

**BEFORE THE PUBLIC UTILITY COMMISSION**

**OF OREGON**

**UM 2057**

In the Matters of

ST. LOUIS SOLAR, LLC,

Complainants,

v.

PORTLAND GENERAL ELECTRIC  
COMPANY,

Defendant.

MOTION FOR LEAVE TO FILE FIRST  
AMENDED COMPLAINT

**I. INTRODUCTION**

Pursuant to ORS 756.500(4), OAR 860-001-0420 and ORCP Rule 23A, Complainant St. Louis Solar, LLC respectfully moves the Oregon Public Utility Commission (“Commission”) for an Order granting leave to file Complainant’s First Amended Complaint. A redline version of the First Amended Complaint is attached as Attachment A.

Complainant conferred with Portland General Electric Company (“PGE”), and PGE has stated that it will determine whether it will oppose this motion after reviewing the filing, and PGE has stated that it will file any response in opposition within 15 days of this motion.

**II. LEGAL STANDARD**

Under ORS 756.500(4), the Commission can order the amendment of a complaint prior to the completion of taking evidence in a case. Under OAR 860-001-0000, the Commission follows the ORCPs in contested case proceedings unless they are inconsistent with the Commission’s rules, an order, or an administrative law judge ruling. Under ORCP 23A, a

pleading may be amended by a party once as a matter of course at any time before a responsive pleading is served, and, after a responsive pleading is served, a party may amend the pleading only by leave of the court or by written consent of the adverse party. Leave shall be freely given when justice so requires.<sup>1</sup> The Commission has previously cited four factors in connection with its consideration of a motion seeking leave to amend a complaint: 1) the proposed amendment's nature and relationship to the existing pleadings; 2) prejudice to the opposing party; 3) timing; and 4) the merit of the proposed amendment.<sup>2</sup>

### III. ARGUMENT

Here, the Commission should grant leave to file the First Amended Complaint because justice requires it and all four factors cited by the Commission indicate that amendment should be allowed. St. Louis Solar acknowledges that the extent of amendment may appear substantial, potentially weighing against a finding that the first factor supports amendment. However, the First Amended Complaint only: 1) provides greater specificity as to facts and claims raised in the original complaint; 2) provides additional facts regarding events that occurred after the filing of the original complaint (specifically, that PGE placed St. Louis Solar's facility in service and deemed it to have achieved commercial operations); and 3) requests damages as an alternative relief to the specific performance requested in the original complaint. The last addition is based

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<sup>1</sup> ORCP 23A.

<sup>2</sup> See *Nw. Pub. Commc'ns Council v. Qwest Corp.*, Order No. 09-155 at 8 (May 4, 2009) (referring to *Forsi v. Hildahl*, 194 Or App 648, 652 (2004)); see also, e.g., *Waconda Solar v. PGE*, Docket No. UM 1971, Ruling at 2 (July 31, 2019).

on St. Louis Solar's understanding of the nature of alleged counterclaims filed by PGE in this proceeding.<sup>3</sup> Although the changes are numerous, they provide specificity and clarity.

The other three factors more clearly support St. Louis Solar's motion for leave to amend. First, there is no prejudice to the opposing party, because the case is in its early stages, and PGE will have an opportunity to provide an answer to each amendment to the complaint. Second, the timing of amendment is appropriate in light of the prehearing conference on July 15, 2020, during which the ALJ expressed a preference for the parties to confer and for St. Louis Solar to amend the complaint to clarify the issues in dispute, and in light of subsequent conferrals with PGE since that date regarding amendment.<sup>4</sup> Finally, amendment is meritorious because it clarifies the issues in dispute and should further a speedy resolution of this proceeding.

#### IV. CONCLUSION

For the reasons stated above, leave should be granted to amend the complaint.

Dated this 26th day of August 2020.

Respectfully submitted,



Irion A. Sanger  
Joni Sliger  
Sanger Law, PC  
1041 SE 58th Place  
Portland, OR 97215  
Telephone: 503-756-7533  
Fax: 503-334-2235  
irion@sanger-law.com

Of Attorneys for St. Louis Solar, LLC

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<sup>3</sup> St. Louis Solar has filed a motion to dismiss PGE's alleged counterclaims and reserves its right to seek a decision on that motion, which is currently being held in abeyance.

<sup>4</sup> See St. Louis Solar's Status Report and Motion to Hold the Case in Abeyance Indefinitely at 1 (July 29, 2020); see also Ruling at 1 (July 30, 2020).

**Attachment A**

**St Louis Solar Amended Complaint Clean**

Irion A. Sanger  
OSB No. 003750  
Sanger Law, PC  
1041 SE 58th Place  
Portland, OR 97215  
503-756-7533 (tel.)  
503-334-2235 (fax)  
irion@sanger-law.com

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DOCKET NO. UM 2057

FIRST AMENDED COMPLAINT

**I. INTRODUCTION**

This is a complaint (“Complaint”) filed by St. Louis Solar, LLC (“St. Louis Solar”) with the Oregon Public Utility Commission (“Commission”) against Portland General Electric Company (“PGE”) under ORS 756.500 and OAR 860-001-0170. The St. Louis Solar project is a 2.2-megawatt (“MW”) solar qualifying facility (“QF”) under the Public Utility Regulatory Policies Act of 1978 (“PURPA”). St. Louis Solar has executed both a standard power purchase agreement (“PPA”) and an interconnection agreement with PGE. PGE has breached both contracts, breached its duty of good faith and fair dealing, and violated Commission rules and state statutes, for which St. Louis Solar seeks relief.

PGE prevented St. Louis Solar from coming online and selling power for approximately 2.5 years. Ultimately, St. Louis Solar only came online after paying PGE for alleged Start-Up Lost Energy Value damages (“delay damages”) and doing interconnection work that PGE was obligated to perform but refused to do.

PGE’s delays largely fall into two categories: 1) delays PGE caused during the interconnection study process (totaling approximately 17 months); and 2) delays PGE caused during the interconnection construction process (totaling approximately 12.5 months). PGE has offered partial relief for some of these delays through amending the commercial operation date (“COD”) in the PPA and amending the cure period for reaching COD in the PPA. PGE has not agreed to amend the commencement date of the fixed price payments. Essentially, PGE’s partial relief was for PGE to not terminate the PPA because PGE was unable to interconnect St. Louis Solar; however, PGE has not provided any economic relief to St. Louis Solar and has instead charged St. Louis Solar delay damages because of PGE’s failure to interconnect St. Louis Solar.

St. Louis Solar asks the Commission to make it whole and provide relief for the delays and unreasonable costs that PGE imposed. Specifically, St. Louis Solar seeks the following relief: 1) compensation for lost fixed price payments; 2) a refund for the alleged delay damages; 3) a refund of the costs associated with interconnection work that PGE should have performed but did not; and 4) a refund of costs associated with interconnection work that was unnecessary for PGE to safely interconnect St. Louis

Solar.<sup>1</sup> The Commission should also impose penalties on PGE for its unlawful and discriminatory practices.

**A. Compensation for Lost Fixed Price Payments**

St. Louis Solar's standard PPA provides 15 years of fixed-price payments starting from the date of execution (under the prevailing interpretation).<sup>2</sup> But for PGE's delays during the interconnection study process, St. Louis Solar could have completed its project and begun earning fixed-price payments as early as October 31, 2017. St. Louis Solar requests that the Commission order PGE to revise its power purchase agreement or otherwise make St. Louis Solar whole by increasing the fixed price period by about 29 months (to compensate St. Louis Solar for the delays from October 31, 2017 to April 6, 2020). This is because PGE's delays have cost St. Louis Solar as many as 29.5 months of fixed-price payments, out of the total 180 months allowed by Commission policy.

PGE will have a variety of arguments as to why St. Louis Solar could not have been interconnected by October 31, 2017. The facts of this case are likely to be confusing and disputed, largely because PGE made so many different kinds of mistakes

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<sup>1</sup> St. Louis Solar has experienced other economic damages, including but not limited to construction loan interest and fees, investor return payments and penalties, land lease payments, and insurance. St. Louis Solar reserves the right to bring a claim for these economic damages before state or federal court.

<sup>2</sup> St. Louis Solar has a PPA form which is similar to that of the NewSun parties, which the Commission recently determined starts the 15-year fixed price period at execution. *PGE vs. Alfalfa Solar I, LLC, et al.*, Docket No. UM 1931, Order No. 19-255 at 17 (Aug. 2, 2019). That decision is under appeal, and it is possible that St. Louis Solar form PPA provides that the 15-year fixed price period begins at commercial operations. *PGE vs. Alfalfa Solar I, LLC, et al.*, Docket No. UM 1931, Petition for Judicial Review (Jan. 10, 2020). St. Louis Solar has included a prayer for relief to amend the PPA to begin the fixed price payment at commercial operations, as a placeholder in the event that the Commission's order is overturned on appeal.

and delays. If the Commission does not agree that St. Louis Solar could have come on line by October 31, 2017, then St. Louis Solar requests two primary alternative prayers for relief to avoid the need for the Commission to essentially count the exact number of days of delay attributable to each harmful PGE action.

First, despite PGE's delays, St. Louis Solar was still able to complete its project no later than January 23, 2019. St. Louis Solar, however, was unable to be energized because PGE had failed to complete interconnection in a timely manner. This alternative request for relief asks that St. Louis Solar be provided an extension of its fixed price period by about 15 months, which would recognize that St. Louis Solar could have earned fixed price payments as of January 23, 2019.

Second, the final interconnection agreement entered into by St. Louis Solar required PGE to interconnect the project by October 31, 2019. At the latest, St. Louis Solar should have been able to come online and earn fixed price payments as of October 31, 2019, the planned in-service date under the interconnection agreement. But PGE failed to achieve this critical milestone. This alternative request for relief asks St. Louis Solar be provided an extension of its fixed price period by about 5 months, which would recognize that St. Louis Solar could have earned fixed price payments as of October 31, 2019.

**B. Refund for the Alleged Delay Damages**

PGE billed St. Louis Solar for alleged delay damages on the basis that St. Louis Solar came online late. In fact, St. Louis Solar completed its project and missed its scheduled COD only because of PGE's delays. It was unreasonable for PGE to bill St.



Louis Solar when PGE was the cause of the delays. St. Louis Solar seeks a refund of the amounts paid.

**C. Refund of the Costs Associated with Interconnection Work that PGE Should Have Performed but Did Not**

The interconnection agreement required PGE to procure and install a transfer trip relay panel, but PGE refused to do so. St. Louis Solar did the work solely to minimize the delays to its facilities. St. Louis Solar seeks a refund of the costs of the work that PGE was obligated to perform but did not do.

**D. Refund of the Costs Associated with Unnecessary Interconnection Work**

PGE required St. Louis Solar to perform work that was not called for under the interconnection agreement and was in fact redundant and unnecessary. Specifically, PGE required St. Louis Solar to install new fuses in PGE's side of the switchgear, despite the existence of a nearby cut-out fuse. The work appears to have been entirely unnecessary, but if the work was in fact somewhat necessary for the safety and reliability of PGE's system, PGE should have performed the work itself. St. Louis Solar seeks a refund of the costs of procuring and installing the unneeded fuses.

**E. The Commission Should Provide Relief to St. Louis Solar**

In summary, St. Louis Solar believes PGE ought to: 1) refund the alleged delay damages and unreasonable interconnection costs; and 2) agree to amend the start date of the fixed price payment period to reflect all of the delays PGE caused, consistent with PGE's duty of good faith and fair dealing. PGE has refused to do so, therefore St. Louis Solar asks the Commission to either: 1) order PGE to provide the relief through refunds

and PPA amendments;<sup>3</sup> or 2) issue an order finding that PGE caused St. Louis Solar to suffer economic losses equal to the value of unreasonable interconnection costs and lost fixed price payments (i.e., damages).

St. Louis Solar understands that the Commission has historically declined to exercise jurisdiction to award damages, which is why St. Louis Solar does not ask the Commission to award damages outright.<sup>4</sup> St. Louis Solar asks only for a Commission order finding that PGE caused St. Louis Solar to suffer economic losses, which St. Louis Solar can take to a circuit court to seek relief through an award of damages.<sup>5</sup> If, however,

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<sup>3</sup> Notably, the Commission need not amend the PPA to provide at least some relief. One approach the Commission could take is by finding language in an existing PPA amendment regarding the commencement date of the fixed price payment to be unconscionable and striking it from the amendment, consistent with general contract principles.

<sup>4</sup> *T.G. v. Qwest*, Docket No. UCR 188, Order No. 18-212 at 3 (June 6, 2018) (granting Qwest’s motion to dismiss claims for damages because “[t]he Commission has only those powers granted to it by statute. There is no statute granting the Commission authority to order a utility company to pay damages . . . That kind of dispute normally is handled through mediation, arbitration, or the judicial system”) (quoting *Schaefer v. CenturyTel of Or., Inc.*, Docket No. UC 569, Order No. 01-157 (Feb. 8, 2001)); see also *Shepherd v. U.S. W. Comm’n, Inc.*, Docket No. UC 477, Order No. 99-749 (Dec. 12, 18 1999); *Sage v. U.S. W. Comm’n*, Docket No. UC 368, Order No. 98-473 (Nov. 18, 1998); *Mattox v. PGE*, Docket No. UC 36, Order No. 85-196 (March 7, 1985).

<sup>5</sup> *E.g., Electric Lightwave v. U.S. West Comm’ns*, Docket No. UC 377, Order No. 99-285 at 6-7 (Apr. 26, 1999) (“[W]hile the Commission generally has no jurisdiction to award monetary damages, it does have authority to enforce interconnection agreements, and a decision on the merits in ELI’s favor would at the very least allow ELI to petition a court of competent jurisdiction for a monetary judgment based on the Commission’s decision.”).

St. Louis Solar could theoretically proceed directly to a court to seek damages, but, because the Commission has asserted jurisdiction over post-contract execution claims, PGE would likely file a complaint before the Commission and seek to have any court case dismissed or abated pending the Commission’s resolution of the dispute. *E.g.*, Docket No. UM 1931, Order No. 18-174 at 2, 4-5 (May 23, 2018) (asserting jurisdiction over PGE’s complaint despite a pre-

the Commission is inclined to exercise jurisdiction to award damages, then St. Louis Solar requests that the Commission also exercise jurisdiction to award statutory damages and attorneys' fees.<sup>6</sup> St. Louis Solar notes that PGE's wrongdoing violated not only the terms of the contracts between PGE and St. Louis Solar but also numerous Commission rules and state statutes.

Finally, St. Louis Solar notes that PGE has failed to provide a final accounting report of the interconnection costs, which was due on July 24, 2020 pursuant to the interconnection agreement. St. Louis Solar reserves the right to seek additional relief either based on information in PGE's final accounting report or based on PGE's failure to provide a final accounting report.

## II. SERVICE

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

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

Stephen D. Gates  
St. Louis Solar, LLC  
1327 SE Tacoma St #235  
Portland, OR 97202  
StephenGates888@gmail.com

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existing court case on the same dispute). St. Louis Solar comes before the Commission in the hopes of avoiding an expensive jurisdictional dispute with PGE.

<sup>6</sup> ORS 756.185 provides that "Any public utility which does, or causes or permits to be done, any matter, act or thing prohibited by ORS chapter 756, 757 or 758 or omits to do any act, matter or thing required to be done by such statutes, is liable to the person injured thereby in the amount of damages sustained in consequence of such violation. If the party seeking damages alleges and proves that the wrong or omission was the result of gross negligence or willful misconduct, the public utility is liable to the person injured thereby in treble the amount of damages sustained in consequence of the violation. [Except if the action is maintained as a class action], the court may award reasonable attorney fees to the prevailing party in an action under this section."

Joni L. Sliger  
Sanger Law, PC  
1041 SE 58th Place  
Portland, OR 97215  
joni@sanger-law.com

In support of this Complaint, Complainant alleges as follows:

### **III. IDENTITY OF THE PARTIES**

1. PGE is an investor-owned public utility regulated by the Commission under ORS Chapter 757. PGE is headquartered at 121 Southwest Salmon Street, Portland, Oregon 97204.

2. St. Louis Solar, a limited liability company organized under the laws of the state of Oregon, is the controlling owner and manager of the St. Louis Solar project and will be the seller of the output from the St. Louis Solar project. St. Louis Solar's address is 1327 SE Tacoma St #235, Portland, OR 97202.

### **IV. APPLICABLE STATUTES AND RULES**

3. The Oregon statutes expected to be involved in this case include: ORS 746.040, 756.040-756.068, 756.185, 756.500-756.558, 756.990, 757.020, 757.325, 758.010-758.035, and 758.505-758.555. The Oregon rules expected to be involved in this case include: OAR 860-001, 860-023, 860-024, 860-029, and 860-082.

4. The federal statute expected to be involved in this case is PURPA, 16 United States Code ("USC") 824a-3. The federal rules expected to be involved in this case include: 18 Code of Federal Regulations ("CFR") 292.101-292.602.

### **V. JURISDICTION**

5. FERC adopted regulations and policies governing utility purchases from QFs under PURPA. 18 CFR 292.101-292.602. State regulatory agencies are required to implement FERC's regulations. *See* 16 USC 824a-3(f); *FERC v. Mississippi*, 456 U.S. 742, 751 (1982).

6. Specifically, the state agencies that implement PURPA have authority to determine the manner for payment of interconnection costs by QFs. 18 CFR 292.306.

7. The Commission is the Oregon state agency that implements the state and federal PURPA statutes. ORS 758.505(3); OAR 860-029-0001; *Snow Mountain Pine Co. v. Maudin*, 84 Or App 590, 593 (1987). Public utilities are defined in ORS 758.505(7), and include PGE. The Commission has the power and jurisdiction to hear complaints by QFs against public utilities, including PGE. ORS 756.040, 756.500-756.558, and 758.505-758.555; OAR 860-001-0010(3), and 860-029-0030.

8. The Commission has the jurisdiction to represent the customers of any public utility, including interconnection customers, in all controversies respecting rates, valuations, service and all matters of which the Commission has jurisdiction, and has the jurisdiction to protect customers, and the public generally, from unjust and unreasonable exactions and practices and to obtain for them adequate service at fair and reasonable rates. ORS 756.040.

9. The federal District Court and/or an Oregon Circuit Court has concurrent and may have exclusive jurisdiction over certain claims in this Complaint. These include post-contract execution claims. St. Louis Solar understands that the Commission has held that it has primary and concurrent jurisdiction over post-contract execution claims

involving standard PURPA PPAs.<sup>7</sup> St. Louis Solar is not waiving any rights to have a District or Circuit court adjudicate and resolve its claims for relief by filing this Complaint before the Commission.

10. The federal District Court and/or an Oregon Circuit Court has concurrent and may have exclusive jurisdiction over certain claims in this Complaint. These include claims for refunds or, in the alternative, for damages and attorneys' fees. St. Louis Solar understands that the Commission has jurisdiction to award refunds but has declined to exercise jurisdiction over damages or attorneys' fees. *Compare* ORS 756.040, ORS 757.250, and OAR 860-021-0135(2)(b), *with, e.g., T.G. v. Qwest*, Order No. 18-212 at 3 (June 6, 2018). St. Louis Solar believes the Commission could exercise jurisdiction to interpret the PPA and determine whether and what amount of refunds or damages are owed. Similarly, the Commission could exercise jurisdiction to determine whether statutory damages or attorneys' fees are owed. St. Louis Solar includes these claims to obtain whatever remedy is available from the Commission and to preserve its rights in the event that the Commission declines to exercise jurisdiction to provide relief or declines to provide adequate relief. *See Dreyer v. Portland*, 341 Or 262, 285-287 (2006). St. Louis Solar is not waiving any rights to have a District or Circuit court adjudicate and resolve its claims for relief by filing this Complaint before the Commission.

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<sup>7</sup> *PGE v. Pacific Northwest Solar, LLC*, Docket No. UM 1894, Order No. 18-025 at 7 (Jan. 25, 2018); *PGE v. Alfalfa Solar*, Docket No. UM 1931, Order No. 18-174 at 3-4 (May 23, 2018).

## VI. FACTUAL BACKGROUND

### Overview of Dispute

11. The St. Louis Solar project is a 2.2-megawatt (“MW”) nameplate capacity solar QF located in Marion County, Oregon.

12. On March 7, 2016, St. Louis Solar requested a PPA from PGE.

13. On April 26, 2016, St. Louis Solar filed an application for interconnection.

14. PGE assigned St. Louis Solar the queue number SPQ0018.

15. On June 3, 2016, PGE executed a Standard Renewable In-System Variable Power Purchase Agreement (“PPA”), which St. Louis Solar counter-signed on June 10, 2016 (available at: <https://edocs.puc.state.or.us/efdocs/HAQ/re143haq161630.pdf>).

16. The unamended PPA set forth an in-service date of September 30, 2017.

17. The unamended PPA set forth a scheduled Commercial Operation Date (“COD”) of October 31, 2017.

18. Prior to PPA execution, PGE made representations to St. Louis Solar that interconnection would likely be completed within 12 months of execution of an interconnection agreement.

19. St. Louis Solar selected its scheduled COD on the bases of the timelines in the Commission’s Small Generator Interconnection Rules (OAR 860-082), the timelines in the Commission-approved form interconnection study agreements, and representations made by PGE that interconnection would likely be completed within 12 months of execution of an interconnection agreement.

20. St. Louis Solar could have reasonably achieved the original scheduled COD of October 31, 2017 but for delays in the interconnection process.

21. Due to delays in the interconnection process, St. Louis Solar did not achieve COD until April 6, 2020.
22. PGE caused delays in the interconnection process.
23. PGE's delays caused St. Louis Solar to lose approximately 2.5 years of fixed price payments.
24. PGE billed St. Louis Solar for alleged damages due to the delays that PGE caused.
25. PGE billed St. Louis Solar for interconnection facilities that PGE did not use or did not need to use in interconnecting St. Louis Solar.
26. PGE required St. Louis Solar to perform interconnection work that St. Louis Solar was not obligated to perform.
27. PGE has refused to refund the damages or other costs.
28. PGE has refused to amend the PPA to extend the fixed price payment period.
29. St. Louis Solar seeks relief.
30. St. Louis Solar seeks a refund of all costs and alleged damages that PGE incorrectly billed to St. Louis Solar.
31. St. Louis Solar seeks relief for the fixed price payments lost due to PGE's delays.

