 27, 2019. One element of the required facilities is a transfer trip protective scheme with a fiber optic communication line. The communication line must cross a railroad and PGE needs permission from the property owner before it installs the communication line across the railroad property.

PGE has been working diligently and in good-faith to construct and install all required facilities by the September 27, 2019 milestone. Immediately after the detailed design work was completed in December 2018, PGE reviewed the Marion County Tax Assessor's property records to determine who owned the railroad. The County's records indicated the owner was BNSF Railway Company (BNSF). PGE contacted BNSF to request authorization to locate the communication line across the railroad property. Less than two weeks later, BNSF informed PGE that it had conveyed the railroad property to the State of Oregon. PGE contacted the Oregon Department of Transportation (ODOT) to request authorization to locate the communication line across the railroad property. After a number of months, ODOT informed PGE that BNSF had conveyed the real property associated with the railroad to the State of Oregon and conveyed the tracks and an exclusive, permanent easement to use the railroad corridor to the Pacific and Western Railroad (PNWR). ODOT informed PGE that it would need to apply to both ODOT and PNWR for permission to cross the railroad property. On July 22, 2019, PGE applied to both ODOT and PNWR for such authorization. PGE is currently waiting for the requested authorization from these two property owners.

### **Analysis**

PGE completed its detailed engineering design of the interconnection as scheduled. Those designs called for installation of a transfer trip protective scheme with a fiber optic communication line. The fiber optic line must cross a railroad. Immediately following completion of detailed design, PGE reviewed county records to determine who owned the railroad. Those records indicated

Irion Sanger  
August 14, 2019  
Page 3

BNSF owned the railroad and PGE immediately contacted BNSF, was rapidly informed by BNSF that the railroad had been transferred to the State of Oregon, and PGE then contacted the State of Oregon seeking authorization to cross the railroad. The State of Oregon took a number of months to provide PGE with information regarding what permits or authorizations are required, but once Oregon did so, PGE immediately applied for those authorizations. PGE has not delayed the process of seeking authorization to cross the railroad and has acted appropriately and consistent with the interconnection schedule agreed to by the parties.

There is still time for ODOT and PNWR to authorize the railroad crossing and for PGE to install the fiber optic communication line under the railroad before the September 27, 2019 milestone to complete construction of the interconnection facilities and before the October 31, 2019 milestone to place the interconnection in service. Further, the milestones agreed to by the parties are not a guarantee that the interconnection will be complete by the targeted in-service date. The last sentence of Attachment D to the Interconnection Agreement states: "PGE does not guarantee completion of any project on a targeted date as the schedule is dependent on a number of variables, including but not limited to, construction of other potential interconnection projects." If the State of Oregon or PNWR are slow to authorize PGE to cross the railroad with the fiber optic line, then the in-service date may be delayed through no fault of PGE. In any event, to date PGE has met all applicable interconnection milestones and there is no basis to conclude that PGE has delayed the interconnection schedule agreed to by the parties in the Interconnection Agreement.

Under the terms of the PPA between the parties, as amended on November 16, 2018, the deadline for St. Louis Solar to achieve commercial operation was February 10, 2019. St. Louis Solar did not achieve commercial operation by that deadline and on February 11, 2019, PGE timely and appropriately provided St. Louis Solar with notice of default. PGE has been invoicing St. Louis Solar for Start-Up Loss Energy Value (SLEV) payments since April 2019 and St. Louis Solar has been paying those invoices. Because PGE has met its obligations under the Interconnection Agreement and associated milestone schedule, there is no basis for PGE: (a) to agree to refund SLEV payments made by St. Louis Solar; (b) to agree not to invoice St. Louis Solar for future SLEV payments; or (c) to agree to extend the scheduled Commercial Operation Date or Termination Date under the PPA.

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August 14, 2019  
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Your July 26, 2019, letter states: “recently, PGE has determined that the path it was on with respect to gaining authorization to run a communication line across a railroad was misguided, and that it would need to start the process over.” PGE disagrees with this statement. As discussed above, PGE reviewed Marion County property records to determine who owned the railroad, those records indicated BNSF owned the railroad, and PGE contacted BNSF to request authorization to cross the railroad. BNSF then responded and indicated that it no longer owned the railroad but had conveyed the land to the State of Oregon. PGE therefore contacted ODOT to request authorization to cross the railroad. This entire process of research and communication to determine who owned the real property took approximately one month. It was not a misguided effort but rather a reasonable and relatively rapid process for determining who owns the railroad property.

Your letter further states that PGE spent “several months working with a railroad that it turned out does not have rights to the property[.]” Again, PGE disagrees. As discussed above, PGE spent less than two weeks in communication with BNSF to determine that BNSF no longer owns the railroad notwithstanding that the County’s property records list BNSF as the record owner of the land in question.