**St. Louis Solar Could Have Reasonably Begun Receiving Fixed Price Payments As Of October 31, 2017 But For PGE's Delays**

32. St. Louis Solar could have reasonably achieved the original scheduled COD of October 31, 2017 but for delays in the interconnection process.



33. St. Louis Solar selected the scheduled COD of October 31, 2017 when it requested a PPA from PGE on March 7, 2016.

34. At the time St. Louis Solar selected the scheduled COD of October 31, 2017, St. Louis Solar reasonably expected PGE to comply with the timelines set forth in the Commission's Small Generator Interconnection Rules (OAR 860-082).

35. At the time St. Louis Solar selected the scheduled COD of October 31, 2017, St. Louis Solar reasonably expected PGE to complete any necessary interconnection studies in a timely manner.

36. At the time St. Louis Solar selected the scheduled COD of October 31, 2017, St. Louis Solar reasonably expected PGE would complete any necessary interconnection work within approximately 12 months of execution of an interconnection agreement.

37. There were no higher-queued projects above St. Louis Solar in the interconnection queue that might have triggered re-studies for St. Louis Solar.

38. St. Louis Solar executed the PPA with the scheduled COD of October 31, 2017 on June 10, 2016.

39. At the time St. Louis Solar executed the PPA, St. Louis Solar continued to reasonably expect that it could reasonably achieve COD on or around October 31, 2017.

40. At the time St. Louis Solar executed the PPA, St. Louis Solar reasonably expected PGE to comply with the remaining timelines set forth in the Commission's Small Generator Interconnection Rules (OAR 860-082).

41. At the time St. Louis Solar executed the PPA, St. Louis Solar reasonably expected PGE to complete any necessary interconnection studies in a timely manner.

42. At the time St. Louis Solar executed the PPA, St. Louis Solar reasonably expected PGE would complete any necessary interconnection work within approximately 12 months of execution of an interconnection agreement.

43. Had PGE complied with the timelines set forth in the Commission's Small Generator Interconnection Rules and with the study timelines in the Commission-approved form study agreements, then St. Louis Solar reasonably expected it could receive an executable interconnection agreement on or about October 31, 2016.

44. Had PGE's representations that interconnection would likely take approximately 12 months from executing an interconnection agreement been accurate, then St. Louis Solar could have reasonably been placed in service on or about October 31, 2017.

45. PGE did not comply with all of the timelines set forth in the Commission's Small Generator Interconnection Rules.

46. PGE did not provide all of the study results in a timely manner.

47. PGE did not provide an executable interconnection agreement to St. Louis Solar on or before October 31, 2016.

48. PGE did not place the St. Louis Solar facility in service on or before October 31, 2017.

49. PGE caused delays that to St. Louis Solar's interconnection.

50. PGE prevented St. Louis Solar from achieving the original COD of October 31, 2017.

51. PGE prevented St. Louis Solar from earning fixed price payments as of October 31, 2017.

## **PGE Caused Delays During the Interconnection Study Process**

52. PGE did not process St. Louis Solar's interconnection within the time periods required under the Commission's Small Generator Interconnection Rules.

53. OAR 860-082-0025(7)(a) states that "Within 10 business days of receipt of an application to interconnect a small generator facility, the interconnecting public utility must provide written notice to the applicant stating whether the application is complete."

54. PGE did not provide written notice stating whether the St. Louis Solar application was complete within 10 business days of receiving St. Louis Solar's application.

55. St. Louis Solar applied for interconnection service on April 26, 2016.

56. On Monday, May 16, 2016, PGE emailed St. Louis Solar that the application was complete.

57. May 16, 2016 was 15 business days after April 26, 2016.

58. PGE did not provide written notice stating whether the St. Louis Solar application was complete until approximately 15 business days after receiving St. Louis Solar's application and 5 business days after PGE was required to do so.

59. OAR 860-082-0060(5) states that "A public utility must schedule a scoping meeting within 10 business days after notifying an applicant that its application is complete."

60. PGE did not schedule a scoping meeting within 10 business days after notifying St. Louis Solar that its application was complete.

61. PGE notified St. Louis Solar that the application was complete on May 16, 2016.

62. On June 6, 2016, PGE scheduled a scoping meeting for June 13, 2016.

63. On June 13, 2016, PGE rescheduled the scoping meeting for June 20, 2016.

64. On June 13, 2016, St. Louis Solar asked if the scoping meeting could be held earlier than June 20, 2016 because of the potential impacts of delays on the development schedule.

65. The scoping meeting occurred on June 20, 2016.

66. June 20, 2016 was 25 business days after May 16, 2016.

67. PGE did not schedule a scoping meeting until approximately 25 business days after notifying St. Louis Solar that the application was complete and 15 business days after PGE was required to do so.

68. OAR 860-082-0060(6) states that “If a public utility reasonably concludes that an adequate evaluation of an application requires a feasibility study, then the public utility must provide the applicant with an executable feasibility study agreement within five business days of the date of the scoping meeting.”

69. PGE did not provide an executable feasibility study agreement within 5 business days of the scoping meeting.

70. The scoping meeting occurred on June 20, 2016.

71. On July 1, 2016, PGE provided a feasibility study agreement that was overly broad in scope and was not ready for execution.

72. July 1, 2016 was 9 business days after June 20, 2016.

73. On August 5, 2016, PGE provided an executable feasibility study agreement.

74. August 5, 2016 was 34 business days after June 20, 2016.

75. PGE did not provide an executable feasibility study agreement until as many as 29 business days after the five-business-day deadline passed for PGE to hold a scoping meeting for St. Louis Solar.

76. The Commission approved a standard feasibility study agreement form that provides for the study to be completed and provided to an interconnection applicant within thirty calendar days from execution unless otherwise agreed.

77. PGE did not agree to complete the feasibility study within 30 calendar days and instead inserted in an attachment to the agreement that PGE would need “at least 60 days” to complete the study.

78. St. Louis Solar signed and returned the feasibility study agreement on Monday, August 8, 2016, approximately 3 calendar days after receiving it.

79. PGE did not complete the feasibility study within 60 calendar days of August 8, 2016.

80. St. Louis Solar tried to contact PGE about the delays to interconnection.

81. On October 24, 2016, TLS Capital, Inc. (“TLS”), then the developer of St. Louis Solar, sent PGE a letter.

82. The October 24, 2016 letter explained that PGE had not met numerous interconnection timelines for several projects, including the St. Louis Solar project.

83. The October 24, 2016 letter stated that “TLS has attempted to contact Portland General Electric nearly every day for the last month, both by email and by

phone, and has yet to receive a response. TLS is requesting that Portland General Electric respond to this letter without delay and process TLS's applications per the timelines set forth in OAR 860-082-0025 and 860-082-0025."

84. PGE did not respond to TLS's October 24, 2016 letter until a phone call on November 23, 2016, approximately a month after the letter was sent.

85. On November 1, 2016, St. Louis Solar received a Feasibility Study.

86. November 1, 2016 was 85 calendar days after St. Louis Solar executed the feasibility study agreement.

87. OAR 860-082-0060(7) states that "If a public utility is required to perform a system impact study under subsection (6)(h), or if an applicant and a public utility agree in the scoping meeting to waive the feasibility study and proceed directly to the system impact study, then the public utility must provide the applicant with an executable system impact study agreement within five business days of completing the feasibility study or from the date of the scoping meeting, whichever is applicable."

88. PGE did not provide an executable system impact study agreement within 5 business days of completing the feasibility study for St. Louis Solar.

89. PGE completed the feasibility study for St. Louis Solar on or about November 1, 2016.

90. On January 19, 2017, PGE and St. Louis Solar met to discuss the interconnection.

91. At the meeting on January 19, 2017, PGE and St. Louis Solar agreed that St. Louis Solar would submit a written request to extend the COD in St. Louis Solar's PPA.

92. On January 27, 2017, St. Louis Solar sent a letter to PGE requesting that PGE agree to extend the COD in the PPA on the basis of PGE's delays to the interconnection process.

93. On January 27, 2017, St. Louis Solar requested that PGE agree to extend the COD in the PPA after PGE completed the interconnection study process.

94. On January 27, 2017, St. Louis Solar requested that PGE agree to amend the COD in the PPA to match the final interconnection in-service date.

95. On February 1, 2017, PGE responded to St. Louis Solar via email and asked for St. Louis Solar's "best informed estimate" of a new COD, because PGE "cannot provide a blanket extension without a date."

96. On February 1, 2017, St. Louis Solar provided March 31, 2018 as an estimate of when the project might be able to come online, but St. Louis Solar noted that the date was "just [an] estimate based on the information we have today. We are still at the mercy of the timeliness of completing the interconnection studies and upgrades."

97. St. Louis Solar could have achieved the first amended scheduled COD of March 31, 2018 but for additional delays in the interconnection process that occurred after February 1, 2017.

98. On February 2, 2017, PGE responded via email that PGE's representative "understand[s] your concerns please keep PGE informed of the project milestones so that we can understand the commercial operations dates going forward."

99. On February 2, 2017, PGE provided a letter.

100. PGE's February 2, 2017 letter stated that PGE had determined that the "request for extension of the COD is warranted under Section 2.2.3" of St. Louis Solar's PPA and therefore PGE agreed to the proposed amended COD of March 31, 2018.

101. PGE and St. Louis Solar executed the first amendment to the PPA effective February 1, 2017.

102. The first amendment to the PPA amended Section 2.2.2 of the PPA to change the scheduled COD to March 31, 2018.

103. The purpose of the first amendment was to provide partial relief to St. Louis Solar for delays in the interconnection process that PGE either caused or failed to anticipate.

104. On and before February 1, 2017, it was St. Louis Solar's understanding that the fixed price term in the PPA started on the COD and not on the PPA execution date.

105. On or before February 1, 2017, it was St. Louis Solar's expectation that extensions to COD would not result in the loss of fixed price payments.

106. PGE caused additional delays to the interconnection study process after the first amendment was executed.

107. On March 16, 2017, PGE provided an executable system impact study agreement for St. Louis Solar.

108. March 16, 2017 was 97 business days after PGE completed the feasibility study.



109. PGE did not provide an executable system impact study agreement until 97 business days after PGE completed the feasibility study and 92 business days after PGE was required to do so.

110. OAR 860-082-0060(7)(b) states that “The system impact study agreement must follow the standard form agreement developed by the public utility and approved by the Commission.”

111. The system impact study agreement that PGE provided to St. Louis Solar is labelled “Form 4 8-21-09 rev.” but the agreement contains terms different than those in the form system impact study agreement that PGE filed with the Commission on or about August 21, 2009 and which the Commission approved in Order No. 09-350.

112. In requiring the utilities to maintain form interconnection agreements, the Commission recognized the value of form agreements in reducing barriers and ensuring consistent treatment.

113. The Commission also required utilities to “identify and explain any deviation . . . no matter how minor.”

114. The Commission approved a form system impact study agreement for PGE that states in Section 6 that “The System Impact Study shall be completed and the results transmitted to the Applicant within thirty (30) calendar days after this Agreement is signed by the Parties unless otherwise agreed to as part of this Agreement.”

115. PGE’s system impact study agreement for St. Louis Solar states in Section 6 that “The System Impact Study shall be completed and the results transmitted to the Applicant within thirty (30) *business* days after this Agreement is signed by the Parties unless otherwise agreed to as part of this Agreement” (emphasis added).

116. The change in timing is a material change between agreements.

117. PGE did not provide a standard system impact study agreement to St. Louis Solar but provided one that was different from the standard agreement approved by the Commission.

118. St. Louis Solar signed the system impact study agreement on March 20, 2017 and returned it to PGE on March 21, 2017, approximately 5 calendar days after receiving it.

119. On April 24, 2017, St. Louis Solar received a System Impact Study Report.

120. OAR 860-082-0060(8) states that “If a public utility is required to perform a facilities study under subsection (6)(i) or 7(j), or if an applicant and a public utility agree in the scoping meeting to waive the system impact study and proceed directly to the facilities study, then the public utility must provide the applicant with an executable facilities study agreement within five business days of completing the system impact study.”

121. PGE did not provide an executable facilities study agreement within 5 business days of completing the system impact study for St. Louis Solar.

122. PGE completed the system impact study for St. Louis Solar on or about April 24, 2017.

123. St. Louis Solar requested an executable facilities study agreement at least three times before PGE provided one.

124. On July 27, 2017, PGE provided an executable facilities study agreement.

125. July 27, 2017 was 66 business days after April 24, 2017.

126. PGE did not provide an executable facilities study agreement until 66 business days after PGE completed the system impact study for St. Louis Solar and 61 business days after PGE was required to do so.

127. OAR 860-082-0060(8)(b) states that “The facilities study agreement must follow the standard form agreement developed by the public utility and approved by the Commission.”

128. The facilities study agreement that PGE provided to St. Louis Solar is labelled “Form 5 8-21-09 rev.” but the agreement omits language found in the form facilities study agreement that PGE filed with the Commission on or about August 21, 2009 and which the Commission approved in Order No. 09-350.

129. The Commission approved a form facilities study agreement for PGE that states in Section 6 that “In cases where no System Upgrade or Interconnection Facilities is required, the Facilities Study shall be completed and the results will be transmitted to Applicant within thirty (30) calendar days after this Agreement is signed by the Parties.”

130. PGE’s facilities study agreement for St. Louis Solar does not contain the quoted language in the above paragraph.

131. PGE did not provide a standard facilities study agreement to St. Louis Solar but provided one that was different from the standard agreement approved by the Commission.

132. In an attachment to the facilities study agreement, PGE stated that “PGE will deliver the study results within 60 days from the time that PGE has received” a signed agreement, deposit, and additional information.

133. St. Louis Solar signed the facilities study agreement on July 28, 2017 and mailed it to PGE on July 29, 2017, along with the deposit and the additional information requested.

134. PGE never requested additional information beyond that information provided on July 29, 2017 in order to complete the Facilities Study.

135. PGE did not deliver the facilities study results within 60 days from the time that PGE received the signed study agreement, deposit, and additional information.

136. St. Louis Solar requested an update on the St. Louis Solar facilities study at least 5 times before PGE provided an update via a phone call on or about September 7, 2017.

137. On September 7, 2017, St. Louis Solar requested study results as soon as they were available.

138. On November 30, 2017, St. Louis Solar received a Facility Study.

139. November 30, 2017 was 124 calendar days after July 29, 2017.

140. PGE did not provide facility study results within 60 days as agreed in the facility study agreement and until 64 additional days after the deadline passed.

141. On November 30, 2017, St. Louis Solar reviewed the Facility Study and emailed PGE to inquire about differences between the Facility Study and the System Impact Study.

142. One concern St. Louis Solar raised was the changed timeline for completing interconnection.

143. The System Impact Study Report showed that the interconnection upgrades were expected to take 12 months from the time an interconnection agreement was executed.

144. The Facility Study showed that the interconnection upgrades were expected to take 18 months from the time an interconnection agreement was executed.

145. PGE did not respond to St. Louis Solar's email about the modified timeline and other questions within a reasonable amount of time.

146. St. Louis Solar asked PGE for answers to its questions at least six times before PGE responded.

147. On December 14, 2017, PGE apologized for the late response, stated that they had been "extremely busy lately," and promised to respond later that day.

148. On December 15, 2017, St. Louis Solar agreed to pay the costs in the facility study for St. Louis Solar and requested an interconnection agreement.

149. On March 28, 2018, St. Louis Solar signed an Interconnection Agreement, which PGE counter-signed on May 14, 2018.

**PGE Unreasonably Refused to Amend the PPA to Provide Adequate Relief for PGE's Delays in the Interconnection Study Process**

150. St. Louis Solar reasonably expected PGE to agree to amend the PPA to align the scheduled COD with the in-service date in the interconnection agreement based on the discussions with the first amendment to the PPA and subsequent delays and schedule changes.

151. PGE did not agree to amend the PPA to align the scheduled COD with the in-service date.

152. The Interconnection Agreement provides an in-service date of October 31, 2019.

153. On November 7 and 16, 2018, PGE and St. Louis Solar executed the second amendment to the PPA.

154. The second amendment of the PPA amended Section 2.2.1 of the PPA to change the date of initial delivery of Net Output to January 10, 2019.

155. The second amendment of the PPA amended Section 2.2.2 of the PPA to change the scheduled COD to February 10, 2019.

156. The purpose of the second amendment was to provide relief to St. Louis Solar for delays in the interconnection process that PGE either caused or failed to anticipate.

157. In negotiating the second amendment to the PPA, PGE would not agree to extend the scheduled COD to a date later than February 10, 2019.

158. Prior to deciding not to agree to extend the scheduled COD, PGE should have determined that a later COD was warranted under Section 2.2.3 of the PPA but did not do so.

159. PGE should have agreed to extend the scheduled COD to a date later than February 10, 2019 but did not do so.

160. St. Louis Solar agreed to a scheduled COD of February 10, 2019, rather than a later date, because February 10, 2019 was the latest date that PGE would agree to.

161. PGE should have agreed to amend the commencement date of the fixed price payment period to reflect the delays but did not do so.

162. The PPA requires PGE to offer St. Louis Solar up to 15 years of Renewable Fixed Price Option pricing.

163. At least some of PGE's standard PPA forms have been interpreted to begin fixed price payments beginning on the date of PPA execution.<sup>8</sup>

164. This interpretation is being appealed and may change.<sup>9</sup>

165. Fixed Price payments provide financial certainty to QFs and are essential to QF financing.

166. In July 2017, the Commission ordered PGE to change its standard contracts to offer pricing beginning on the date of power delivery.<sup>10</sup>

167. The Commission has stated, "Prices paid to a QF are only meaningful when a QF is operational and delivering power to the utility. Therefore, we believe that, to provide a QF the full benefit of the fixed price requirement, the 15-year term must commence on the date of power delivery."<sup>11</sup>

168. Because St. Louis Solar's PPA is a standard PPA and the Commission's current interpretation of at least some of PGE's standard PPA forms is that PGE must begin fixed price payments on the date of execution rather than the "date of power delivery," St. Louis Solar is significantly harmed by every delay to power delivery.

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<sup>8</sup> *NIPPC et al. vs. PGE*, Docket No. UM 1805, Order No. 17-256 at 1 (July 13, 2017).

<sup>9</sup> Docket No. UM 1931, Order No. 19-255 (August 2, 2019); Docket No. UM 1931, Petition for Judicial Review (Jan. 10, 2020).

<sup>10</sup> Docket No. UM 1805, Order No. 17-256 at 4.

<sup>11</sup> *Id.*

169. In the amendment to the PPA dated November 16, 2018, parties agreed to amend the PPA in order to provide some relief to St. Louis Solar from the harm of delays caused by PGE.

170. At the time of the amendment, the Commission was considering the question of whether fixed price payments for QFs who, like St. Louis Solar, had executed standard contracts with PGE should begin at the date of PPA execution or at a later date such as the scheduled COD.<sup>12</sup>

171. If PGE must begin fixed-price payments at power delivery, rather than the earlier date of PPA execution, then St. Louis Solar would have benefited from having fewer lost fixed price payments prior to power delivery.

172. Rather than choose to abide by whatever decision the Commission reached, PGE demanded a one-sided term be added to the second amendment that was unrelated to the issue of interconnection delays.

173. The following term was included: “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.”

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<sup>12</sup> *PGE vs. Alfalfa Solar I, LLC, et al.*, Docket No. UM 1931, PGE’s Complaint (Jan. 25, 2018); Docket No. UM 1931, Order No. 19-255.



174. The effect of this term is limited to a potential circumstance in which the Commission specifically orders PGE to modify the commencement date for fixed price payments.

175. The one-sidedness of this term was egregious, particularly in light of the intent of the second amendment, which was to remedy some of the harm PGE caused to St. Louis Solar through delays.

176. In effect, PGE offered to remedy the harm it had caused through delays to St. Louis Solar only if St. Louis Solar agreed to risk suffering additional harm specifically in contravention of any relief that might have been offered by the Commission.

177. The potential harm amounted to, at minimum, the loss of fixed price payments for more than 15 months, i.e., the amount of time between the original scheduled COD of October 31, 2017 and the then-amended scheduled COD of February 10, 2019.

178. The potential harm also included the risk of additional delays to COD being achieved.

179. The risk of additional delays to COD was high.

180. The Commission did not order PGE to change the commencement date in any existing executed PPAs to begin on a date later than the date of execution.<sup>13</sup>

181. In the second amendment to the PPA, PGE refused to agree to amend the COD to match the in-service date in the interconnection agreement.

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<sup>13</sup> Docket No. UM 1805, Order No. 17-256 at 2.

182. In the second amendment to the PPA, PGE refused to agree to modify the commencement date of the fixed price payment period to reflect the delays PGE caused.

**PGE Prevented St. Louis Solar from Achieving COD and Then Charged St. Louis Solar for Alleged Damages**

183. On December 15, 2018, the St. Louis Solar project was completed, with final electrical permit sign off on January 23, 2019.

184. St. Louis Solar would have completed its project earlier but for the delays in the interconnection study process.

185. St. Louis Solar was ready to be energized in December 2018.

186. After December 15, 2018, St. Louis Solar had to wait for PGE to complete the interconnection so that St. Louis Solar could begin to sell power pursuant to the PPA.

187. On January 10, 2019, St. Louis Solar was not able to meet its initial delivery date because PGE had not completed the interconnection by that date.

188. St. Louis Solar was not able to complete interconnection testing and commissioning because PGE had not completed the interconnection.

189. On February 10, 2019, St. Louis Solar was not able to achieve its scheduled COD because PGE had not completed the interconnection facilities and testing had not been completed.

190. Failure to achieve COD constitutes a default under the PPA.

191. On February 10, 2019, the PPA provided for a one-year cure period for failure to meet the COD.

192. After the cure period ends, PGE may immediately terminate the PPA.

193. On February 11, 2019, PGE provided St. Louis Solar with a notice of default under the PPA for failure to achieve the scheduled COD.

194. The notice of default specified that St. Louis Solar had one year from February 11, 2019, the date of notice, to cure.

195. It was unreasonable for PGE to provide St. Louis Solar with a notice of default when PGE was preventing St. Louis Solar's performance.

196. On March 25, 2019, PGE informed St. Louis Solar that they were still working on substation upgrades, had not been able to schedule fiber installation, and could take months to complete interconnection.

197. On March 25, 2019, PGE asserted that PGE had until October 31, 2019 to complete interconnection.

198. On April 3, 2019, PGE sent St. Louis Solar an invoice for alleged damages under the PPA.

199. On April 25, 2019, PGE sent St. Louis Solar a second invoice for alleged damages under the PPA.

200. St. Louis Solar has consistently paid these invoices with the expectation that energization was imminent.

201. St. Louis Solar has not received an invoice for alleged damages since April 2019.

202. It was unclear if PGE attempted to send additional invoices prior to February 2, 2020.

203. It was unclear if PGE intended to send additional invoices prior to February 2, 2020.

204. PGE has refused to agree that it will not send future invoices for alleged damages arising from the failure to achieve COD.

205. In a letter dated August 14, 2019, PGE asserted that PGE “has been invoicing St. Louis Solar . . . since April 2019.”

206. PGE’s delays to the interconnection process prevented St. Louis Solar from achieving COD until April 6, 2020.

**PGE Caused Additional Delays During the Interconnection Construction Process**

207. St. Louis Solar has contacted PGE several times regarding interconnection.

208. One of the delays to achieving interconnection has been PGE’s errors and mistakes in running a communications line across a railroad.

209. On May 17, 2019, PGE informed St. Louis Solar that PGE had sought a railroad permit in December 2018.

210. On June 4, 2019, PGE informed St. Louis Solar that PGE had been unsuccessful in acquiring a necessary permit to install interconnection facilities across a railroad from the State Department of Lands and was now “attempting” to file for a permit with the Oregon Department of Transportation.

211. PGE spent several months working with a railroad that did not have rights to the property and with government agencies that did not have jurisdiction over the issue.

212. On July 26, 2019, St. Louis Solar sent PGE a letter expressing its concerns.

213. In the July 26 letter, St. Louis Solar requested that PGE either timely complete interconnection or allow St. Louis Solar to complete interconnection.

214. In the July 26 letter, St. Louis Solar requested that PGE refund St. Louis Solar for the invoices for alleged damages under the PPA and stop sending invoices for alleged damages.

215. In the July 26 letter, St. Louis Solar requested that PGE agree to amend the PPA in light of the interconnection delays.

216. On August 14, 2019, PGE sent St. Louis Solar a letter.

217. In the August 14 letter, PGE responded that St. Louis Solar had no basis to expect interconnection to be completed prior to October 31, 2019.

218. In the August 14 letter, PGE responded that PGE was on schedule to place the interconnection in service by October 31, 2019.

219. In the August 14 letter, PGE responded that PGE would not refund St. Louis Solar for the alleged damages and refused to agree not to bill St. Louis Solar for alleged damages in the future.

220. In the August 14 letter, PGE responded that PGE would not agree to amend the PPA.

221. Prior to deciding not to agree to amend the PPA, PGE should have determined that a later COD was warranted under Section 2.2.3 of the PPA but did not do so.

222. The Interconnection Agreement includes a list of “critical milestones” for the project and an indication of the party responsible for meeting that critical milestone.

223. The Interconnection Agreement specifies that PGE was responsible for completing the interconnection facilities on or before September 27, 2019.

224. The interconnection agreement required PGE to ensure that the interconnection facilities were complete on or before September 27, 2019.

225. PGE did not complete the interconnection facilities for the St. Louis Solar project on or before September 27, 2019.

226. On September 27, 2019, PGE failed to meet the “critical milestone” under the interconnection agreement of ensuring that the interconnection facilities were complete.

227. On October 7, 2019, PGE notified St. Louis Solar that PGE had received some but not all of the documents needed to complete the interconnection facilities.

228. On October 7, 2019, PGE represented that interconnection would be completed quickly once the last permit was obtained. The Interconnection Agreement specifies that PGE was responsible for ensuring the project achieved its “in-service date” on or before October 31, 2019.

229. The interconnection agreement required PGE to ensure that the St. Louis Solar project was in service on or before October 31, 2019.

230. PGE did not place the St. Louis Solar project in service on or before October 31, 2019.

231. On October 31, 2019, PGE failed to meet the “critical milestone” under the interconnection agreement of ensuring that the project was in-service.

232. On October 31, 2019, PGE notified St. Louis Solar that PGE had received the last permit needed to install fiber optic cable across the railroad right-of-way.

233. On November 25, 2019, PGE notified St. Louis Solar that the interconnection facilities were not complete because the site was lacking a necessary relay.

234. PGE and St. Louis Solar disagree about which party was responsible for installing the relay.

235. On November 25, 2019, PGE asserted that St. Louis Solar was responsible for installing the relay.

236. PGE never previously informed St. Louis Solar of PGE's position that St. Louis Solar was responsible for installing the relay.

237. On November 26, 2019, St. Louis Solar responded that the interconnection agreement required PGE to install the relay.

238. On December 2, 2019, PGE responded that the relay was St. Louis Solar's responsibility and cited PGE's currently effective Distribution Interconnection Standards. PGE did not cite Distribution Interconnection Standards published at the time that the interconnection agreement was executed.

239. It is unclear whether PGE had Distribution Interconnection Standards at the time the interconnection agreement was executed.

240. If PGE had Distribution Interconnection Standards at the time the interconnection agreement was executed, PGE had not yet published those standards at that time.

241. PGE told Commission Staff on or about August 30, 2019 that PGE would be publishing PGE's distribution interconnection standards and other documents on PGE's OASIS "in the coming months."

242. PGE did not previously provide St. Louis Solar with any of its Distribution Interconnection Standards but only with the Interconnection Agreement.

243. St. Louis Solar disagreed with PGE's interpretation of the interconnection agreement but proceeded to order and install the relay in the interest of obtaining energization as soon as possible.

244. PGE was obligated under the interconnection agreement to perform the work regarding the relay.

245. The interconnection agreement states that "Space in the Interconnection Customers switchgear will need to be made available for a meet-me cabinet where PGE will install the transfer trip relay panel and associated components."

246. PGE was obligated to "install the transfer trip relay panel and associated components."

247. PGE provided the same language quoted above in the Facility Study for St. Louis Solar dated November 30, 2017.

248. PGE provided the same language quoted above in at least four other Facility Studies dated November 30, 2017 for other interconnection customers (SPQ0012, SPQ0014, SPQ0016, and SPQ0022).

249. PGE was obligated to procure the transfer trip relay panel and any associated components for St. Louis Solar's interconnection.

250. Sometime after the interconnection agreement was fully executed, PGE changed its approach and began requiring interconnection customers to procure and install any required transfer trip relay panel and associated components.



251. In recent Facility Studies, PGE has stated that “The Interconnection Customer will be responsible for purchasing and installing the relays for transfer trip. Prior to testing, a copy of the setting must be provided to PGE for review.”

252. If PGE wished to have St. Louis Solar procure and install the transfer trip relay panel and associated components, PGE should have conveyed that as a request to amend the interconnection agreement to St. Louis Solar.

253. PGE never asked St. Louis Solar to amend the interconnection agreement.

254. PGE did not ask St. Louis Solar to procure and install the transfer trip relay panel until approximately November 25, 2019.

255. The unamended interconnection agreement obligated PGE to perform the work regarding the relay.

256. PGE caused delay by demanding that St. Louis Solar complete a task that PGE was obligated to perform under the interconnection agreement.

257. St. Louis Solar was not responsible for ordering or installing the relay but proceeded to do so because PGE’s refusal to do so was causing delays to St. Louis Solar’s interconnection.

258. On December 3, 2019, St. Louis Solar provided PGE with information about a potential relay and asked PGE to confirm that the equipment specifications were acceptable to PGE.

259. On December 3, 2019, PGE responded that PGE was circulating the relay information with PGE’s engineers and would let St. Louis Solar if there were any concerns.

260. On December 4, 2019, St. Louis Solar asked for an update on PGE's review of the proposed relay so that St. Louis Solar could order the relay and avoid delaying interconnection.

261. On December 5, 2019, PGE approved the proposed relay.

262. On December 5, 2019, PGE told St. Louis Solar that PGE would need to approve the relay settings prior to scheduling "the end to end testing (transfer trip)."

263. On December 5, 2019, St. Louis Solar emailed PGE and asked if PGE's relay setting requirements as stated in PGE's Distribution Interconnection Standards document had changed.

264. On December 9, 2019, PGE responded that PGE's "protection engineers review each interconnect on a case by case basis. Please have your engineer develop the settings based on their expertise and provide that to PGE. Our engineers will review the project holistically and make comments as necessary. They are not able to make any evaluations until all information has been submitted to us."

265. On December 31, 2019, PGE notified St. Louis Solar that PGE planned to inspect the facility in the coming week.

266. On January 8, 2020, St. Louis finished installing the relay.

267. On January 8, 2020, St. Louis Solar responded that the relay was installed and inquired when PGE would finish the interconnection work.

268. On January 9, 2020, PGE responded that PGE was scheduling the work and that PGE could not deem the project to have met COD until after PGE approved St. Louis Solar's relay settings.

269. On January 15, 2020, St. Louis Solar inquired with PGE about when PGE might complete the interconnection work.

270. On January 15, 2020, PGE responded that the work was still being scheduled to be done.

271. On January 15, 2020, PGE responded that PGE could not deem the project to have met COD until after PGE approved St. Louis Solar's relay settings.

272. On January 16, 2020, St. Louis Solar inquired with PGE about whether it was possible to integrate the new relay with the PTs and CTs already installed on PGE's revenue meter or whether new PTs and CTs were needed.

273. On January 20, 2020, PGE responded that St. Louis Solar would need to install new PTs and CTs because PGE's metering instrument transformers are not rated for protection.

274. On January 20, 2020, St. Louis Solar responded that St. Louis Solar had obtained the new equipment to integrate the new relay and inquired again when PGE would complete the fiber installation.

275. On January 22, 2020, St. Louis Solar provided its proposed relay settings, including a single-line drawing that focused on the relay and nearby equipment, to PGE for approval. On January 24, 2020, St. Louis Solar sent PGE a letter.

276. In the January 24 letter, St. Louis Solar asked PGE to agree to amend the PPA.

277. In the January 24 letter, St. Louis Solar asked PGE to change the initial delivery date to April 12, 2019.

278. In the January 24 letter, St. Louis Solar asked PGE to change the scheduled COD to May 13, 2019.

279. In the January 24 letter, St. Louis Solar asked PGE to change the commencement date for fixed price payments to at least 92 days from the PPA's effective date.

280. On January 26, 2020, PGE acknowledged receipt of the proposed relay settings.

281. On January 30, 2020, PGE responded to St. Louis Solar's January 24 letter via letter.

282. In the January 30 letter, PGE did not agree to change the initial delivery date as St. Louis Solar had requested.

283. In the January 30 letter, PGE did not agree to change the scheduled COD as St. Louis Solar had requested.

284. In the January 30 letter, PGE did not agree to change the commencement date for fixed price payments as St. Louis Solar had requested.

285. In the January 30 letter, PGE offered to extend the cure period by 45 days.

286. On January 30, 2020, PGE requested a one-line diagram showing all fuses, breakers, and relays and showing transformer impedance for PGE's engineers reviewing the proposed relay settings.

287. PGE should have reviewed St. Louis Solar's one-line diagram prior to PGE giving St. Louis Solar notice to proceed on plant construction.

288. On February 3, 2020, St. Louis Solar filed a complaint in this docket.

289. On February 3, 2020, St. Louis Solar provided the one-line diagram as requested (within approximately 3 business days of PGE's request).

290. On February 3, 2020, St. Louis Solar expressed concern that PGE's January 30 request implied: 1) that PGE was conducting a review outside of the scope of the relay design review; and 2) that PGE may not have conducted adequate due diligence in previously approving the site, construction, or choice of relay.

291. On February 3, 2020, St. Louis Solar asked for an update on PGE's review of the relay settings.

292. On February 4, 2020, St. Louis Solar inquired when PGE could schedule a relay tech to adjust settings and test the relay.

293. On February 5, 2020, PGE responded that a relay tech was scheduled for February 6, 2020.

294. On February 5, 2020, St. Louis Solar asked PGE for a response to the concerns raised by St. Louis Solar on February 3, 2020.

295. On February 6, 2020, PGE responded that PGE's engineers had reviewed the proposed relay settings and had no comments on the relay settings.

296. On February 6, 2020, PGE notified St. Louis Solar that "[A]n issue has been identified with the installed fuse for the facility. In order to prevent reliability issues impacting other customers on the feeder, the St Louis Solar facility will need to have 140 Amp T-Link fuses instead of the 300E fuses currently installed in order to coordinate with the upstream fuses on the PGE feeder. Once the fuses have been replaced, we will be able to energize the facility and complete our transfer trip testing."

297. If the use of 300E fuses presented reliability issues, then PGE should have identified those issues during the interconnection study process.

298. On February 6 and 12, 2020, St. Louis Solar raised several concerns and questions about PGE's requirement that St. Louis Solar install new fuses in PGE's side of the switchgear.

299. St. Louis Solar expressed concern that PGE's engineers had previously reviewed and approved the switchgear design, including the 300E fuses.

300. St. Louis Solar asked PGE to explain PGE's conclusion that the 300E fuses were oversized since that conclusion conflicts with the final engineering design.

301. St. Louis Solar could not install new fuses in PGE's side of the switchgear unless PGE unlocked the switchgear, because it is PGE's responsibility to maintain that equipment.

302. On February 10, 2020, PGE confirmed that the relay settings had been verified but also stated that PGE's Meter Relay Tech "added a couple of items" to the settings.

303. On February 10, 2020, St. Louis Solar signed the third amendment to the PPA, which PGE counter-signed on February 12, 2020.

304. The purpose of the third amendment was to provide partial relief to St. Louis Solar for delays in the interconnection process that PGE either caused or failed to anticipate.

305. The third amendment to the PPA amended Section 9.2 of the PPA to extend the one-year cure period until March 26, 2020.

306. PGE did not agree to any other changes in the third amendment.

307. On February 13, 2020, St. Louis Solar emailed PGE for an update on the fuse issue and notified PGE that the requested T-Links would not fit in the switchgear.

308. On February 17, 2020, St. Louis Solar provided updated relay settings.

309. On February 17, 2020, PGE notified St. Louis Solar that PGE's Senior Project Manager Jordan Messinger was having conversations with both PGE's distribution engineers and PGE's legal team to evaluate alternative options on the fuse issue and would keep St. Louis Solar updated.

310. On February 18, 2020, PGE provided feedback on the updated relay settings and asked for an updated copy of the relay settings for final check after revisions were made.

311. PGE's February 18, 2020 email to St. Louis Solar referenced an email between PGE employees on January 27, 2020.

312. PGE knew of a potential problem with the St. Louis Solar relay settings since at least January 27, 2020, and PGE did not express the concern until February 18, 2020, despite telling St. Louis Solar on February 6, 2020 and again on February 10, 2020 that the settings were approved without comment.

313. On February 19, 2020, St. Louis Solar emailed PGE for an update on the fuse issue.

314. On February 21, 2020, PGE emailed St. Louis Solar and stated that "This issue turned out to be more complicated than I first anticipated. After speaking with our Protection Engineers, adding a fuse to the PGE side of the solar facility tap line would solve the protection issue with the solar plant, but would lead to a decrease in reliability to other customers on the same feeder, which is not something that we are able to do.

The only way to avoid changing the fuse at the solar facility would be to perform a total change out of the in line protection system on that feeder, which would result in a much higher cost and longer delay. At this point, the best option is to proceed with changing the fuse at the solar facility as previously requested by PGE. After getting this information from our technical team, I spoke with our legal team since this project is already in a cure period. Given the unique circumstances of this particular project, they have agreed that the best course of action is to require that the solar facility fuse be changed out, with the understanding that this could result in additional delay and a need for an additional extension to the cure period.”

315. On February 21, 2020, St. Louis Solar responded to PGE and stated that “Since this switchgear as installed was approved by PGE prior to fabrication and built to this PGE approved configuration, we have to assume PGE will bear the costs of this change. I don’t know yet how long it will take to procure the necessary equipment to accomplish this requested conversion, will PGE also cover our lost revenue during this time period?”

316. PGE never responded to St. Louis Solar’s February 21, 2020 email.

317. On February 24, 2020, St. Louis Solar provided updated relay settings.

318. On February 24, 2020, St. Louis Solar informed PGE that the T-Link fuses were not an option in the switchgear and inquired about changing to 125E or 150E fuses instead.

319. On February 25, 2020, St. Louis Solar’s engineer raised several questions and concerns with PGE’s proposed approach to the fuse issue.



320. Those concerns include that: 1) PGE’s engineers previously approved the 300E sizing for the fuse; 2) PGE requested that the developer of the St. Louis Solar project be responsible for fuse coordination on PGE’s system; 3) that St. Louis Solar had not provided adequate information for a non-PGE engineer to provide any technical opinion on the appropriate fuse sizing.

321. On February 26, 2020, PGE responded to St. Louis Solar’s engineer and stated that “If the developer replaces their 300E fuses with 125E fuses, we will have sufficient fuse coordination.”

322. On February 27, 2020, St. Louis Solar’s engineer (Nimbus Power Engineers) emailed PGE and stated that “I think 125E fuses can be used in place of the 300E fuses located in the metering switchgear cabinet. The 125E fuse will likely operate before the 140T fuse with faults occurring downstream of these proposed 125E fuses. Nimbus Power Engineers does not make any claims or guarantees this modification provides improved reliability to PGE’s customers sharing the distribution line with the St Louis Solar facility. Information about the distribution system is unavailable and therefore a review of system reliability cannot be made. The inverter system has a nominal rating of 2.2 MVA, the line current at this nominal load is 102 Amps on the 12.47 KV circuit. The 125 Amp fuse with a minimum melt close to 300 Amps will likely not impact generator operation. According to the engineered St Louis drawing set, the 15KV conductors from the GSU transformer to the metal clad switchgear are size 3/0, which has a 200 Amp rating at 75C. Fuses located on the [St. Louis Solar] side of the point of interconnection are 200E. These fuses are sized to the 3/0 conductor as recommended by industry standards. The service conductor from the switchgear to the

tap, is not known, nor is the conductor to the 140T fuse. These conductors are assumed to be appropriately sized under PGE Engineering supervision. Nimbus Power Engineers also expects PGE Engineering has diligently sized these conductors to handle the anticipated ST Louis Solar Station along with other existing PGE customers.”

323. St. Louis Solar and St. Louis Solar’s engineer continue to have concerns about PGE’s proposed approach to the fuse issue.

324. The engineer working for St. Louis Solar expressed concern that it was impossible for him to design the fuses or approve the work as appropriate because doing so would require reviewing information about PGE’s system that is confidential and was not shared.

325. The engineer working for St. Louis Solar expressed concern that it was inappropriate for PGE to ask him to perform engineering work for the benefit of PGE and not for his client, St. Louis Solar.

326. PGE would not proceed with interconnection until the engineer working for St. Louis Solar performed engineering work for PGE that PGE’s engineers should have done.

327. St. Louis Solar continues to have concerns that the new fuses were not necessary because PGE already has a cut-out fuse on a nearby utility pole.

328. PGE has refused to acknowledge that the cut-out fuse exists.

329. A cut-out fuse exists on a utility pole nearby the St. Louis Solar project.

330. PGE stated the utility pole has a solidly bladed cutout (a non-fused cutout).

331. PGE's line crew has done site electrical isolation at the cut-out fuse on the nearby utility pole rather than at the intended switchgear fused disconnects.

332. It would be impossible for PGE's line crew to perform site electrical isolation at a solidly bladed cut-out.

333. It was unnecessary for PGE to require St. Louis Solar to install new fuses in PGE's side of the switchgear, since a cut-out fuse already exists on the nearby utility pole.

334. St. Louis Solar continues to have concerns that the new switchgear fuse might not have been needed if PGE reconducted the line as PGE was obligated to do under the interconnection agreement.

335. It is unclear whether PGE actually reconducted the line.

336. It is unclear whether PGE required the original 300E fuse sizing on the basis that PGE would reconductor the line.

337. It is unclear whether PGE required the fuse to be resized because PGE did not reconductor the line.

338. PGE has not demonstrated that the new switchgear fuse was necessary to interconnect St. Louis Solar.

339. The new switchgear fuse was not necessary to interconnect St. Louis Solar.

340. PGE approved the wrong sized fuse in the original St. Louis Solar site design.

341. Alternatively, PGE required an unnecessary change in fuse design in February 2020.

342. PGE's errors or mistakes regarding the fuse issue caused delays to St. Louis Solar's interconnection.

343. On February 27, 2020, PGE conveyed information to St. Louis Solar from PGE's engineer reviewing the proposed relay settings.

344. On February 28, 2020, St. Louis Solar responded to PGE's engineers' questions and provided updated relay settings.

345. On March 3, 2020, PGE approved the updated relay settings and stated that the installation of a 125E fuse "is an acceptable solution."

346. On March 12, 2020, St. Louis Solar asked PGE for an update on when the St. Louis Solar project site would be energized.

347. On March 12, 2020, PGE responded that PGE had a line crew scheduled for March 17, 2020.

348. On March 18, 2020, PGE emailed St. Louis Solar that PGE had ordered its relay tech to stop work on the St. Louis Solar site due to one or more wiring issues related to the relays.

349. On March 18, 2020, St. Louis Solar installed the new fuses.

350. On March 19, 2020, St. Louis Solar responded that all issues had been resolved and St. Louis Solar's engineer would be completing a final check on March 20, 2020.

351. On March 25, 2020, St. Louis Solar and PGE signed the fourth amendment to the PPA.

352. The purpose of the fourth amendment was to provide partial relief to St. Louis Solar for delays in the interconnection process that PGE either caused or failed to anticipate.

353. The fourth amendment to the PPA amended Section 9.2 of the PPA to extend the cure period until April 9, 2020.

354. PGE refused to agree to any other changes in the fourth amendment.

355. On March 26, 2020, St. Louis Solar emailed PGE that the relay test was successful and asked about PGE's availability to perform a witness test.

356. On March 26, 2020, PGE confirmed availability to perform a witness test on March 27, 2020.

357. On or about March 26, 2020, PGE placed the interconnection in service.

358. On April 1, 2020, St. Louis Solar completed the 5-day testing.

359. On April 6, 2020, PGE deemed St. Louis Solar to have achieved COD.

360. But for PGE's actions and inactions, St. Louis Solar would have achieved COD earlier than April 6, 2020.

361. PGE's actions and inactions prevented St. Louis Solar from achieving COD until on or about April 6, 2020.

362. PGE failed to provide interconnection service to St. Louis Solar on time or otherwise in a timely manner.

363. The St. Louis Solar project could have been interconnected months earlier but for PGE's ineffective approach and mistakes.