Your letter asserts that the Project was ready to energize at the end of December 2018 and suggests that “but for” PGE’s “mistakes” regarding authorization to cross the railroad the interconnection should have been completed by that date. This is incorrect. First, as discussed above PGE has not made “mistakes” resulting in a delay in authorization to cross the railroad. Rather, PGE has engaged in a timely and appropriate process to identify the owner of the railroad and to obtain the necessary authorization to cross the railroad. Second, even if it was not necessary to cross the railroad, the interconnection would not have been placed in-service at the end of December 2018. Under Attachment D to the Interconnection Agreement, the parties have agreed that PGE has an approximately nine-month period, from December 31, 2018, through September 27, 2019, to construct and install the required interconnection facilities and distribution system upgrades. These include, modifications to the substation, reconductoring of approximately 1,600 feet of distribution line, installation of transfer trip with a fiber optic communication channel, and installation of a new primary underground service. This work is proceeding on schedule but there is no basis to conclude that it would have or should have been completed by the end of December 2018 “but for” the need to obtain authorization to cross the railroad.

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Your letter states that “PGE did not consider other options, such as a radio connection, suggested by St. Louis Solar that would have allowed it to complete this work more quickly and efficiently, without the need to cross the railroad line.” This is incorrect. PGE did consider St. Louis Solar’s suggestion but concluded that a radio connection would not provide the level of reliability required by PGE’s operations.

### **Conclusions**

As outlined above, PGE disagrees with your characterization of its interconnection efforts. All of PGE’s actions have been appropriate, timely, and reasonable. PGE is awaiting permission to cross the railroad from ODOT and PNWR and may still obtain that permission in time to allow for the St. Louis Solar interconnection to be completed and placed in-service by the October 31, 2019 target date. It is premature to claim that there has been any delay in the timely completion of the interconnection; it is completely unfounded to claim that speculative future delays will be the result of PGE’s actions. Because there has been no failure to meet the deadlines established by the Interconnection Agreement and because PGE has not delayed the interconnection process, PGE cannot agree to St. Louis Solar’s demands to refund SLEV payments, to stop invoicing for SLEV payments, or to modify the scheduled Commercial Operation Date or Termination Date under the PPA.

If St. Louis Solar believes that there are specific facts that alter or impact the above analysis, then please bring those specific facts to my attention and I will be happy to review them with PGE and provide you with PGE’s response. PGE encourages St. Louis Solar to continue to discuss its position with PGE and to clarify any additional facts that St. Louis Solar believes are applicable **before** St. Louis Solar files a complaint.

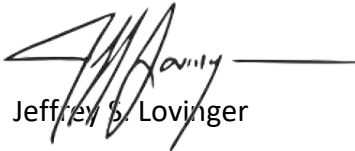
If St. Louis Solar determines to file a complaint with a tribunal, PGE requests that St. Louis Solar provide PGE with at least 14 days advanced notice, a copy of the draft complaint, and notice of which tribunal St. Louis Solar intends to file a complaint with. This will provide the parties with an opportunity to consult informally regarding the specific facts and theories contained in St. Louis Solar’s complaint and may allow the parties to resolve some or all of their dispute without the need for protracted litigation and before positions harden in litigation.

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This letter is based on an initial review of the facts and issues raised by your July 26, 2019 letter. This letter is not an exhaustive statement of the facts that may be relevant to the issues raised in your letter, nor is it an exhaustive statement of PGE's legal rights or position. PGE reserves the right to advance any and all facts, rights, and defenses in response to your letter, in response to any complaint St. Louis Solar may file, or in response to any other action St. Louis Solar may take.

I would be happy to discuss any aspect of your July 26, 2019 letter or this response and encourage you and your client to engage in further discussion regarding the specific factual allegations and the specific statutory, regulatory, or contractual provisions that your client relies on for its position.

Sincerely,



Jeffrey S. Lovinger

cc: David White, PGE  
Kristin Ingram, PGE

St Louis Solar  
SPQ0018

Form 8  
1-19-10 rev.

**Attachment D**

**Scope of Work/Milestones**

In-Service Date: October 31, 2019

Critical milestones and responsibility as agreed to by the Parties:

	<b>Milestone/Date</b>	<b>Responsible Party</b>
(1)	<u>Executed Interconnection Agreement / 3-28-2018</u>	<u>St Louis</u>
(2)	<u>\$10,000 Deposit / 3-28-2018</u>	<u>St Louis</u>
(3)	<u>First 1/3 Payment \$199,667 / 4-26-2018</u>	<u>St Louis</u>
(4)	<u>Engineering Design Starts / 5-26-2018</u>	<u>PGE</u>
(6)	<u>Distribution Design Complete / 11-23-2018</u>	<u>PGE</u>
(7)	<u>Substation Design Complete / 11-23-2018</u>	<u>PGE</u>
(5)	<u>Remaining Balance of \$419,333 / 11-30-2018</u>	<u>St Louis</u>
(8)	<u>*Communications Design Complete / 12-31-2018</u>	<u>PGE</u>
(9)	<u>PGE Construction Scheduled / 12-31-2018</u>	<u>PGE</u>
(10)	<u>Switchgear Installed and Inspection / 8-30-2019</u>	<u>St Louis</u>
(11)	<u>Interconnection Facilities Complete / 9-27-2019</u>	<u>PGE</u>
(12)	<u>Testing and Commissioning / 10-11-2019</u>	<u>St Louis</u>
(13)	<u>In-Service Date / 10-31-2019</u>	<u>PGE</u>

\* During the design of the communication scheme additional costs or time may be incurred should the existing utility poles need to be replaced or modified to accommodate the fiber optic line.

PGE does not guarantee completion of any project on a targeted date as the schedule is dependent on a number of variables, including but not limited to, construction of other potential interconnection projects.