364. If PGE's actions and inactions were not mistakes, then they were negligent.

365. If PGE's actions and inactions were not negligent, then they were malfeasant.

366. St. Louis Solar was unable to meet COD and sell power pursuant to the PPA until on or about April 6, 2020 because of PGE's failure to provide interconnection service on time or otherwise in a timely manner.

367. In addition to being unable to meet COD and sell power until April 6, 2020, St. Louis Solar suffered additional harm due to the delayed interconnection.

368. St. Louis Solar has lost valuable months of fixed-price payments.

369. Under the PPA, as currently amended, fixed price payments to St. Louis Solar are interpreted to begin on the date of execution (i.e., June 10, 2016).

370. On February 10, 2020, St. Louis Solar had lost 25% of its potential fixed price payments (i.e., 45 months out of 180 total).

371. By the time St. Louis Solar achieved COD on April 6, 2020, St. Louis Solar had lost approximately 26% of its potential fixed price payments (i.e., 47 months out of 180 total).

372. PGE caused the delays to St. Louis Solar achieving COD.

373. PGE caused or failed to anticipate at least 513 days (approximately 17 months) of delay during the interconnection study process.

374. PGE caused or failed to anticipate at least 375 days (approximately 12.5 months) of delay during the interconnection construction process.

375. In the second amendment to the PPA, if the Commission ordered PGE to change the date, the parties agreed to change the commencement date to 509 days after the date of execution (i.e., October 31, 2017) (an extension of approximately 17 months).

376. In its letter dated January 24, 2020, St. Louis Solar requested the commencement date be changed to at least 92 days from the Effective Date (i.e., at least September 10, 2016) (an extension of approximately 3 months).

377. An extension of 92 days would not remedy all of the harm that St. Louis Solar has suffered.

378. St. Louis Solar's request on January 24, 2020, was made in the interest of avoiding a dispute with PGE.

379. Despite earlier agreeing to potentially amend the commencement day to occur 17 months later, PGE has not agreed to amend the commencement day to occur 3 months later than the PPA execution date.

380. PGE did not specifically mention St. Louis Solar's request for a 92-day extension in its responsive letter dated January 30, 2020.

381. PGE has not provided any indication of willingness to change the commencement date of fixed price payments.

382. St. Louis Solar continued to suffer harm from lost fixed-price payments for every delay to power delivery until it achieved COD on April 6, 2020.

383. In addition to the above harms, St. Louis Solar has been forced to make payments to PGE for alleged damages arising from the failure to achieve COD.

384. On April 3, 2019, PGE sent an invoice to St. Louis Solar demanding payment for alleged damages in the amount of \$12,569.94 due on or before April 30, 2019.

385. On April 25, 2019, PGE sent an invoice to St. Louis Solar demanding payment for alleged damages in the amount of \$11,215.76 due on or before May 5, 2019.

386. St. Louis Solar does not know whether PGE will send additional invoices in the future, demanding payment for alleged damages.

387. As of February 3, 2020, PGE had demanded payments from St. Louis Solar for alleged damages totaling more than \$23,000.

388. PGE has denied St. Louis Solar's requests for relief from these invoices.

389. Collecting delay damages provided PGE an economic incentive to continue to delay interconnection service.

390. St. Louis Solar paid the bills sent by PGE because St. Louis Solar wished to simply continue to work toward energization and avoid disputes with PGE.

391. St. Louis Solar paid the bills sent by PGE because St. Louis Solar believed that PGE would complete interconnection soon and St. Louis Solar's ability to energize the project was imminent.

392. PGE's actions caused material and harmful interconnection delays.

393. PGE is obligated to provide interconnection service at a just and reasonable rate.

394. The costs and losses that St. Louis Solar has suffered in seeking interconnection service are outrageous.

395. St. Louis Solar paid \$629,000 to PGE for interconnection services, including \$153,000 for communications requirements.

396. The interconnection agreement requires PGE to provide a final accounting report "within one hundred and twenty (120) calendar days of completing the construction and installation of PGE's interconnection facilities and Distribution Upgrades" described in the interconnection agreement.



397. PGE ultimately completed the “construction and installation of PGE’s interconnection facilities and Distribution Upgrades” on or about March 26, 2020.

398. PGE was obligated to provide a final accounting report to St. Louis Solar on or before July 24, 2020.

399. As of August 26, 2020, St. Louis Solar has not received a final accounting report from PGE.

400. PGE has displayed a pattern of misbehavior towards and discrimination against QFs generally.

401. PGE’s behavior in failing to complete interconnection in a timely manner reflects a pattern of misbehavior towards and discrimination against QFs.

402. PGE’s behavior in billing QFs for alleged damages from delays to COD caused by PGE’s delayed interconnection service reflects a pattern of misbehavior towards and discrimination against QFs.

## VII. LEGAL CLAIMS

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

**St. Louis Solar is entitled to relief because PGE has breached the PPA by unreasonably withholding its agreement to a later COD that St. Louis Solar has shown to be reasonable and necessary and by billing St. Louis Solar for alleged damages for failure to meet COD.**

403. Complainant re-alleges all the preceding paragraphs.

404. PGE is obligated to purchase a QF’s net output that is directly or indirectly made available to PGE. 18 CFR 292.303(a), 292.304(d); ORS 758.525(2), 758.535(2)(a)&3(b); OAR 860-029-0030(1).

405. PGE and St. Louis Solar have executed a standard renewable PPA for the purpose of enabling St. Louis Solar to sell its net output directly to PGE.

406. Section 2.2.3 of the PPA provides that PGE may not withhold agreement to a COD that is within three years from the PPA's Effective date.

407. PGE should have agreed to amend the COD to any date within three years from the PPA's Effective date (i.e., as late as June 10, 2019) without disputing the change.

408. PGE refused to agree to COD later than February 10, 2019.

409. Section 2.2.3 of the PPA provides that PGE will not unreasonably withhold agreement to a COD that is more than three years from the Effective date if St. Louis Solar has demonstrated that a later COD is reasonable and necessary.

410. PGE referenced Section 2.2.3 in determining that a later COD was warranted for purposes of the first amendment to the PPA.

411. PGE violated this term in negotiating the second amendment to the PPA.

412. In November 2018, PGE and St. Louis Solar executed an amendment for a revised COD of February 10, 2019.

413. PGE refused at that time to agree to a later COD.

414. St. Louis Solar demonstrated at that time that a later COD was reasonable and necessary.

415. If St. Louis Solar did not demonstrate that a later COD was reasonable and necessary, then it was obvious from PGE's interconnection studies.

416. The System Impact Study Report showed that the interconnection upgrades were expected to take 12 months from the time an interconnection agreement was executed (i.e., at the earliest, approximately April 2018).

417. The Facility Study showed that the interconnection upgrades were expected to take 18 months from the time an interconnection agreement was executed (i.e., at the earliest, approximately September 2018).

418. PGE and St. Louis Solar executed an interconnection agreement that was fully executed in May 2018.

419. If interconnection took 12 months from execution, as PGE estimated in the System Impact Study Report, then interconnection could not possibly be accomplished prior to the scheduled COD of February 10, 2019.

420. If interconnection took 18 months from execution, as PGE estimated in the Facility Study, then interconnection could not possibly be accomplished prior to the scheduled COD of February 10, 2019.

421. If interconnection took until October 31, 2019, as the interconnection agreement itself expected, then interconnection would not be complete prior to the scheduled COD of February 10, 2019.

422. PGE refused to agree to a COD later than February 10, 2019.

423. PGE's refusal was unreasonable because it knew that it would not complete interconnection prior to the scheduled COD of February 10, 2019.

424. PGE is violated this term in negotiating the third amendment to the PPA.

425. In the third amendment, PGE agreed to extend the cure period for missing COD but refused to amend the COD.

426. PGE violated this term in negotiating the fourth amendment to the PPA.

427. In the fourth amendment, PGE agreed to extend the cure period for missing COD but refused to amend the COD.

428. The purpose of the fourth amendment was to provide additional time to complete the interconnection of the St. Louis Solar project given PGE's desire to replace the fuses it had earlier approved.

429. St. Louis Solar has requested that PGE agree to amend the PPA to adopt a later COD.

430. St. Louis Solar has demonstrated that a later COD is reasonable and necessary due to the delayed interconnection.

431. PGE refused to amend the PPA to adopt a later COD.

432. A later COD was necessary because achieving the scheduled COD was impossible.

433. A later COD was necessary because the delayed interconnection made achieving the scheduled COD impossible.

434. A later COD was necessary because the delayed interconnection made achieving COD within the one-year cure period impossible.

435. PGE's refusal is unreasonable because PGE is responsible for the delays to interconnection that have made a later COD necessary.

436. PGE's refusal is unreasonable because the delays to the interconnection caused by PGE are the only reason that St. Louis Solar did not achieve COD until April 6, 2020.

437. PGE's refusal is unreasonable because PGE cited St. Louis Solar's inability to achieve COD on or before February 10, 2019 as a default and sought delay damages.

438. PGE was not entitled to seek delay damages when PGE prevented St. Louis Solar's performance.

439. St. Louis Solar is entitled to relief because PGE's refusal to agree to a COD within three years of the PPA effective date is a violation of Section 2.2.3 of the PPA.

440. St. Louis Solar is entitled to relief because PGE's unreasonable withholding of agreement to a later COD that St. Louis Solar has shown to be reasonable and necessary is a violation of Section 2.2.3 of the PPA.

441. St. Louis Solar is entitled to relief because PGE's unreasonable withholding of agreement to a later COD in the second amendment to the PPA is a violation of Section 2.2.3 of the PPA.

442. St. Louis Solar is entitled to relief because PGE's collection of delay damages is a violation of the PPA.

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

**St. Louis Solar is entitled to relief because PGE has violated its contractual duty towards St. Louis Solar of good faith and fair dealing under the PPA.**

443. Complainant re-alleges all the preceding paragraphs.

444. PGE has an obligation of good faith and fair dealing to facilitate performance of the contracts it signs, including its power purchase agreement with St.

Louis Solar, where it is consistent with and in furtherance of the agreed-upon terms of the contracts or where it effectuates the reasonable contractual expectations of the parties.

445. PGE violated the duty of good-faith and fair dealing under the PPA by refusing to agree to amend the initial delivery date and the scheduled COD in light of the unexpected interconnection delays.

446. PGE violated its obligation of good faith and fair dealing by refusing to agree to amend the scheduled COD to within three years of the PPA effective date.

447. PGE violated its obligation of good faith and fair dealing by refusing to agree to amend the scheduled COD when St. Louis Solar demonstrated that the extension was reasonable and necessary.

448. PGE violated its obligation of good faith and fair dealing by refusing to agree to amend the scheduled COD to align with the schedule for interconnection in the interconnection agreement.

449. PGE violated its obligation of good faith and fair dealing by refusing to agree to amend the scheduled COD despite expecting interconnection to take as much as eight months or longer beyond the scheduled COD.

450. PGE violated its obligation of good faith and fair dealing by refusing to amend the PPA to reflect the delays to interconnection when interconnection is a clear prerequisite to St. Louis Solar being able to achieve COD.

451. PGE violated its duty of good faith and fair dealing by billing St. Louis Solar for alleged damages when PGE did not suffer any damages.

452. PGE has failed to demonstrate that it suffered damages.

453. PGE violated its duty of good faith and fair dealing by billing St. Louis Solar for alleged damages without demonstrating that PGE suffered actual damages.

454. If PGE suffered actual damages, they were self-inflicted.

455. PGE has failed to demonstrate that St. Louis Solar caused PGE damages.

456. St. Louis Solar has not caused PGE to suffer damages.

457. PGE violated its duty of good faith and fair dealing by billing St. Louis Solar for alleged damages when St. Louis Solar did not cause PGE to suffer damages.

458. PGE violated its obligation of good faith and fair dealing by billing St. Louis Solar for alleged damages for failure to achieve COD when PGE was responsible for COD not being met.

459. PGE violated its obligation of good faith and fair dealing by billing St. Louis Solar for alleged damages for failure to achieve COD without demonstrating that the billing was proper under the PPA.

460. PGE violated its obligation of good faith and fair dealing by refusing to refund St. Louis Solar for the payments St. Louis Solar paid PGE for alleged damages for failure to achieve COD when PGE was responsible for the failure to achieve COD.

461. PGE violated its obligation of good faith and fair dealing by refusing to stop billing St. Louis Solar for the payments St. Louis Solar paid PGE for alleged damages for failure to achieve COD when PGE was responsible for the failure to achieve COD.

462. Even if billing for alleged damages was not a violation of good faith and fair dealing, it was inappropriate under the circumstances.

463. It was inappropriate and unreasonable for PGE to bill St. Louis Solar.

464. If PGE has suffered damages and those damages are assigned to St. Louis Solar, the amount of damages should be reassessed in light of any change that is made to the scheduled COD.

465. PGE should refund St. Louis Solar for all amounts paid that do not reflect actual damages to PGE caused by St. Louis Solar.

466. PGE should pay St. Louis Solar for interest on all amounts paid that do not reflect actual damages to PGE caused by St. Louis Solar.

467. PGE should pay St. Louis Solar for interest on all amounts paid that were not yet due when billed.

468. PGE violated its obligation of good faith and fair dealing by demanding that the second amendment to the PPA contain a term benefitting PGE when the purpose of the second amendment was to provide partial relief to St. Louis Solar for PGE's delays to interconnection.

469. PGE violated its obligation of good faith and fair dealing by demanding that the second amendment to the PPA contain a term unrelated to providing relief from interconnection delays.

470. PGE violated its obligation of good faith and fair dealing by demanding that the second amendment to the PPA contain a term that was unreasonable and unfair.

471. PGE violated its obligation of good faith and fair dealing by demanding that the second amendment to the PPA contain a term that is unconscionable.

472. PGE violated its obligation of good faith and fair dealing by demanding that the second amendment to the PPA contain a term that would specifically allow PGE to avoid complying with an order of the Commission.



473. PGE violated its obligation of good faith and fair dealing by demanding that the second amendment to the PPA contain a term that would specifically allow PGE to violate PURPA.

474. St. Louis Solar is entitled to relief because PGE violated its obligation of good faith and fair dealing under the PPA.

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

**St. Louis Solar is entitled to relief because PGE has breached the interconnection agreement by failing to provide interconnection on schedule or within a reasonable amount of time, by failing to perform work that PGE was obligated to perform, and by requiring St. Louis Solar to perform additional work that was not called for under the interconnection agreement.<sup>14</sup>**

475. Complainant re-alleges all the preceding paragraphs.

476. PGE is obligated to make interconnections with any QF that may be necessary to accomplish the required purchases. 18 CFR 292.303(c); OAR 860-029-0030(3).

477. PGE and St. Louis Solar executed an interconnection agreement for the purpose of PGE's completion of the interconnection.

478. The interconnection agreement provides a schedule of "critical milestones."

479. The designation of the milestones as critical demonstrates that time was of the essence in performing under the interconnection agreement.

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<sup>14</sup> To the extent that OAR 860-082-0085 applies to a complaint regarding a PPA, St. Louis Solar seeks a waiver of this rule pursuant to OAR 860-001-0000(2). For purposes of the waiver, if required, this Complaint shall serve as a request in writing.

480. The interconnection agreement provides for PGE to “complete the interconnection facilities” no later than September 27, 2019.

481. PGE failed to complete the interconnection facilities by September 27, 2019.

482. As of February 3, 2020, PGE had still not completed the interconnection facilities.

483. PGE failed to complete the interconnection facilities within a reasonable amount of time.

484. The interconnection agreement calls for PGE to place the St. Louis Solar facility “in-service” no later than October 31, 2019.

485. PGE failed to place the St. Louis Solar facility in-service by October 31, 2019.

486. As of February 3, 2020, PGE had still not placed the St. Louis Solar facility in-service.

487. PGE failed to place the St. Louis Solar facility “in-service” within a reasonable amount of time.

488. PGE’s failure to complete the facilities on schedule is a violation of the interconnection agreement.

489. PGE’s failure to complete the facilities within a reasonable amount of time is a violation of the interconnection agreement.

490. PGE’s failure to place the facility in-service on schedule is a violation of the interconnection agreement.

491. PGE's failure to place the facility in-service within a reasonable amount of time is a violation of the interconnection agreement.

492. PGE billed St. Louis Solar for alleged delay damages on the basis of the facility not being in-service.

493. PGE owes damages to St. Louis Solar for the violations of the interconnection agreement.

494. PGE owes damages to St. Louis Solar under the interconnection agreement for the alleged delay damages PGE billed under the PPA.

495. PGE breached the interconnection agreement by failing to procure and install the relay.

496. PGE breached the interconnection agreement by demanding that St. Louis Solar install fuses when the installation of different fuses than those PGE already approved was either not called for under the interconnection agreement or was work that PGE was obligated to perform.

497. St. Louis Solar is entitled to relief because PGE has breached the interconnection agreement.

498. St. Louis Solar is entitled to relief because PGE should agree to amend the PPA to provide relief to St. Louis Solar for the delays to interconnection.

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

**St. Louis Solar is entitled to relief because PGE has violated the Commission's Small Generator Interconnection Rules.**

499. Complainant re-alleges all the preceding paragraphs.

500. OAR 860-082-0025(g) states that “A public utility must meet all applicable deadlines in the small generator interconnection rules unless the deadlines have been waived by agreement with an applicant or interconnection customer or by Commission order. If the public utility cannot meet an applicable deadline, then the public utility must provide written notice to the applicant or interconnection customer explaining the reasons for the failure to meet the deadline and an estimated alternative deadline.”

501. PGE violated the Commission’s rules by failing to meet applicable deadlines and by failing to justify the delays.

502. PGE violated the Commission’s rules by providing non-standard study agreements.

503. PGE is obligated to make interconnections with any QF that may be necessary to accomplish the required purchases. 18 CFR 292.303(c); OAR 860-029-0030(3).

504. PGE failed to interconnect St. Louis Solar on the timeline agreed in the interconnection agreement.

505. PGE failed to interconnect St. Louis Solar within a reasonable amount of time.

506. St. Louis Solar is entitled to relief because PGE’s failure to provide interconnection, including interconnection studies, within a reasonable amount of time is in violation of the Commission’s rules.

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

**St. Louis Solar is entitled to relief because PGE has violated ORS 757.020 by charging an unreasonable and unjust rate for interconnection service.**

507. Complainant re-alleges all the preceding paragraphs.

508. PGE is obligated to furnish adequate and safe interconnection service to its customers for a reasonable and just charge. ORS 757.020.

509. PGE failed to provide adequate interconnection service.

510. PGE failed to provide adequate interconnection service in a timely manner.

511. PGE's failure to provide adequate interconnection service in a timely manner has caused economic damages to St. Louis Solar from the loss of power sales.

512. PGE's failure to provide adequate interconnection service in a timely manner has caused economic damages to St. Louis Solar from the loss of power sales at fixed prices.

513. PGE's failure to provide adequate interconnection service in a timely manner has caused economic damages to St. Louis Solar from PGE's assertion of damages billable to St. Louis Solar from the delay in achieving COD.

514. The economic losses suffered by St. Louis Solar amount to an unreasonable and unjust increase in the cost of interconnection service from PGE.

515. PGE has incorrectly charged for interconnection service that PGE was obligated to perform under the interconnection agreement.

516. PGE has incorrectly charged for interconnection service that either was not authorized under the interconnection agreement or that PGE was obligated to perform under the interconnection agreement.

517. Billing for work that PGE was obligated to perform amounts to an unreasonable and unjust increase in the cost of interconnection service from PGE

518. PGE has violated its statutory obligation to provide interconnection service at a “reasonable and just charge.”

519. St. Louis Solar is entitled to relief because PGE violated ORS 757.020 and caused St. Louis Solar to suffer significant economic losses.

520. PGE should refund St. Louis Solar for the amount incorrectly billed for work that PGE was obligated to perform.

521. PGE should agree to amend the scheduled COD.

522. PGE should agree to amend the commencement date of fixed price payments.

523. PGE should agree to amend the PPA so that St. Louis Solar does not suffer lost power sales.

524. PGE should agree to amend the PPA so that St. Louis Solar does not suffer lost power sales at fixed prices.

525. PGE should agree that St. Louis Solar should receive fixed-price payments beginning on the date that power is delivered, not on the date of execution.

526. PGE should agree that St. Louis Solar should receive fixed-price payments beginning on the date that PGE represented that St. Louis Solar was likely to achieve commercial operations.

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

**St. Louis Solar is entitled to relief because PGE has violated its contractual duty towards St. Louis Solar of good faith and fair dealing under the interconnection agreement.**

527. Complainant re-alleges all the preceding paragraphs.

528. PGE has an obligation of good faith and fair dealing to facilitate performance of the contracts it signs, including its interconnection agreement with St. Louis Solar, where it is consistent with and in furtherance of the agreed-upon terms of the contracts or where it effectuates the reasonable contractual expectations of the parties.

529. PGE violated its obligation of good faith and fair dealing by refusing to agree that interconnection work should be done as soon as possible.

530. PGE violated its obligation of good faith and fair dealing by asserting that interconnection work did not need to be performed before the last possible date for completion.

531. PGE violated its obligation of good faith and fair dealing by refusing to allow St. Louis Solar to complete interconnection when it appeared PGE would not be able to perform on time and delays cause St. Louis Solar to suffer losses.

532. PGE violated its obligation of good faith and fair dealing by agreeing to charge St. Louis Solar a certain amount and later refusing to complete work until St. Louis Solar paid more than agreed.

533. PGE violated its obligation of good faith and fair dealing by agreeing to perform certain work and later refusing to complete interconnection unless St. Louis Solar performed the work that PGE was obligated to perform.

534. PGE violated its obligation of good faith and fair dealing by failing to provide adequate notice that PGE would require St. Louis Solar to complete the work that PGE was obligated to perform.

535. PGE violated its obligation of good faith and fair dealing by demanding that St. Louis Solar perform work that either was not called for under the interconnection agreement or that PGE was obligated to perform.

536. PGE violated its obligation of good faith and fair dealing by delaying interconnection on the basis of a dispute over billing.

537. PGE violated its obligation of good faith and fair dealing by delaying interconnection on the basis of a dispute over which party was obligated to perform.

538. St. Louis Solar is entitled to relief because PGE violated its obligation of good faith and fair dealing under the interconnection agreement.

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

**St. Louis Solar is entitled to relief because PGE violated ORS 757.325 by discriminating against St. Louis Solar.**

539. Complainant re-alleges all the preceding paragraphs.

540. PGE cannot make or give undue preference, unreasonable preference or advantage to any particular person, or subject any particular person to any undue or unreasonable prejudice or disadvantage in any respect. ORS 757.325.

541. PGE subjected St. Louis Solar to undue and/or unreasonable prejudice or disadvantage by not completing interconnection in a timely manner.

542. PGE subjected St. Louis Solar with undue and unreasonable disadvantage by refusing to agree to amendments in light of delays caused by PGE.



543. PGE subjected St. Louis Solar with undue and unreasonable disadvantage by billing St. Louis Solar for delay damages when PGE was causing the delay.

544. PGE gave undue preference and/or unreasonable preference to itself by delaying interconnection and collecting damages from St. Louis Solar on the basis of the delay.

545. PGE gave undue preference and/or unreasonable preference requiring the inclusion of a term in the second amendment to the PPA to allow PGE to avoid following a potential order by the Commission.

546. St. Louis Solar is entitled to relief because PGE has violated ORS 757.325 with respect to St. Louis Solar.

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

**St. Louis Solar is entitled to relief because PGE violated ORS 746.040 by engaging in unjust and unreasonable practices with respect to St. Louis Solar and other interconnection customers.**

547. Complainant re-alleges all the preceding paragraphs.

548. PGE is obligated to refrain from engaging in unjust and unreasonable practices with respect to its customers, including interconnection customers, and the public generally. ORS 746.040.

549. PGE's behavior in delaying a QF's interconnection and subsequently billing the QF for delay damages is unjust and unreasonable.

550. PGE subjected St. Louis Solar to interconnection delays and subsequently billed for delay damages.

551. PGE has subjected other QFs to interconnection delays and subsequently billed for delay damages.

552. PGE has established a practice of subjecting QFs to interconnection delays and subsequently billing the QFs for delay damages.

553. PGE has established a practice that is unjust and unreasonable with respect to its interconnection customers.

554. PGE has established a practice that is unjust and unreasonable with respect to its interconnection customers and which harms the public generally.

555. PGE has a statutory obligation to refrain from engaging in a practice that is unjust and unreasonable with respect to its interconnection customers and the public generally.

556. PGE violated its statutory obligation by engaging in a practice that is unjust and unreasonable with respect to its interconnection customers and the public generally.

557. St. Louis Solar is entitled to relief because the actions of PGE towards St. Louis Solar were part of a practice of PGE that violates ORS 746.040.

### **VIII. PRAYER FOR RELIEF**

WHEREFORE, Complainant respectfully requests the Commission issue an order:

558. Finding that relief is warranted due to PGE's slowed interconnection process.

559. Finding that St. Louis Solar's inability to cure the default of not achieving COD was due entirely or in part to PGE.

560. Finding that PGE violated the PPA by withholding agreement to a COD within three years of the effective date.

561. Finding that PGE has violated the PPA by unreasonably withholding agreement to a later COD that St. Louis Solar has demonstrated is reasonable and necessary.

562. Finding that PGE violated the PPA by collecting delay damages when PGE caused the delays.

563. Requiring or otherwise finding that PGE is obligated to grant an extension of St. Louis Solar's PPA COD to account for the delayed in-service date PGE caused.

564. Requiring or otherwise finding that PGE is obligated to grant an extension of St. Louis Solar's PPA COD to coincide with the actual interconnection in-service date (i.e., April 6, 2020).

565. Alternatively, requiring or otherwise finding that PGE is obligated to grant an extension of St. Louis Solar's PPA COD to coincide with the in-service date estimated under the interconnection agreement (i.e., October 31, 2019).

566. Alternatively, requiring or otherwise finding that PGE is obligated to grant an extension of St. Louis Solar's PPA COD to within three years of the PPA Effective date (i.e., June 10, 2019).

567. Requiring or otherwise finding that PGE is obligated to grant an extension of St. Louis Solar's PPA commencement date of fixed price payments to coincide with the actual interconnection in-service date (i.e., an extension of the approximately 47 months).<sup>15</sup>

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<sup>15</sup> St. Louis Solar includes this prayer for relief as a placeholder in the event that the pending appeal of the Commission's order on this matter is overturned. St. Louis Solar does not seek to relitigate this matter if the Commission's order is upheld on appeal.

568. Alternatively, requiring PGE or otherwise finding that PGE is obligated to extend the fixed-price period under the PPA to reflect the delay from the St. Louis Solar was constructed and could have achieved commercial operations (i.e., January 23, 2019) to when the interconnection was actually finalized (i.e., an extension of approximately 14.5 months).

569. Alternatively, requiring or otherwise finding that PGE is obligated to extend the fixed-price period under the PPA for the period from October 31, 2019, when PGE should have completed the interconnection, to when the interconnection is actually finalized (i.e., an extension of approximately 5 months).

570. If the Commission wishes not to order PGE to amend the PPA, the Commission can grant alternative relief through finding St. Louis Solar is entitled to damages or by striking language in the second amendment as unconscionable and enforcing the second amendment as revised to state that the fixed price payment period commenced on October 31, 2017.

571. Finding that the inclusion of a term in the second amendment to the PPA to allow PGE to avoid following a potential order by the Commission was discriminatory, unjust and unreasonable.

572. Requiring that PGE file any amendments to standard contract PPAs, or summaries thereof, with the Commission as updates to the filings made pursuant to OAR 860-029-0030(7).

573. Finding that PGE is not authorized to charge damages from any QF for not achieving COD unless PGE suffered actual damages.

574. Finding that PGE was not authorized to charge damages from St. Louis Solar for not achieving COD because St. Louis Solar did not cause PGE to suffer damages.

575. Finding that PGE was not authorized to charge damages from St. Louis Solar for not achieving COD, because the damages, if any, were self-inflicted by PGE through its own failure to complete the interconnection.

576. Requiring PGE to refund St. Louis Solar for the alleged damages that PGE wrongfully charged to St. Louis Solar.

577. Requiring PGE to pay St. Louis Solar interest on the money St. Louis Solar paid PGE for the alleged damages which St. Louis Solar did not owe or did not owe at that time.

578. Finding that PGE was obligated to obtain and install the new relay under the interconnection agreement.

579. Finding that PGE was obligated to do any work necessary to remedy the fuse issue.

580. Ordering PGE to refund St. Louis Solar for any costs for interconnection service that were wrongly incurred due to PGE's mistakes or misdeeds.

581. Finding PGE in violation of its obligation to not make or give undue preference, unreasonable preference to any other person or itself, or subject St. Louis Solar to undue or unreasonable prejudice or disadvantage in any respect.

582. Requiring that PGE not make or give undue preference, unreasonable preference to any other person or itself, or subject St. Louis Solar to undue or unreasonable prejudice or disadvantage in any respect.

583. 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

584. Requiring PGE to refrain from engaging in unjust and unreasonable practices with respect to its customers, including interconnection customers, and the public generally.

585. Finding that St. Louis Solar is entitled to contractual damages, pursuant to the damage's provisions in the PPA and in the interconnection agreement, statutory damages pursuant to ORS 756.185, and/or attorneys' fees pursuant to ORS 756.185.

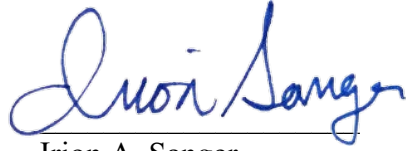
586. To the extent that the Commission finds that it lacks authority to provide any relief requested above or declines to exercise jurisdiction to provide any relief requested above, issuing an order finding that St. Louis Solar is entitled to relief from PGE in the form of damages sufficient to reflect the amounts in controversy, plus attorneys' fees, so that St. Louis Solar can seek relief from a court of competent jurisdiction.

587. Instituting penalties up to \$10,000 pursuant to ORS 756.990 against PGE and paid by PGE's shareholders for each violation of ORS 757.020, ORS 758.325, ORS 758.525(2), ORS 758.535(2), ORS 758.535(2)(b), ORS 758.535(3)(b), 18 CFR 292.303(a), 18 CFR 292.303(c), 18 CFR 292.304(d), OAR 860-029-0030(1), OAR 860-029-0030(3); OAR 860-082-0025; and OAR 860-082-0060.

588. Granting any other such relief as the Commission deems necessary.

Dated this 26th day of August 2020.

Respectfully submitted,



Irion A. Sanger  
Joni L. Sliger  
Sanger Law, PC  
1041 SE 58th Place  
Portland, OR 97215  
Telephone: 503-756-7533  
Fax: 503-334-2235  
irion@sanger-law.com

Of Attorneys for St. Louis Solar, LLC

**Attachment B**

**St Louis Solar Amended Complaint Redline**



Irion A. Sanger  
OSB No. 003750  
Sanger Law, PC  
1041 SE 58th Place  
Portland, OR 97215  
503-756-7533 (tel.)  
503-334-2235 (fax)  
irion@sanger-law.com

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

ST. LOUIS SOLAR, LLC,

Complainant,

v.

PORTLAND GENERAL ELECTRIC  
COMPANY,

Defendant.

DOCKET NO. UM 2057

FIRST AMENDED COMPLAINT

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**I. INTRODUCTION**

This is a complaint (“Complaint”) filed by St. Louis Solar, LLC (“St. Louis Solar”) with the Oregon Public Utility Commission (“Commission”) against Portland General Electric Company (“PGE”) under ORS 756.500 and OAR 860-001-0170. The St. Louis Solar project is a 2.2-megawatt (“MW”) solar qualifying facility (“QF”) under the Public Utility Regulatory Policies Act of 1978 (“PURPA”). St. Louis Solar has executed both a standard power purchase agreement (“PPA”) and an interconnection agreement with PGE. PGE has breached both contracts, breached its duty of good faith and fair dealing, and violated Commission rules and state statutes, for which St. Louis Solar seeks relief.

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PGE prevented St. Louis Solar from coming online and selling power for approximately 2.5 years. Ultimately, St. Louis Solar only came online after paying PGE for alleged Start-Up Lost Energy Value damages (“delay damages”) and doing interconnection work that PGE was obligated to perform but refused to do.

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PGE’s delays largely fall into two categories: 1) delays PGE caused during the interconnection study process (totaling approximately 17 months); and 2) delays PGE caused during the interconnection construction process (totaling approximately 12.5 months). PGE has offered partial relief for some of these delays through amending the commercial operation date (“COD”) in the PPA and amending the cure period for reaching COD in the PPA. PGE has not agreed to amend the commencement date of the fixed price payments. Essentially, PGE’s partial relief was for PGE to not terminate the PPA because PGE was unable to interconnect St. Louis Solar; however, PGE has not provided any economic relief to St. Louis Solar and has instead charged St. Louis Solar delay damages because of PGE’s failure to interconnect St. Louis Solar.

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**Deleted:** Louis Solar’s interconnection. These delays have forced St. Louis Solar to default on

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**Deleted:** achieving its Commercial Operation Date (“COD”). Because of PGE’s continuing delays,

**Deleted:** has been unable to cure the default. In addition, during the time that

**Deleted:** has been unable to sell power because the interconnection is incomplete, PGE

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**Deleted:** . On February 11, 2020, the cure period for

**Deleted:** will end, and PGE could terminate the PPA. If PGE terminates the PPA,

**Deleted:** will suffer catastrophic losses and not be able to operate its facility or sell its net output.

**Deleted:** Louis Solar has been working in good faith with PGE to avoid this filing. However, PGE has refused to provide adequate relief, so St.

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**Deleted:** Louis Solar believed PGE when the utility said during PPA negotiations that interconnection would take approximately 12 months to complete. That was 2016. As of February 3, 2020, interconnection has still not been completed, due in large part to PGE’s errors and mistakes. The estimated completion date for interconnection has been delayed time and again. Twice the parties have agreed to amend the PPA by extending the COD, which has resulted in partial but not adequate relief to St. Louis Solar. ¶  
→ The most recent amendment extended the scheduled COD to February 10, 2019. This amendment was executed in November 2018, months after PGE and St. Louis Solar executed an interconnection agreement that set an interconnection schedule extending into late 2019. St. Louis Solar believed PGE when it represented that interconnection could be completed sooner than those dates, so

St. Louis Solar asks the Commission to make it whole and provide relief for the delays and unreasonable costs that PGE imposed. Specifically, St. Louis Solar seeks the following relief: 1) compensation for lost fixed price payments; 2) a refund for the alleged delay damages; 3) a refund of the costs associated with interconnection work that PGE should have performed but did not; and 4) a refund of costs associated with interconnection work that was unnecessary for PGE to safely interconnect St. Louis

Solar.<sup>1</sup> The Commission should also impose penalties on PGE for its unlawful and discriminatory practices.

**A. Compensation for Lost Fixed Price Payments**

St. Louis Solar's standard PPA provides 15 years of fixed-price payments starting from the date of execution (under the prevailing interpretation).<sup>2</sup> But for PGE's delays during the interconnection study process, St. Louis Solar could have completed its project and begun earning fixed-price payments as early as October 31, 2017. St. Louis Solar requests that the Commission order PGE to revise its power purchase agreement or otherwise make St. Louis Solar whole by increasing the fixed price period by about 29 months (to compensate St. Louis Solar for the delays from October 31, 2017 to April 6, 2020). This is because PGE's delays have cost St. Louis Solar as many as 29.5 months of fixed-price payments, out of the total 180 months allowed by Commission policy.

PGE will have a variety of arguments as to why St. Louis Solar could not have been interconnected by October 31, 2017. The facts of this case are likely to be confusing and disputed, largely because PGE made so many different kinds of mistakes

<sup>1</sup> St. Louis Solar has experienced other economic damages, including but not limited to construction loan interest and fees, investor return payments and penalties, land lease payments, and insurance. St. Louis Solar reserves the right to bring a claim for these economic damages before state or federal court.

<sup>2</sup> St. Louis Solar has a PPA form which is similar to that of the NewSun parties, which the Commission recently determined starts the 15-year fixed price period at execution. PGE vs. Alfalfa Solar I, LLC, et al., Docket No. UM 1931, Order No. 19-255 at 17 (Aug. 2, 2019). That decision is under appeal, and it is possible that St. Louis Solar form PPA provides that the 15-year fixed price period begins at commercial operations. PGE vs. Alfalfa Solar I, LLC, et al., Docket No. UM 1931, Petition for Judicial Review (Jan. 10, 2020). St. Louis Solar has included a prayer for relief to amend the PPA to begin the fixed price payment at commercial operations, as a placeholder in the event that the Commission's order is overturned on appeal.

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Deleted: Louis Solar agreed to the February 2019 COD. PGE also unlawfully and discriminatorily demanded that St. Louis Solar give up other legal rights to obtain an inadequate extension of its COD. The St. Louis Solar project has been complete and waiting to be energized since December 2018. → February 10, 2019, passed, and St. Louis Solar missed its COD. On February 11, 2019, PGE provided a notice of default under the PPA. In March 2019, St. Louis Solar inquired about interconnection, and PGE asserted that St. Louis Solar had no claim to interconnection sooner than the last date in the interconnection agreement (October 31, 2019). In April 2019, PGE began sending monthly bills to St. Louis Solar for alleged damages from the failure to achieve COD pursuant to the PPA. ¶  
→ In addition to being unable to sell power, St. Louis Solar is unable to receive the benefits of the fixed-price payments in the PPA. The

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Deleted: Louis Solar will have missed the opportunity to earn fixed-price payments for 25% of that term. These payments are essential to QF financing.

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and delays. If the Commission does not agree that St. Louis Solar could have come on line by October 31, 2017, then St. Louis Solar requests two primary alternative prayers for relief to avoid the need for the Commission to essentially count the exact number of days of delay attributable to each harmful PGE action.

First, despite PGE's delays, St. Louis Solar was still able to complete its project no later than January 23, 2019. ~~St. Louis Solar, however, was unable to be energized because PGE had failed to complete interconnection in a timely manner. This alternative request for relief asks that St. Louis Solar be provided an extension of its fixed price period by about 15 months, which would recognize that St. Louis Solar could have earned fixed price payments as of January 23, 2019.~~

Second, the final interconnection agreement entered into by St. Louis Solar required PGE to interconnect the project by October 31, 2019. At the latest, St. Louis Solar should have been able to come online and earn fixed price payments as of October 31, 2019, the planned in-service date under the interconnection agreement. But PGE failed to achieve this critical milestone. This alternative request for relief asks St. Louis Solar be provided an extension of its fixed price period by about 5 months, which would recognize that St. Louis Solar could have earned fixed price payments as of October 31, 2019.

#### **B. Refund for the Alleged Delay Damages**

PGE billed St. Louis Solar for alleged delay damages on the basis that St. Louis Solar came online late. In fact, St. Louis Solar completed its project and missed its scheduled COD only because of PGE's delays. It was unreasonable for PGE to bill St.

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**Deleted:** → St. Louis Solar has paid over \$600,000 for interconnection service, has paid over \$20,000 for PGE's alleged damages, and has lost substantial revenues under the PPA. If the PPA is terminated, St. Louis Solar's losses will be catastrophic, and the project may never be able to operate and deliver its net output. ¶  
→ St. Louis Solar wishes to be energized and sell power to PGE as agreed in 2016. For that purpose, St. Louis Solar has sought PGE's consent to amend the PPA dates to reflect at least some of the delay to interconnection. Considering the significant economic losses, St. Louis Solar has also sought PGE's consent to amend the commencement date of the fixed-price payments or to amend the termination date of the PPA to provide at least partial relief. PGE has refused to amend the PPA, has refused to stop sending invoices, has refused to offer relief for St. Louis Solar's revenue losses, and has still not completed interconnection. ¶  
→ Therefore, the Commission should require that PGE amend the PPA's COD, fixed-price payment commencement date, and termination date to reflect the *all* delays to interconnection service; require that PGE complete interconnection immediately so that St. Louis Solar can begin delivering power; require that PGE refund St. Louis Solar for the invoices PGE wrongfully billed for the alleged damages; and impose penalties on PGE for its unlawful and discriminatory practices.

Louis Solar when PGE was the cause of the delays. St. Louis Solar seeks a refund of the amounts paid.

**C. Refund of the Costs Associated with Interconnection Work that PGE Should Have Performed but Did Not**

The interconnection agreement required PGE to procure and install a transfer trip relay panel, but PGE refused to do so. St. Louis Solar did the work solely to minimize the delays to its facilities. St. Louis Solar seeks a refund of the costs of the work that PGE was obligated to perform but did not do.

**D. Refund of the Costs Associated with Unnecessary Interconnection Work**

PGE required St. Louis Solar to perform work that was not called for under the interconnection agreement and was in fact redundant and unnecessary. Specifically, PGE required St. Louis Solar to install new fuses in PGE's side of the switchgear, despite the existence of a nearby cut-out fuse. The work appears to have been entirely unnecessary, but if the work was in fact somewhat necessary for the safety and reliability of PGE's system, PGE should have performed the work itself. St. Louis Solar seeks a refund of the costs of procuring and installing the unneeded fuses.

**E. The Commission Should Provide Relief to St. Louis Solar**

In summary, St. Louis Solar believes PGE ought to: 1) refund the alleged delay damages and unreasonable interconnection costs; and 2) agree to amend the start date of the fixed price payment period to reflect all of the delays PGE caused, consistent with PGE's duty of good faith and fair dealing. PGE has refused to do so, therefore St. Louis Solar asks the Commission to either: 1) order PGE to provide the relief through refunds

and PPA amendments;<sup>3</sup> or 2) issue an order finding that PGE caused St. Louis Solar to suffer economic losses equal to the value of unreasonable interconnection costs and lost fixed price payments (i.e., damages).

St. Louis Solar understands that the Commission has historically declined to exercise jurisdiction to award damages, which is why St. Louis Solar does not ask the Commission to award damages outright.<sup>4</sup> St. Louis Solar asks only for a Commission order finding that PGE caused St. Louis Solar to suffer economic losses, which St. Louis Solar can take to a circuit court to seek relief through an award of damages.<sup>5</sup> If, however,

<sup>3</sup> Notably, the Commission need not amend the PPA to provide at least some relief. One approach the Commission could take is by finding language in an existing PPA amendment regarding the commencement date of the fixed price payment to be unconscionable and striking it from the amendment, consistent with general contract principles.

<sup>4</sup> T.G. v. Qwest, Docket No. UCR 188, Order No. 18-212 at 3 (June 6, 2018) (granting Qwest's motion to dismiss claims for damages because "[t]he Commission has only those powers granted to it by statute. There is no statute granting the Commission authority to order a utility company to pay damages . . . That kind of dispute normally is handled through mediation, arbitration, or the judicial system") (quoting *Schaefer v. CenturyTel of Or., Inc.*, Docket No. UC 569, Order No. 01-157 (Feb. 8, 2001)); see also *Shepherd v. U.S. W. Commc'n, Inc.*, Docket No. UC 477, Order No. 99-749 (Dec. 12, 18 1999); *Sage v. U.S. W. Commc'n*, Docket No. UC 368, Order No. 98-473 (Nov. 18, 1998); *Mattox v. PGE*, Docket No. UC 36, Order No. 85-196 (March 7, 1985).

<sup>5</sup> E.g., *Electric Lightwave v. U.S. West Comm'ns*, Docket No. UC 377, Order No. 99-285 at 6-7 (Apr. 26, 1999) ("[W]hile the Commission generally has no jurisdiction to award monetary damages, it does have authority to enforce interconnection agreements, and a decision on the merits in ELI's favor would at the very least allow ELI to petition a court of competent jurisdiction for a monetary judgment based on the Commission's decision.").

St. Louis Solar could theoretically proceed directly to a court to seek damages, but, because the Commission has asserted jurisdiction over post-contract execution claims, PGE would likely file a complaint before the Commission and seek to have any court case dismissed or abated pending the Commission's resolution of the dispute. E.g., Docket No. UM 1931, Order No. 18-174 at 2, 4-5

the Commission is inclined to exercise jurisdiction to award damages, then St. Louis Solar requests that the Commission also exercise jurisdiction to award statutory damages and attorneys' fees.<sup>6</sup> St. Louis Solar notes that PGE's wrongdoing violated not only the terms of the contracts between PGE and St. Louis Solar but also numerous Commission rules and state statutes.

Finally, St. Louis Solar notes that PGE has failed to provide a final accounting report of the interconnection costs, which was due on July 24, 2020 pursuant to the interconnection agreement. St. Louis Solar reserves the right to seek additional relief either based on information in PGE's final accounting report or based on PGE's failure to provide a final accounting report.

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## II. SERVICE

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

Irion Sanger  
Sanger Law, PC  
1041 SE 58th Place  
Portland, OR 97215

Stephen D. Gates  
St. Louis Solar, LLC  
1327 SE Tacoma St #235  
Portland, OR 97202

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(May 23, 2018) (asserting jurisdiction over PGE's complaint despite a pre-existing court case on the same dispute). St. Louis Solar comes before the Commission in the hopes of avoiding an expensive jurisdictional dispute with PGE.

<sup>6</sup> ORS 756.185 provides that "Any public utility which does, or causes or permits to be done, any matter, act or thing prohibited by ORS chapter 756, 757 or 758 or omits to do any act, matter or thing required to be done by such statutes, is liable to the person injured thereby in the amount of damages sustained in consequence of such violation. If the party seeking damages alleges and proves that the wrong or omission was the result of gross negligence or willful misconduct, the public utility is liable to the person injured thereby in treble the amount of damages sustained in consequence of the violation. [Except if the action is maintained as a class action], the court may award reasonable attorney fees to the prevailing party in an action under this section."

irion@sanger-law.com

StephenGates888@gmail.com

Joni L. Sliger  
Sanger Law, PC  
1041 SE 58th Place  
Portland, OR 97215  
joni@sanger-law.com

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In support of this Complaint, Complainant alleges as follows:

**III. IDENTITY OF THE PARTIES**

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1. PGE is an investor-owned public utility regulated by the Commission under ORS Chapter 757. PGE is headquartered at 121 Southwest Salmon Street, Portland, Oregon 97204.

2. St. Louis Solar, a limited liability company organized under the laws of the state of Oregon, is the controlling owner and manager of the St. Louis Solar project and will be the seller of the output from the St. Louis Solar project. St. Louis Solar’s address is 1327 SE Tacoma St #235, Portland, OR 97202.

**IV. APPLICABLE STATUTES AND RULES**

3. The Oregon statutes expected to be involved in this case include: ORS 746.040, 756.040-756.068, 756.185, 756.500-756.558, 756.990, 757.020, 757.325, 758.010-758.035, and 758.505-758.555. The Oregon rules expected to be involved in this case include: OAR 860-001, 860-023, 860-024, 860-029, and 860-082.

4. The federal statute expected to be involved in this case is PURPA, 16 United States Code (“USC”) 824a-3. The federal rules expected to be involved in this case include: 18 Code of Federal Regulations (“CFR”) 292.101-292.602.

**V. JURISDICTION**



5. FERC adopted regulations and policies governing utility purchases from QFs under PURPA. 18 CFR 292.101-292.602. State regulatory agencies are required to implement FERC's regulations. See 16 USC 824a-3(f); *FERC v. Mississippi*, 456 U.S. 742, 751 (1982).

6. Specifically, the state agencies that implement PURPA have authority to determine the manner for payment of interconnection costs by QFs. 18 CFR 292.306.

7. The Commission is the Oregon state agency that implements the state and federal PURPA statutes. ORS 758.505(3); OAR 860-029-0001; *Snow Mountain Pine Co. v. Maudin*, 84 Or App 590, 593 (1987). Public utilities are defined in ORS 758.505(7), and include PGE. The Commission has the power and jurisdiction to hear complaints by QFs against public utilities, including PGE. ORS 756.040, 756.500-756.558, and 758.505-758.555; OAR 860-001-0010(3), and 860-029-0030.

8. The Commission has the jurisdiction to represent the customers of any public utility, including interconnection customers, in all controversies respecting rates, valuations, service and all matters of which the Commission has jurisdiction, and has the jurisdiction to protect customers, and the public generally, from unjust and unreasonable exactions and practices and to obtain for them adequate service at fair and reasonable rates. ORS 756.040.

9. The federal District Court and/or an Oregon Circuit Court has concurrent and may have exclusive jurisdiction over certain claims in this Complaint. These include post-contract execution claims. St. Louis Solar understands that the Commission has held that it has primary and concurrent jurisdiction over post-contract execution claims,

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involving standard PURPA PPAs.<sup>8</sup> St. Louis Solar is not waiving any rights to have a District or Circuit court adjudicate and resolve its claims for relief by filing this Complaint before the Commission.

10. The federal District Court and/or an Oregon Circuit Court has concurrent and may have exclusive jurisdiction over certain claims in this Complaint. These include claims for refunds or, in the alternative, for damages and attorneys' fees. St. Louis Solar understands that the Commission has jurisdiction to award refunds but has declined to exercise jurisdiction over damages or attorneys' fees. Compare ORS 756.040, ORS 757.250, and OAR 860-021-0135(2)(b), with, e.g., *T.G. v. Qwest*, Order No. 18-212 at 3 (June 6, 2018). St. Louis Solar believes the Commission could exercise jurisdiction to interpret the PPA and determine whether and what amount of refunds or damages are owed. Similarly, the Commission could exercise jurisdiction to determine whether statutory damages or attorneys' fees are owed. St. Louis Solar includes these claims to obtain whatever remedy is available from the Commission and to preserve its rights in the event that the Commission declines to exercise jurisdiction to provide relief or declines to provide adequate relief. See *Dreyer v. Portland*, 341 Or 262, 285-287 (2006). St. Louis Solar is not waiving any rights to have a District or Circuit court adjudicate and resolve its claims for relief by filing this Complaint before the Commission.

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<sup>8</sup> *PGE v. Pacific Northwest Solar, LLC*, Docket No. UM 1894, Order No. 18-025 at 7 (Jan. 25, 2018); *PGE v. Alfalfa Solar*, Docket No. UM 1931, Order No. 18-174 at 3-4 (May 23, 2018).

VI. FACTUAL BACKGROUND

Overview of Dispute

11. The St. Louis Solar project is a 2.2-megawatt (“MW”) nameplate capacity solar QF located in Marion County, Oregon.

12. On March 7, 2016, St. Louis Solar requested a PPA from PGE.

13. On April 26, 2016, St. Louis Solar filed an application for interconnection.

14. PGE assigned St. Louis Solar the queue number SPQ0018.

15. On June 3, 2016, PGE executed a Standard Renewable In-System Variable Power Purchase Agreement (“PPA”), which St. Louis Solar counter-signed on June 10, 2016 (available at: <https://edocs.puc.state.or.us/efdocs/HAQ/re143haq161630.pdf>).

16. The unamended PPA set forth an in-service date of September 30, 2017.

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17. The unamended PPA set forth a scheduled Commercial Operation Date (“COD”) of October 31, 2017.

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18. Prior to PPA execution, PGE made representations to St. Louis Solar that interconnection would likely be completed within 12 months of execution of an interconnection agreement.

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19. St. Louis Solar selected its scheduled COD on the bases of the timelines in the Commission’s Small Generator Interconnection Rules (OAR 860-082), the timelines in the Commission-approved form interconnection study agreements, and representations made by PGE that interconnection would likely be completed within 12 months of execution of an interconnection agreement.

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20. St. Louis Solar could have reasonably achieved the original scheduled COD of October 31, 2017 but for delays in the interconnection process.

21. Due to delays in the interconnection process, St. Louis Solar did not achieve COD until April 6, 2020.

22. PGE caused delays in the interconnection process.

23. PGE's delays caused St. Louis Solar to lose approximately 2.5 years of fixed price payments.

24. PGE billed St. Louis Solar for alleged damages due to the delays that PGE caused.

25. PGE billed St. Louis Solar for interconnection facilities that PGE did not use or did not need to use in interconnecting St. Louis Solar.

26. PGE required St. Louis Solar to perform interconnection work that St. Louis Solar was not obligated to perform.

27. PGE has refused to refund the damages or other costs.

28. PGE has refused to amend the PPA to extend the fixed price payment period.

29. St. Louis Solar seeks relief.

30. St. Louis Solar seeks a refund of all costs and alleged damages that PGE incorrectly billed to St. Louis Solar.

31. St. Louis Solar seeks relief for the fixed price payments lost due to PGE's delays.

**St. Louis Solar Could Have Reasonably Begun Receiving Fixed Price Payments As Of October 31, 2017 But For PGE's Delays**

32. St. Louis Solar could have reasonably achieved the original scheduled COD of October 31, 2017 but for delays in the interconnection process.

33. St. Louis Solar selected the scheduled COD of October 31, 2017 when it requested a PPA from PGE on March 7, 2016.

34. At the time St. Louis Solar selected the scheduled COD of October 31, 2017, St. Louis Solar reasonably expected PGE to comply with the timelines set forth in the Commission's Small Generator Interconnection Rules (OAR 860-082).

35. At the time St. Louis Solar selected the scheduled COD of October 31, 2017, St. Louis Solar reasonably expected PGE to complete any necessary interconnection studies in a timely manner.

36. At the time St. Louis Solar selected the scheduled COD of October 31, 2017, St. Louis Solar reasonably expected PGE would complete any necessary interconnection work within approximately 12 months of execution of an interconnection agreement.

37. There were no higher-queued projects above St. Louis Solar in the interconnection queue that might have triggered re-studies for St. Louis Solar.

38. St. Louis Solar executed the PPA with the scheduled COD of October 31, 2017 on June 10, 2016.

39. At the time St. Louis Solar executed the PPA, St. Louis Solar continued to reasonably expect that it could reasonably achieve COD on or around October 31, 2017.

40. At the time St. Louis Solar executed the PPA, St. Louis Solar reasonably expected PGE to comply with the remaining timelines set forth in the Commission's Small Generator Interconnection Rules (OAR 860-082).

41. At the time St. Louis Solar executed the PPA, St. Louis Solar reasonably expected PGE to complete any necessary interconnection studies in a timely manner.

42. At the time St. Louis Solar executed the PPA, St. Louis Solar reasonably expected PGE would complete any necessary interconnection work within approximately 12 months of execution of an interconnection agreement.

43. Had PGE complied with the timelines set forth in the Commission's Small Generator Interconnection Rules and with the study timelines in the Commission-approved form study agreements, then St. Louis Solar reasonably expected it could receive an executable interconnection agreement on or about October 31, 2016.

44. Had PGE's representations that interconnection would likely take approximately 12 months from executing an interconnection agreement been accurate, then St. Louis Solar could have reasonably been placed in service on or about October 31, 2017.

45. PGE did not comply with all of the timelines set forth in the Commission's Small Generator Interconnection Rules.

46. PGE did not provide all of the study results in a timely manner.

47. PGE did not provide an executable interconnection agreement to St. Louis Solar on or before October 31, 2016.

48. PGE did not place the St. Louis Solar facility in service on or before October 31, 2017.

49. PGE caused delays that to St. Louis Solar's interconnection.

50. PGE prevented St. Louis Solar from achieving the original COD of October 31, 2017.

51. PGE prevented St. Louis Solar from earning fixed price payments as of October 31, 2017.

**PGE Caused Delays During the Interconnection Study Process**

52. PGE did not process St. Louis Solar's interconnection within the time periods required under the Commission's Small Generator Interconnection Rules.

53. OAR 860-082-0025(7)(a) states that "Within 10 business days of receipt of an application to interconnect a small generator facility, the interconnecting public utility must provide written notice to the applicant stating whether the application is complete."

54. PGE did not provide written notice stating whether the St. Louis Solar application was complete within 10 business days of receiving St. Louis Solar's application.

55. St. Louis Solar applied for interconnection service on April 26, 2016.

56. On Monday, May 16, 2016, PGE emailed St. Louis Solar that the application was complete.

57. May 16, 2016 was 15 business days after April 26, 2016.

58. PGE did not provide written notice stating whether the St. Louis Solar application was complete until approximately 15 business days after receiving St. Louis Solar's application and 5 business days after PGE was required to do so.

59. OAR 860-082-0060(5) states that "A public utility must schedule a scoping meeting within 10 business days after notifying an applicant that its application is complete."

60. PGE did not schedule a scoping meeting within 10 business days after notifying St. Louis Solar that its application was complete.

61. PGE notified St. Louis Solar that the application was complete on May 16, 2016.

62. On June 6, 2016, PGE scheduled a scoping meeting for June 13, 2016.

63. On June 13, 2016, PGE rescheduled the scoping meeting for June 20, 2016.

64. On June 13, 2016, St. Louis Solar asked if the scoping meeting could be held earlier than June 20, 2016 because of the potential impacts of delays on the development schedule.

65. The scoping meeting occurred on June 20, 2016.

66. June 20, 2016 was 25 business days after May 16, 2016.

67. PGE did not schedule a scoping meeting until approximately 25 business days after notifying St. Louis Solar that the application was complete and 15 business days after PGE was required to do so.

68. OAR 860-082-0060(6) states that "If a public utility reasonably concludes that an adequate evaluation of an application requires a feasibility study, then the public utility must provide the applicant with an executable feasibility study agreement within five business days of the date of the scoping meeting."

69. PGE did not provide an executable feasibility study agreement within 5 business days of the scoping meeting.

70. The scoping meeting occurred on June 20, 2016.

71. On July 1, 2016, PGE provided a feasibility study agreement that was overly broad in scope and was not ready for execution.

72. July 1, 2016 was 9 business days after June 20, 2016.



73. On August 5, 2016, PGE provided an executable feasibility study agreement.

74. August 5, 2016 was 34 business days after June 20, 2016.

75. PGE did not provide an executable feasibility study agreement until as many as 29 business days after the five-business-day deadline passed for PGE to hold a scoping meeting for St. Louis Solar.

76. The Commission approved a standard feasibility study agreement form that provides for the study to be completed and provided to an interconnection applicant within thirty calendar days from execution unless otherwise agreed.

77. PGE did not agree to complete the feasibility study within 30 calendar days and instead inserted in an attachment to the agreement that PGE would need “at least 60 days” to complete the study.

78. St. Louis Solar signed and returned the feasibility study agreement on Monday, August 8, 2016, approximately 3 calendar days after receiving it.

79. PGE did not complete the feasibility study within 60 calendar days of August 8, 2016.

80. St. Louis Solar tried to contact PGE about the delays to interconnection.

81. On October 24, 2016, TLS Capital, Inc. (“TLS”), then the developer of St. Louis Solar, sent PGE a letter.

82. The October 24, 2016 letter explained that PGE had not met numerous interconnection timelines for several projects, including the St. Louis Solar project.

83. The October 24, 2016 letter stated that “TLS has attempted to contact Portland General Electric nearly every day for the last month, both by email and by

phone, and has yet to receive a response. TLS is requesting that Portland General Electric respond to this letter without delay and process TLS's applications per the timelines set forth in OAR 860-082-0025 and 860-082-0025."

84. PGE did not respond to TLS's October 24, 2016 letter until a phone call on November 23, 2016, approximately a month after the letter was sent.

85. On November 1, 2016, St. Louis Solar received a Feasibility Study.

86. November 1, 2016 was 85 calendar days after St. Louis Solar executed the feasibility study agreement.

87. OAR 860-082-0060(7) states that "If a public utility is required to perform a system impact study under subsection (6)(h), or if an applicant and a public utility agree in the scoping meeting to waive the feasibility study and proceed directly to the system impact study, then the public utility must provide the applicant with an executable system impact study agreement within five business days of completing the feasibility study or from the date of the scoping meeting, whichever is applicable."

88. PGE did not provide an executable system impact study agreement within 5 business days of completing the feasibility study for St. Louis Solar.

89. PGE completed the feasibility study for St. Louis Solar on or about November 1, 2016.

90. On January 19, 2017, PGE and St. Louis Solar met to discuss the interconnection.

91. At the meeting on January 19, 2017, PGE and St. Louis Solar agreed that St. Louis Solar would submit a written request to extend the COD in St. Louis Solar's PPA.

92. On January 27, 2017, St. Louis Solar sent a letter to PGE requesting that PGE agree to extend the COD in the PPA on the basis of PGE's delays to the interconnection process.

93. On January 27, 2017, St. Louis Solar requested that PGE agree to extend the COD in the PPA after PGE completed the interconnection study process.

94. On January 27, 2017, St. Louis Solar requested that PGE agree to amend the COD in the PPA to match the final interconnection in-service date.

95. On February 1, 2017, PGE responded to St. Louis Solar via email and asked for St. Louis Solar's "best informed estimate" of a new COD, because PGE "cannot provide a blanket extension without a date."

96. On February 1, 2017, St. Louis Solar provided March 31, 2018 as an estimate of when the project might be able to come online, but St. Louis Solar noted that the date was "just [an] estimate based on the information we have today. We are still at the mercy of the timeliness of completing the interconnection studies and upgrades."

97. St. Louis Solar could have achieved the first amended scheduled COD of March 31, 2018 but for additional delays in the interconnection process that occurred after February 1, 2017.

98. On February 2, 2017, PGE responded via email that PGE's representative "understand[s] your concerns please keep PGE informed of the project milestones so that we can understand the commercial operations dates going forward."

99. On February 2, 2017, PGE provided a letter.

100. PGE’s February 2, 2017 letter stated that PGE had determined that the “request for extension of the COD is warranted under Section 2.2.3” of St. Louis Solar’s PPA and therefore PGE agreed to the proposed amended COD of March 31, 2018.

101. PGE and St. Louis Solar executed the first amendment to the PPA effective February 1, 2017.

102. The first amendment to the PPA amended Section 2.2.2 of the PPA to change the scheduled COD to March 31, 2018.

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103. The purpose of the first amendment was to provide partial relief to St. Louis Solar for delays in the interconnection process that PGE either caused or failed to anticipate.

104. On and before February 1, 2017, it was St. Louis Solar’s understanding that the fixed price term in the PPA started on the COD and not on the PPA execution date.

105. On or before February 1, 2017, it was St. Louis Solar’s expectation that extensions to COD would not result in the loss of fixed price payments.

106. PGE caused additional delays to the interconnection study process after the first amendment was executed.

107. On March 16, 2017, PGE provided an executable system impact study agreement for St. Louis Solar.

108. March 16, 2017 was 97 business days after PGE completed the feasibility study.

109. PGE did not provide an executable system impact study agreement until 97 business days after PGE completed the feasibility study and 92 business days after PGE was required to do so.

110. OAR 860-082-0060(7)(b) states that “The system impact study agreement must follow the standard form agreement developed by the public utility and approved by the Commission.”

111. The system impact study agreement that PGE provided to St. Louis Solar is labelled “Form 4 8-21-09 rev.” but the agreement contains terms different than those in the form system impact study agreement that PGE filed with the Commission on or about August 21, 2009 and which the Commission approved in Order No. 09-350.

112. In requiring the utilities to maintain form interconnection agreements, the Commission recognized the value of form agreements in reducing barriers and ensuring consistent treatment.

113. The Commission also required utilities to “identify and explain any deviation . . . no matter how minor.”

114. The Commission approved a form system impact study agreement for PGE that states in Section 6 that “The System Impact Study shall be completed and the results transmitted to the Applicant within thirty (30) calendar days after this Agreement is signed by the Parties unless otherwise agreed to as part of this Agreement.”

115. PGE’s system impact study agreement for St. Louis Solar states in Section 6 that “The System Impact Study shall be completed and the results transmitted to the Applicant within thirty (30) business days after this Agreement is signed by the Parties unless otherwise agreed to as part of this Agreement” (emphasis added).

116. The change in timing is a material change between agreements.

117. PGE did not provide a standard system impact study agreement to St. Louis Solar but provided one that was different from the standard agreement approved by the Commission.

118. St. Louis Solar signed the system impact study agreement on March 20, 2017 and returned it to PGE on March 21, 2017, approximately 5 calendar days after receiving it.

119. On April 24, 2017, St. Louis Solar received a System Impact Study Report.

120. OAR 860-082-0060(8) states that "If a public utility is required to perform a facilities study under subsection (6)(i) or 7(j), or if an applicant and a public utility agree in the scoping meeting to waive the system impact study and proceed directly to the facilities study, then the public utility must provide the applicant with an executable facilities study agreement within five business days of completing the system impact study."

121. PGE did not provide an executable facilities study agreement within 5 business days of completing the system impact study for St. Louis Solar.

122. PGE completed the system impact study for St. Louis Solar on or about April 24, 2017.

123. St. Louis Solar requested an executable facilities study agreement at least three times before PGE provided one.

124. On July 27, 2017, PGE provided an executable facilities study agreement.

125. July 27, 2017 was 66 business days after April 24, 2017.

126. PGE did not provide an executable facilities study agreement until 66 business days after PGE completed the system impact study for St. Louis Solar and 61 business days after PGE was required to do so.

127. OAR 860-082-0060(8)(b) states that “The facilities study agreement must follow the standard form agreement developed by the public utility and approved by the Commission.”

128. The facilities study agreement that PGE provided to St. Louis Solar is labelled “Form 5 8-21-09 rev.” but the agreement omits language found in the form facilities study agreement that PGE filed with the Commission on or about August 21, 2009 and which the Commission approved in Order No. 09-350.

129. The Commission approved a form facilities study agreement for PGE that states in Section 6 that “In cases where no System Upgrade or Interconnection Facilities is required, the Facilities Study shall be completed and the results will be transmitted to Applicant within thirty (30) calendar days after this Agreement is signed by the Parties.”

130. PGE’s facilities study agreement for St. Louis Solar does not contain the quoted language in the above paragraph.

131. PGE did not provide a standard facilities study agreement to St. Louis Solar but provided one that was different from the standard agreement approved by the Commission.

132. In an attachment to the facilities study agreement, PGE stated that “PGE will deliver the study results within 60 days from the time that PGE has received” a signed agreement, deposit, and additional information.

133. St. Louis Solar signed the facilities study agreement on July 28, 2017 and mailed it to PGE on July 29, 2017, along with the deposit and the additional information requested.

134. PGE never requested additional information beyond that information provided on July 29, 2017 in order to complete the Facilities Study.

135. PGE did not deliver the facilities study results within 60 days from the time that PGE received the signed study agreement, deposit, and additional information.

136. St. Louis Solar requested an update on the St. Louis Solar facilities study at least 5 times before PGE provided an update via a phone call on or about September 7, 2017.

137. On September 7, 2017, St. Louis Solar requested study results as soon as they were available.

138. On November 30, 2017, St. Louis Solar received a Facility Study.

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139. November 30, 2017 was 124 calendar days after July 29, 2017.

140. PGE did not provide facility study results within 60 days as agreed in the facility study agreement and until 64 additional days after the deadline passed.

141. On November 30, 2017, St. Louis Solar reviewed the Facility Study and emailed PGE to inquire about differences between the Facility Study and the System Impact Study.

142. One concern St. Louis Solar raised was the changed timeline for completing interconnection.



143. The System Impact Study Report showed that the interconnection upgrades were expected to take 12 months from the time an interconnection agreement was executed.

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144. The Facility Study showed that the interconnection upgrades were expected to take 18 months from the time an interconnection agreement was executed.

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145. PGE did not respond to St. Louis Solar's email about the modified timeline and other questions within a reasonable amount of time.

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The purpose of the first amendment was to provide partial relief to St. Louis Solar for delays in the interconnection process that PGE either caused or failed to anticipate.

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146. St. Louis Solar asked PGE for answers to its questions at least six times before PGE responded.

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On February 1, 2017, PGE and St. Louis executed the first amendment to the PPA.  
The amendment postponed the scheduled COD to March 31, 2018.

147. On December 14, 2017, PGE apologized for the late response, stated that they had been "extremely busy lately," and promised to respond later that day.

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148. On December 15, 2017, St. Louis Solar agreed to pay the costs in the facility study for St. Louis Solar and requested an interconnection agreement.

149. On March 28, 2018, St. Louis Solar signed an Interconnection Agreement, which PGE counter-signed on May 14, 2018.

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**PGE Unreasonably Refused to Amend the PPA to Provide Adequate Relief for PGE's Delays in the Interconnection Study Process**

150. St. Louis Solar reasonably expected PGE to agree to amend the PPA to align the scheduled COD with the in-service date in the interconnection agreement based on the discussions with the first amendment to the PPA and subsequent delays and schedule changes.

151. PGE did not agree to amend the PPA to align the scheduled COD with the in-service date.

152. The Interconnection Agreement ~~provides an in-service date of October 31,~~  
2019.

153. ~~On November 7 and 16, 2018, PGE and St. Louis Solar executed the~~  
second amendment to the PPA.

154. The ~~second amendment of the PPA amended Section 2.2.1 of the PPA to~~  
~~change~~ the date of initial ~~delivery~~ of Net Output ~~to~~ January 10, 2019.

155. The ~~second amendment of the PPA amended Section 2.2.2 of the PPA to~~  
~~change~~ the scheduled COD ~~to~~ February 10, 2019.

156. The purpose of the second amendment was to provide relief to St. Louis  
Solar for delays in the interconnection process that PGE either caused or failed to  
anticipate.

~~157. In negotiating the second amendment to the PPA, PGE would not agree to~~  
~~extend the scheduled COD to a date later than February 10, 2019.~~

~~158. Prior to deciding not to agree to extend the scheduled COD, PGE should~~  
~~have determined that a later COD was warranted under Section 2.2.3 of the PPA but did~~  
~~not do so.~~

~~159. PGE should have agreed to extend the scheduled COD to a date later than~~  
~~February 10, 2019 but did not do so.~~

160. St. Louis Solar agreed to a scheduled COD of February 10, 2019, rather  
than a ~~later date~~, because ~~February 10, 2019~~ was the latest date that PGE would agree to.

~~161. PGE should have agreed to amend the commencement date of the fixed~~  
~~price payment period to reflect the delays but did not do so.~~

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**Deleted:** <#>The Interconnection Agreement specifies that PGE was responsible for ensuring the project achieved its "in-service date" on or before October 31, 2019. ¶

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162. The PPA requires PGE to offer St. Louis Solar up to 15 years of Renewable Fixed Price Option pricing.

163. At least some of PGE's standard PPA forms have been interpreted to begin fixed price payments beginning on the date of PPA execution.<sup>9</sup>

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164. This interpretation is being appealed and may change.<sup>10</sup>

165. Fixed Price payments provide financial certainty to QFs and are essential to QF financing.

166. In July 2017, the Commission ordered PGE to change its standard contracts to offer pricing beginning on the date of power delivery.<sup>11</sup>

167. The Commission has stated, "Prices paid to a QF are only meaningful when a QF is operational and delivering power to the utility. Therefore, we believe that, to provide a QF the full benefit of the fixed price requirement, the 15-year term must commence on the date of power delivery."<sup>12</sup>

168. Because St. Louis Solar's PPA is a standard PPA and the Commission's current interpretation of at least some of PGE's standard PPA forms is that PGE must begin fixed price payments on the date of execution rather than the "date of power delivery," St. Louis Solar is significantly harmed by every delay to power delivery.

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<sup>9</sup> *NIPPC et al. vs. PGE*, Docket No. UM 1805, Order No. 17-256 at 1 (July 13, 2017).

<sup>10</sup> Docket No. UM 1931, Order No. 19-255 (August 2, 2019); Docket No. UM 1931, Petition for Judicial Review (Jan. 10, 2020).

<sup>11</sup> Docket No. UM 1805, Order No. 17-256 at 4.

<sup>12</sup> *Id.*

169. In the amendment to the PPA dated November 16, 2018, parties agreed to amend the PPA in order to provide some relief to St. Louis Solar from the harm of delays caused by PGE.

170. At the time of the amendment, the Commission was considering the question of whether fixed price payments for QFs who, like St. Louis Solar, had executed standard contracts with PGE should begin at the date of PPA execution or at a later date such as the scheduled COD.<sup>13</sup>

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171. If PGE must begin fixed-price payments at power delivery, rather than the earlier date of PPA execution, then St. Louis Solar would have benefited from having fewer lost fixed price payments prior to power delivery.

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172. Rather than choose to abide by whatever decision the Commission reached, PGE demanded a one-sided term be added to the second amendment that was unrelated to the issue of interconnection delays.

173. The following term was included: "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."

<sup>13</sup> *PGE vs. Alfalfa Solar I, LLC, et al.*, Docket No. UM 1931, PGE's Complaint (Jan. 25, 2018); Docket No. UM 1931, Order No. 19-255.

174. The effect of this term is limited to a potential circumstance in which the Commission specifically orders PGE to modify the commencement date for fixed price payments.

175. The one-sidedness of this term was egregious, particularly in light of the intent of the second amendment, which was to remedy some of the harm PGE caused to St. Louis Solar through delays.

176. In effect, PGE offered to remedy the harm it had caused through delays to St. Louis Solar only if St. Louis Solar agreed to risk suffering additional harm specifically in contravention of any relief that might have been offered by the Commission.

177. The potential harm amounted to, at minimum, the loss of fixed price payments for more than 15 months, i.e., the amount of time between the original scheduled COD of October 31, 2017 and the then-amended scheduled COD of February 10, 2019.

178. The potential harm also included the risk of additional delays to COD being achieved.

179. The risk of additional delays to COD was high.

180. The Commission did not order PGE to change the commencement date in any existing executed PPAs to begin on a date later than the date of execution.<sup>14</sup>

181. In the second amendment to the PPA, PGE refused to agree to amend the COD to match the in-service date in the interconnection agreement.

<sup>14</sup> Docket No. UM 1805, Order No. 17-256 at 2.

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182. In the second amendment to the PPA, PGE refused to agree to modify the commencement date of the fixed price payment period to reflect the delays PGE caused.

**PGE Prevented St. Louis Solar from Achieving COD and Then Charged St. Louis Solar for Alleged Damages**

183. On December 15, 2018, the St. Louis Solar project was completed, with final electrical permit sign off on January 23, 2019.

184. St. Louis Solar would have completed its project earlier but for the delays in the interconnection study process.

185. St. Louis Solar was ready to be energized in December 2018.

186. After December 15, 2018, St. Louis Solar had to wait for PGE to complete the interconnection so that St. Louis Solar could begin to sell power pursuant to the PPA.

187. On January 10, 2019, St. Louis Solar was not able to meet its initial delivery date because PGE had not completed the interconnection by that date.

188. St. Louis Solar was not able to complete interconnection testing and commissioning because PGE had not completed the interconnection.

189. On February 10, 2019, St. Louis Solar was not able to achieve its scheduled COD because PGE had not completed the interconnection facilities and testing had not been completed.

190. Failure to achieve COD constitutes a default under the PPA.

191. On February 10, 2019, the PPA provided for a one-year cure period for failure to meet the COD.

192. After the cure period ends, PGE may immediately terminate the PPA.

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193. On February 11, 2019, PGE provided St. Louis Solar with a notice of default under the PPA for failure to achieve the scheduled COD.

194. The notice of default specified that St. Louis Solar had one year from February 11, 2019, the date of notice, to cure.

195. It was unreasonable for PGE to provide St. Louis Solar with a notice of default when PGE was preventing St. Louis Solar's performance.

196. On March 25, 2019, PGE informed St. Louis Solar that they were still working on substation upgrades, had not been able to schedule fiber installation, and could take months to complete interconnection.

197. On March 25, 2019, PGE asserted that PGE had until October 31, 2019 to complete interconnection.

198. On April 3, 2019, PGE ~~sent~~ St. Louis Solar ~~an invoice~~ for alleged damages ~~under the PPA.~~

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199. On April 25, 2019, PGE sent St. Louis Solar a second invoice for alleged damages under the PPA.

200. St. Louis Solar has consistently paid these invoices with the expectation that energization was imminent.

201. St. Louis Solar has not received an invoice for alleged damages since April 2019.

202. It ~~was~~ unclear if PGE attempted to send additional invoices ~~prior to~~ February 2, 2020.

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203. It ~~was~~ unclear if PGE ~~intended~~ to send additional invoices ~~prior to~~ February 2, 2020.

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204. PGE has refused to agree that it will not send future invoices for alleged damages arising from the failure to achieve COD.

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205. In a letter dated August 14, 2019, PGE asserted that PGE “has been invoicing St. Louis Solar . . . since April 2019.”

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206. PGE’s delays to the interconnection process prevented St. Louis Solar from achieving COD until April 6, 2020.

**PGE Caused Additional Delays During the Interconnection Construction Process**

207. St. Louis Solar has contacted PGE several times regarding interconnection.

208. One of the delays to achieving interconnection has been PGE’s errors and mistakes in running a communications line across a railroad.

209. On May 17, 2019, PGE informed St. Louis Solar that PGE had sought a railroad permit in December 2018.

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210. On June 4, 2019, PGE informed St. Louis Solar that PGE had been unsuccessful in acquiring a necessary permit to install interconnection facilities across a railroad from the State Department of Lands and was now “attempting” to file for a permit with the Oregon Department of Transportation.

211. PGE spent several months working with a railroad that did not have rights to the property and with government agencies that did not have jurisdiction over the issue.

212. On July 26, 2019, St. Louis Solar sent PGE a letter expressing its concerns.



213. In the July 26 letter, St. Louis Solar requested that PGE either timely complete interconnection or allow St. Louis Solar to complete interconnection.

214. In the July 26 letter, St. Louis Solar requested that PGE refund St. Louis Solar for the invoices for alleged damages under the PPA and stop sending invoices for alleged damages.

215. In the July 26 letter, St. Louis Solar requested that PGE agree to amend the PPA in light of the interconnection delays.

216. On August 14, 2019, PGE sent St. Louis Solar a letter.

217. In the August 14 letter, PGE responded that St. Louis Solar had no basis to expect interconnection to be completed prior to October 31, 2019.

218. In the August 14 letter, PGE responded that PGE was on schedule to place the interconnection in service by October 31, 2019.

219. In the August 14 letter, PGE responded that PGE would not refund St. Louis Solar for the alleged damages and refused to agree not to bill St. Louis Solar for alleged damages in the future.

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220. In the August 14 letter, PGE responded that PGE would not agree to amend the PPA.

221. Prior to deciding not to agree to amend the PPA, PGE should have determined that a later COD was warranted under Section 2.2.3 of the PPA but did not do so.

222. The Interconnection Agreement includes a list of “critical milestones” for the project and an indication of the party responsible for meeting that critical milestone.

223. The Interconnection Agreement specifies that PGE was responsible for completing the interconnection facilities on or before September 27, 2019.

Moved (insertion) [7]

224. The interconnection agreement required PGE to ensure that the interconnection facilities were complete on or before September 27, 2019.

225. PGE did not complete the interconnection facilities for the St. Louis Solar project on or before September 27, 2019.

226. On September 27, 2019, PGE failed to meet the “critical milestone” under the interconnection agreement of ensuring that the interconnection facilities were complete.

227. On October 7, 2019, PGE notified St. Louis Solar that PGE had received some but not all of the documents needed to complete the interconnection facilities.

228. On October 7, 2019, PGE represented that interconnection would be completed quickly once the last permit was obtained. The Interconnection Agreement specifies that PGE was responsible for ensuring the project achieved its “in-service date” on or before October 31, 2019.

229. The interconnection agreement required PGE to ensure that the St. Louis Solar project was in service on or before October 31, 2019.

230. PGE did not place the St. Louis Solar project in service on or before October 31, 2019.

231. On October 31, 2019, PGE failed to meet the “critical milestone” under the interconnection agreement of ensuring that the project was in-service.

232. On October 31, 2019, PGE notified St. Louis Solar that PGE had received the last permit needed to install fiber optic cable across the railroad right-of-way.

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233. On November 25, 2019, PGE notified St. Louis Solar that the interconnection facilities were not complete because the site was lacking a necessary relay.

234. PGE and St. Louis Solar disagree about which party was responsible for installing the relay.

235. On November 25, 2019, PGE asserted that St. Louis Solar was responsible for installing the relay.

236. PGE never previously informed St. Louis Solar of PGE's position that St. Louis Solar was responsible for installing the relay.

237. On November 26, 2019, St. Louis Solar responded that the interconnection agreement required PGE to install the relay.

238. On December 2, 2019, PGE responded that the relay was St. Louis Solar's responsibility and cited PGE's currently effective Distribution Interconnection Standards. PGE did not cite Distribution Interconnection Standards published at the time that the interconnection agreement was executed.

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239. It is unclear whether PGE had Distribution Interconnection Standards at the time the interconnection agreement was executed.

240. If PGE had Distribution Interconnection Standards at the time the interconnection agreement was executed, PGE had not yet published those standards at that time.

241. PGE told Commission Staff on or about August 30, 2019 that PGE would be publishing PGE's distribution interconnection standards and other documents on PGE's OASIS "in the coming months."

242. PGE did not previously provide St. Louis Solar with any of its Distribution Interconnection Standards but only with the Interconnection Agreement.

243. St. Louis Solar disagreed with PGE's interpretation of the interconnection agreement but proceeded to order and install the relay in the interest of obtaining energization as soon as possible.

244. PGE was obligated under the interconnection agreement to perform the work regarding the relay.

245. The interconnection agreement states that "Space in the Interconnection Customers switchgear will need to be made available for a meet-me cabinet where PGE will install the transfer trip relay panel and associated components."

246. PGE was obligated to "install the transfer trip relay panel and associated components."

247. PGE provided the same language quoted above in the Facility Study for St. Louis Solar dated November 30, 2017.

248. PGE provided the same language quoted above in at least four other Facility Studies dated November 30, 2017 for other interconnection customers (SPQ0012, SPQ0014, SPQ0016, and SPQ0022).

249. PGE was obligated to procure the transfer trip relay panel and any associated components for St. Louis Solar's interconnection.

250. Sometime after the interconnection agreement was fully executed, PGE changed its approach and began requiring interconnection customers to procure and install any required transfer trip relay panel and associated components.

251. In recent Facility Studies, PGE has stated that “The Interconnection Customer will be responsible for purchasing and installing the relays for transfer trip. Prior to testing, a copy of the setting must be provided to PGE for review.”

252. If PGE wished to have St. Louis Solar procure and install the transfer trip relay panel and associated components, PGE should have conveyed that as a request to amend the interconnection agreement to St. Louis Solar.

253. PGE never asked St. Louis Solar to amend the interconnection agreement.

254. PGE did not ask St. Louis Solar to procure and install the transfer trip relay panel until approximately November 25, 2019.

255. The unamended interconnection agreement obligated PGE to perform the work regarding the relay.

256. PGE caused delay by demanding that St. Louis Solar complete a task that PGE was obligated to perform under the interconnection agreement.

257. St. Louis Solar was not responsible for ordering or installing the relay but proceeded to do so because PGE’s refusal to do so was causing delays to St. Louis Solar’s interconnection.

258. On December 3, 2019, St. Louis Solar provided PGE with information about a potential relay and asked PGE to confirm that the equipment specifications were acceptable to PGE.

259. On December 3, 2019, PGE responded that PGE was circulating the relay information with PGE’s engineers and would let St. Louis Solar if there were any concerns.

260. On December 4, 2019, St. Louis Solar asked for an update on PGE’s review of the proposed relay so that St. Louis Solar could order the relay and avoid delaying interconnection.

261. On December 5, 2019, PGE approved the proposed relay.

262. On December 5, 2019, PGE told St. Louis Solar that PGE would need to approve the relay settings prior to scheduling “the end to end testing (transfer trip).”

263. On December 5, 2019, St. Louis Solar emailed PGE and asked if PGE’s relay setting requirements as stated in PGE’s Distribution Interconnection Standards document had changed.

264. On December 9, 2019, PGE responded that PGE’s “protection engineers review each interconnect on a case by case basis. Please have your engineer develop the settings based on their expertise and provide that to PGE. Our engineers will review the project holistically and make comments as necessary. They are not able to make any evaluations until all information has been submitted to us.”

265. On December 31, 2019, PGE notified St. Louis Solar that PGE ~~planned to~~ inspect the facility in the coming week.

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266. On January 8, 2020, St. Louis finished installing the relay.

267. On January 8, 2020, St. Louis Solar responded that the relay was installed and inquired when PGE would finish the interconnection work.

268. On January 9, 2020, PGE responded that ~~PGE was scheduling~~ the work ~~and that PGE could not deem the project to have met COD until after~~ PGE approved St. Louis Solar’s relay settings.

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269. On January 15, 2020, St. Louis Solar inquired with PGE about when PGE might complete the interconnection work.

270. On January 15, 2020, PGE responded that the work was still being scheduled to be done.

271. On January 15, 2020, PGE responded that PGE could not deem the project to have met COD until after PGE approved St. Louis Solar's relay settings.

272. On January 16, 2020, St. Louis Solar inquired with PGE about whether it was possible to integrate the new relay with the PTs and CTs already installed on PGE's revenue meter or whether new PTs and CTs were needed.

273. On January 20, 2020, PGE responded that St. Louis Solar would need to install new PTs and CTs because PGE's metering instrument transformers are not rated for protection.

274. On January 20, 2020, St. Louis Solar responded that St. Louis Solar had obtained the new equipment to integrate the new relay and inquired again when PGE would complete the fiber installation.

275. On January 22, 2020, St. Louis Solar provided its proposed relay settings, including a single-line drawing that focused on the relay and nearby equipment, to PGE for approval. On January 24, 2020, St. Louis Solar sent PGE a letter.

276. In the January 24 letter, St. Louis Solar asked PGE to agree to amend the PPA.

277. In the January 24 letter, St. Louis Solar asked PGE to change the initial delivery date to April 12, 2019.

**Deleted:** <#>On January 15, 2020, PGE responded that it was scheduling the work to be done.

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**Deleted:** PGE has failed to complete the interconnection facilities. The failure to complete interconnection is due to PGE's actions and inactions.

**Deleted:** believes that interconnection could have been completed months earlier but for PGE's ineffective approach and mistakes.

If PGE's actions were not mistakes, then they were negligent.

If PGE's actions were not negligent, then they were malfeasant.

St. Louis Solar cannot conduct the necessary testing and commissioning that the interconnection agreement states must be done until after the interconnection facilities are complete.

St. Louis Solar has been unable to sell power pursuant to the PPA because of PGE's failure to complete interconnection. St. Louis Solar is at risk of PGE terminating

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Failure to achieve COD constitutes

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The PPA provides for a one-year cure period for failure

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After the one-year cure period ends,

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PGE's failure to complete interconnection is the reason why COD has not been achieved.

On February 11, 2020, the one-year cure period may end.

On February 11, 2020, PGE could demand to immediately terminate the PPA.

278. In the January 24 letter, St. Louis Solar asked PGE to change the scheduled COD to May 13, 2019.

279. In the January 24 letter, St. Louis Solar asked PGE to change the commencement date for fixed price payments to at least 92 days from the PPA's effective date.

280. On January 26, 2020, PGE acknowledged receipt of the proposed relay settings.

281. On January 30, 2020, PGE responded to St. Louis ~~Solar's January 24 letter~~ via letter.

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282. In the January 30 letter, PGE ~~did not agree~~ to change the initial delivery date ~~as St. Louis Solar had requested.~~

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283. In the January 30 letter, PGE ~~did not agree~~ to change the scheduled COD, ~~as St. Louis Solar had requested.~~

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284. In the January 30 letter, PGE ~~did not agree~~ to change the commencement date for fixed price payments, ~~as St. Louis Solar had requested.~~

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285. In the January 30 letter, PGE offered to extend the cure period by 45 days.

286. On January 30, 2020, PGE requested a one-line diagram showing all fuses, breakers, and relays and showing transformer impedance for PGE's engineers reviewing the proposed relay settings.

287. PGE should have reviewed St. Louis Solar's one-line diagram prior to PGE giving St. Louis Solar notice to proceed on plant construction.

288. On February 3, 2020, St. Louis Solar filed a complaint in this docket.



289. On February 3, 2020, St. Louis Solar provided the one-line diagram as requested (within approximately 3 business days of PGE's request).

290. On February 3, 2020, St. Louis Solar expressed concern that PGE's January 30 request implied: 1) that PGE was conducting a review outside of the scope of the relay design review; and 2) that PGE may not have conducted adequate due diligence in previously approving the site, construction, or choice of relay.

291. On February 3, 2020, St. Louis Solar asked for an update on PGE's review of the relay settings.

292. On February 4, 2020, St. Louis Solar inquired when PGE could schedule a relay tech to adjust settings and test the relay.

293. On February 5, 2020, PGE responded that a relay tech was scheduled for February 6, 2020.

294. On February 5, 2020, St. Louis Solar asked PGE for a response to the concerns raised by St. Louis Solar on February 3, 2020.

295. On February 6, 2020, PGE responded that PGE's engineers had reviewed the proposed relay settings and had no comments on the relay settings.

296. On February 6, 2020, PGE notified St. Louis Solar that "[A]n issue has been identified with the installed fuse for the facility. In order to prevent reliability issues impacting other customers on the feeder, the St Louis Solar facility will need to have 140 Amp T-Link fuses instead of the 300E fuses currently installed in order to coordinate with the upstream fuses on the PGE feeder. Once the fuses have been replaced, we will be able to energize the facility and complete our transfer trip testing."

297. If the use of 300E fuses presented reliability issues, then PGE should have identified those issues during the interconnection study process.

298. On February 6 and 12, 2020, St. Louis Solar raised several concerns and questions about PGE's requirement that St. Louis Solar install new fuses in PGE's side of the switchgear.

299. St. Louis Solar expressed concern that PGE's engineers had previously reviewed and approved the switchgear design, including the 300E fuses.

300. St. Louis Solar asked PGE to explain PGE's conclusion that the 300E fuses were oversized since that conclusion conflicts with the final engineering design.

301. St. Louis Solar could not install new fuses in PGE's side of the switchgear unless PGE unlocked the switchgear, because it is PGE's responsibility to maintain that equipment.

302. On February 10, 2020, PGE confirmed that the relay settings had been verified but also stated that PGE's Meter Relay Tech "added a couple of items" to the settings.

303. On February 10, 2020, St. Louis Solar signed the third amendment to the PPA, which PGE counter-signed on February 12, 2020.

304. The purpose of the third amendment was to provide partial relief to St. Louis Solar for delays in the interconnection process that PGE either caused or failed to anticipate.

305. The third amendment to the PPA amended Section 9.2 of the PPA to extend the one-year cure period until March 26, 2020.

306. PGE did not agree to any other changes in the third amendment.

307. On February 13, 2020, St. Louis Solar emailed PGE for an update on the fuse issue and notified PGE that the requested T-Links would not fit in the switchgear.

308. On February 17, 2020, St. Louis Solar provided updated relay settings.

309. On February 17, 2020, PGE notified St. Louis Solar that PGE's Senior Project Manager Jordan Messinger was having conversations with both PGE's distribution engineers and PGE's legal team to evaluate alternative options on the fuse issue and would keep St. Louis Solar updated.

310. On February 18, 2020, PGE provided feedback on the updated relay settings and asked for an updated copy of the relay settings for final check after revisions were made.

311. PGE's February 18, 2020 email to St. Louis Solar referenced an email between PGE employees on January 27, 2020.

312. PGE knew of a potential problem with the St. Louis Solar relay settings since at least January 27, 2020, and PGE did not express the concern until February 18, 2020, despite telling St. Louis Solar on February 6, 2020 and again on February 10, 2020 that the settings were approved without comment.

313. On February 19, 2020, St. Louis Solar emailed PGE for an update on the fuse issue.

314. On February 21, 2020, PGE emailed St. Louis Solar and stated that "This issue turned out to be more complicated than I first anticipated. After speaking with our Protection Engineers, adding a fuse to the PGE side of the solar facility tap line would solve the protection issue with the solar plant, but would lead to a decrease in reliability to other customers on the same feeder, which is not something that we are able to do.

The only way to avoid changing the fuse at the solar facility would be to perform a total change out of the in line protection system on that feeder, which would result in a much higher cost and longer delay. At this point, the best option is to proceed with changing the fuse at the solar facility as previously requested by PGE. After getting this information from our technical team, I spoke with our legal team since this project is already in a cure period. Given the unique circumstances of this particular project, they have agreed that the best course of action is to require that the solar facility fuse be changed out, with the understanding that this could result in additional delay and a need for an additional extension to the cure period.”

315. On February 21, 2020, St. Louis Solar responded to PGE and stated that “Since this switchgear as installed was approved by PGE prior to fabrication and built to this PGE approved configuration, we have to assume PGE will bear the costs of this change. I don’t know yet how long it will take to procure the necessary equipment to accomplish this requested conversion, will PGE also cover our lost revenue during this time period?”

316. PGE never responded to St. Louis Solar’s February 21, 2020 email.

317. On February 24, 2020, St. Louis Solar provided updated relay settings.

318. On February 24, 2020, St. Louis Solar informed PGE that the T-Link fuses were not an option in the switchgear and inquired about changing to 125E or 150E fuses instead.

319. On February 25, 2020, St. Louis Solar’s engineer raised several questions and concerns with PGE’s proposed approach to the fuse issue.

320. Those concerns include that: 1) PGE’s engineers previously approved the 300E sizing for the fuse; 2) PGE requested that the developer of the St. Louis Solar project be responsible for fuse coordination on PGE’s system; 3) that St. Louis Solar had not provided adequate information for a non-PGE engineer to provide any technical opinion on the appropriate fuse sizing.

321. On February 26, 2020, PGE responded to St. Louis Solar’s engineer and stated that “If the developer replaces their 300E fuses with 125E fuses, we will have sufficient fuse coordination.”

322. On February 27, 2020, St. Louis Solar’s engineer (Nimbus Power Engineers) emailed PGE and stated that “I think 125E fuses can be used in place of the 300E fuses located in the metering switchgear cabinet. The 125E fuse will likely operate before the 140T fuse with faults occurring downstream of these proposed 125E fuses. Nimbus Power Engineers does not make any claims or guarantees this modification provides improved reliability to PGE’s customers sharing the distribution line with the St Louis Solar facility. Information about the distribution system is unavailable and therefore a review of system reliability cannot be made. The inverter system has a nominal rating of 2.2 MVA, the line current at this nominal load is 102 Amps on the 12.47 KV circuit. The 125 Amp fuse with a minimum melt close to 300 Amps will likely not impact generator operation. According to the engineered St Louis drawing set, the 15KV conductors from the GSU transformer to the metal clad switchgear are size 3/0, which has a 200 Amp rating at 75C. Fuses located on the [St. Louis Solar] side of the point of interconnection are 200E. These fuses are sized to the 3/0 conductor as recommended by industry standards. The service conductor from the switchgear to the

tap, is not known, nor is the conductor to the 140T fuse. These conductors are assumed to be appropriately sized under PGE Engineering supervision. Nimbus Power Engineers also expects PGE Engineering has diligently sized these conductors to handle the anticipated ST Louis Solar Station along with other existing PGE customers.”

323. St. Louis Solar and St. Louis Solar’s engineer continue to have concerns about PGE’s proposed approach to the fuse issue.

324. The engineer working for St. Louis Solar expressed concern that it was impossible for him to design the fuses or approve the work as appropriate because doing so would require reviewing information about PGE’s system that is confidential and was not shared.

325. The engineer working for St. Louis Solar expressed concern that it was inappropriate for PGE to ask him to perform engineering work for the benefit of PGE and not for his client, St. Louis Solar.

326. PGE would not proceed with interconnection until the engineer working for St. Louis Solar performed engineering work for PGE that PGE’s engineers should have done.

327. St. Louis Solar continues to have concerns that the new fuses were not necessary because PGE already has a cut-out fuse on a nearby utility pole.

328. PGE has refused to acknowledge that the cut-out fuse exists.

329. A cut-out fuse exists on a utility pole nearby the St. Louis Solar project.

330. PGE stated the utility pole has a solidly bladed cutout (a non-fused cutout).

331. PGE's line crew has done site electrical isolation at the cut-out fuse on the nearby utility pole rather than at the intended switchgear fused disconnects.

332. It would be impossible for PGE's line crew to perform site electrical isolation at a solidly bladed cut-out.

333. It was unnecessary for PGE to require St. Louis Solar to install new fuses in PGE's side of the switchgear, since a cut-out fuse already exists on the nearby utility pole.

334. St. Louis Solar continues to have concerns that the new switchgear fuse might not have been needed if PGE reconducted the line as PGE was obligated to do under the interconnection agreement.

335. It is unclear whether PGE actually reconducted the line.

336. It is unclear whether PGE required the original 300E fuse sizing on the basis that PGE would reconductor the line.

337. It is unclear whether PGE required the fuse to be resized because PGE did not reconductor the line.

338. PGE has not demonstrated that the new switchgear fuse was necessary to interconnect St. Louis Solar.

339. The new switchgear fuse was not necessary to interconnect St. Louis Solar.

340. PGE approved the wrong sized fuse in the original St. Louis Solar site design.

341. Alternatively, PGE required an unnecessary change in fuse design in February 2020.

342. PGE's errors or mistakes regarding the fuse issue caused delays to St. Louis Solar's interconnection.

343. On February 27, 2020, PGE conveyed information to St. Louis Solar from PGE's engineer reviewing the proposed relay settings.

344. On February 28, 2020, St. Louis Solar responded to PGE's engineers' questions and provided updated relay settings.

345. On March 3, 2020, PGE approved the updated relay settings and stated that the installation of a 125E fuse "is an acceptable solution."

346. On March 12, 2020, St. Louis Solar asked PGE for an update on when the St. Louis Solar project site would be energized.

347. On March 12, 2020, PGE responded that PGE had a line crew scheduled for March 17, 2020.

348. On March 18, 2020, PGE emailed St. Louis Solar that PGE had ordered its relay tech to stop work on the St. Louis Solar site due to one or more wiring issues related to the relays.

349. On March 18, 2020, St. Louis Solar installed the new fuses.

350. On March 19, 2020, St. Louis Solar responded that all issues had been resolved and St. Louis Solar's engineer would be completing a final check on March 20, 2020.

351. On March 25, 2020, St. Louis Solar and PGE signed the fourth amendment to the PPA.



352. The purpose of the fourth amendment was to provide partial relief to St. Louis Solar for delays in the interconnection process that PGE either caused or failed to anticipate.

353. The fourth amendment to the PPA amended Section 9.2 of the PPA to extend the cure period until April 9, 2020.

354. PGE refused to agree to any other changes in the fourth amendment.

355. On March 26, 2020, St. Louis Solar emailed PGE that the relay test was successful and asked about PGE's availability to perform a witness test.

356. On March 26, 2020, PGE confirmed availability to perform a witness test on March 27, 2020.

357. On or about March 26, 2020, PGE placed the interconnection in service.

358. On April 1, 2020, St. Louis Solar completed the 5-day testing.

359. On April 6, 2020, PGE deemed St. Louis Solar to have achieved COD.

360. But for PGE's actions and inactions, St. Louis Solar would have achieved COD earlier than April 6, 2020.

361. PGE's actions and inactions prevented St. Louis Solar from achieving COD until on or about April 6, 2020.

362. PGE failed to provide interconnection service to St. Louis Solar on time or otherwise in a timely manner.

363. The St. Louis Solar project could have been interconnected months earlier but for PGE's ineffective approach and mistakes.

364. If PGE's actions and inactions were not mistakes, then they were negligent.

365. If PGE's actions and inactions were not negligent, then they were malfeasant.

366. St. Louis Solar was unable to meet COD and sell power pursuant to the PPA until on or about April 6, 2020 because of PGE's failure to provide interconnection service on time or otherwise in a timely manner.

367. In addition to being unable to meet COD and sell power until April 6, 2020, St. Louis Solar suffered additional harm due to the delayed interconnection.

368. St. Louis Solar has lost valuable months of fixed-price payments.

369. Under the PPA, as currently amended, fixed price payments to St. Louis Solar are interpreted to begin on the date of execution (i.e., June 10, 2016).

370. On February 10, 2020, St. Louis Solar had lost 25% of its potential fixed price payments (i.e., 45 months out of 180 total).

371. By the time St. Louis Solar achieved COD on April 6, 2020, St. Louis Solar had lost approximately 26% of its potential fixed price payments (i.e., 47 months out of 180 total).

372. PGE caused the delays to St. Louis Solar achieving COD.

373. PGE caused or failed to anticipate at least 513 days (approximately 17 months) of delay during the interconnection study process.

374. PGE caused or failed to anticipate at least 375 days (approximately 12.5 months) of delay during the interconnection construction process.

375. In the second amendment to the PPA, if the Commission ordered PGE to change the date, the parties agreed to change the commencement date to 509 days after the date of execution (i.e., October 31, 2017) (an extension of approximately 17 months).

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Moved up [8]: <#> been interpreted to begin fixed price payments beginning on the date of PPA execution.<sup>15</sup> ¶ This interpretation is being appealed and may change.<sup>16</sup> ¶ Fixed Price payments provide financial certainty to QFs and are essential to QF financing. ¶ In July 2017, the Commission ordered PGE to change its standard contracts to offer pricing beginning on the date of power delivery.<sup>17</sup> ¶ The Commission has stated, "Prices paid to a QF are only meaningful when a QF is operational and delivering power to the utility. Therefore, we believe that, to provide a QF the full benefit of the fixed price requirement, the 15-year term must commence on the date of power delivery."<sup>18</sup> ¶ Because St.

Deleted: <#>Louis Solar's PPA is currently interpreted to begin fixed price payments on the date of execution rather than the "date of power delivery," St.

Moved up [9]: <#>Louis Solar is significantly harmed by every delay to power delivery. ¶ In the amendment to the PPA dated November 16, 2018, parties agreed to amend the PPA in order to provide some relief to St. Louis Solar from the harm of delays caused by PGE. ¶ At the time of the amendment, the Commission was considering the question of whether fixed price payments for QFs who, like St. Louis Solar, had executed standard contracts with PGE should begin at the date of PPA execution or at

Deleted: <#>The PPA required PGE to offer St. Louis Solar up to 15 years of Renewable Fixed Price Option pricing. ¶ The PPA has

Deleted: <#>the scheduled COD.<sup>19</sup> ¶

Moved up [10]: <#>If PGE must begin fixed-price payments at power delivery, rather than the earlier date of PPA execution, then St. Louis Solar would have benefited from having fewer lost fixed price payments prior to power delivery. ¶ Rather than choose to abide by whatever decision the Commission reached, PGE demanded a one-sided term be added to the second amendment that was unrelated to the issue of interconnection delays. ¶ The following term was included: "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

Deleted: <#>The risk of additional delays to COD was high, as demonstrated by the current petition for an extension of the project's COD. ¶ The Commission did not order PGE to change the commencement date.<sup>20</sup> ¶

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376. In its letter dated January 24, 2020, St. Louis Solar requested the commencement date be changed to at least 92 days from the Effective Date (i.e., at least September 10, 2016) (an extension of approximately 3 months).

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377. An extension of 92 days would not remedy all of the harm that St. Louis Solar has suffered.

378. St. Louis Solar's request on January 24, 2020, was made in the interest of avoiding a dispute with PGE.

379. Despite earlier agreeing to potentially amend the commencement day to occur 17 months later, PGE has not agreed to amend the commencement day to occur 3 months later than the PPA execution date.

380. PGE did not specifically mention St. Louis Solar's request for a 92-day extension in its responsive letter dated January 30, 2020.

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381. PGE has not provided any indication of willingness to change the commencement date of fixed price payments.

382. St. Louis Solar continued to suffer harm from lost fixed-price payments for every delay to power delivery until it achieved COD on April 6, 2020.

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383. In addition to the above harms, St. Louis Solar has been forced to make payments to PGE for alleged damages arising from the failure to achieve COD.

384. On April 3, 2019, PGE sent an invoice to St. Louis Solar demanding payment for alleged damages in the amount of \$12,569.94 due on or before April 30, 2019.

385. On April 25, 2019, PGE sent an invoice to St. Louis Solar demanding payment for alleged damages in the amount of \$11,215.76 due on or before May 5, 2019.

386. St. Louis Solar does not know whether PGE will ~~send~~ additional invoices in the future, demanding payment for alleged damages.

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387. As of February 3, 2020, PGE ~~had~~ demanded payments from St. Louis Solar for alleged damages totaling more than \$23,000.

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388. PGE has denied St. Louis Solar's requests for relief from these invoices.

389. Collecting delay damages provided PGE an economic incentive to continue to delay interconnection service.

390. St. Louis Solar paid the bills sent by PGE because St. Louis Solar wished to ~~simply continue to work toward energization and avoid disputes with PGE.~~

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391. ~~St. Louis Solar paid the bills sent by PGE because St. Louis Solar believed that PGE would complete interconnection soon and St. Louis Solar's ability to energize the project was imminent.~~

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~~392. PGE's actions caused material and harmful interconnection delays.~~

~~393. PGE is obligated to provide interconnection service at a just and reasonable rate.~~

~~394. The costs and losses that St. Louis Solar has suffered in seeking interconnection service are outrageous.~~

~~395. St. Louis Solar paid \$629,000 to PGE for interconnection services, including \$153,000 for communications requirements.~~

~~396. The interconnection agreement requires PGE to provide a final accounting report "within one hundred and twenty (120) calendar days of completing the construction and installation of PGE's interconnection facilities and Distribution Upgrades" described in the interconnection agreement.~~

397. PGE ultimately completed the “construction and installation of PGE’s interconnection facilities and Distribution Upgrades” on or about March 26, 2020.

398. PGE was obligated to provide a final accounting report to St. Louis Solar on or before July 24, 2020.

399. As of August 26, 2020, St. Louis Solar has not received a final accounting report from PGE.

400. PGE has displayed a pattern of misbehavior towards and discrimination against QFs generally.

401. PGE’s behavior in failing to complete interconnection in a timely manner reflects a pattern of misbehavior towards and discrimination against QFs.

402. PGE’s behavior in billing QFs for alleged damages from delays to COD caused by PGE’s delayed interconnection service reflects a pattern of misbehavior towards and discrimination against QFs.

## VII. LEGAL CLAIMS

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

**St. Louis Solar is entitled to relief because PGE has breached the PPA by unreasonably withholding its agreement to a later COD that St. Louis Solar has shown to be reasonable and necessary and by billing St. Louis Solar for alleged damages for failure to meet COD.**

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403. Complainant re-alleges all the preceding paragraphs.

404. PGE is obligated to purchase a QF’s net output that is directly or indirectly made available to PGE. 18 CFR 292.303(a), 292.304(d); ORS 758.525(2), 758.535(2)(a)&3(b); OAR 860-029-0030(1).

405. PGE and St. Louis Solar have executed a standard renewable PPA for the purpose of enabling St. Louis Solar to sell its net output directly to PGE.

406. Section 2.2.3 of the PPA provides that PGE may not withhold agreement to a COD that is within three years from the PPA's Effective date.

407. PGE should have agreed to amend the COD to any date within three years from the PPA's Effective date (i.e., as late as June 10, 2019) without disputing the change.

408. PGE refused to agree to COD later than February 10, 2019.

409. Section 2.2.3 of the PPA provides that PGE will not unreasonably withhold agreement to a COD that is more than three years from the Effective date if St. Louis Solar has demonstrated that a later COD is reasonable and necessary.

410. PGE referenced Section 2.2.3 in determining that a later COD was warranted for purposes of the first amendment to the PPA.

411. PGE violated this term in negotiating the second amendment to the PPA.

412. In November 2018, PGE and St. Louis Solar executed an amendment for a revised COD of February 10, 2019.

413. PGE refused at that time to agree to a later COD.

Deleted: date

414. St. Louis Solar demonstrated at that time that a later COD was reasonable and necessary.

415. If St. Louis Solar did not demonstrate that a later COD was reasonable and necessary, then it was obvious from PGE's interconnection studies.

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416. The System Impact Study Report showed that the interconnection upgrades were expected to take 12 months from the time an interconnection agreement was executed (i.e., at the earliest, approximately April 2018).

417. The Facility Study showed that the interconnection upgrades were expected to take 18 months from the time an interconnection agreement was executed (i.e., at the earliest, approximately September 2018).

418. PGE and St. Louis Solar executed an interconnection agreement ~~that was fully executed in May 2018.~~

Deleted: March

419. If interconnection took 12 months from execution, as PGE estimated in the System Impact Study Report, then interconnection could not possibly be accomplished prior to the scheduled COD of February 10, 2019.

420. If interconnection took 18 months from execution, as PGE estimated in the Facility Study, then interconnection could not possibly be accomplished prior to the scheduled COD of February 10, 2019.

421. If interconnection took until October 31, 2019, as the interconnection agreement itself expected, then interconnection would not be complete prior to the scheduled COD of February 10, 2019.

422. PGE refused to agree to a COD later than February 10, 2019.

423. PGE's refusal was unreasonable because it knew that it would not complete interconnection prior to the scheduled COD of February 10, 2019.

~~424. PGE is violated this term in negotiating the third amendment to the PPA.~~

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~~425. In the third amendment, PGE agreed to extend the cure period for missing~~

Deleted: by unreasonably withholding its agreement

~~COD but refused to amend the COD.~~

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426. PGE violated this term in negotiating the fourth amendment to the PPA.

427. In the fourth amendment, PGE agreed to extend the cure period for missing COD but refused to amend the COD.

428. The purpose of the fourth amendment was to provide additional time to complete the interconnection of the St. Louis Solar project given PGE's desire to replace the fuses it had earlier approved.

429. St. Louis Solar has requested that PGE agree to amend the PPA to adopt a later COD.

430. St. Louis Solar has demonstrated that a later COD is reasonable and necessary due to the delayed interconnection.

431. PGE refused to amend the PPA to adopt a later COD.

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432. A later COD was necessary because achieving the scheduled COD was impossible.

Deleted: is

433. A later COD was necessary because the delayed interconnection made achieving the scheduled COD impossible.

434. A later COD was necessary because the delayed interconnection made achieving COD within the one-year cure period impossible.

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435. PGE's refusal is unreasonable because PGE is responsible for the delays to interconnection that have made a later COD necessary.

Deleted: <#>A later COD is necessary because the end of the cure period means the PPA could be terminated. ¶

436. PGE's refusal is unreasonable because the delays to the interconnection caused by PGE are the only reason that St. Louis Solar did not achieve COD until April 6, 2020.

Deleted: has

Deleted: yet achieved COD.



437. PGE's refusal is unreasonable because PGE cited St. Louis Solar's inability to achieve COD on or before February 10, 2019 as a default and sought delay damages.

438. PGE was not entitled to seek delay damages when PGE prevented St. Louis Solar's performance.

439. St. Louis Solar is entitled to relief because PGE's refusal to agree to a COD within three years of the PPA effective date is a violation of Section 2.2.3 of the PPA.

440. St. Louis Solar is entitled to relief because PGE's unreasonable withholding of agreement to a later COD that St. Louis Solar has shown to be reasonable and necessary is a violation of Section 2.2.3 of the PPA.

441. St. Louis Solar is entitled to relief because PGE's unreasonable withholding of agreement to a later COD in the second amendment to the PPA is a violation of Section 2.2.3 of the PPA.

442. St. Louis Solar is entitled to relief because PGE's collection of delay damages is a violation of the PPA.

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

**St. Louis Solar is entitled to relief because PGE has violated its contractual duty towards St. Louis Solar of good faith and fair dealing under the PPA.**

443. Complainant re-alleges all the preceding paragraphs.

444. PGE has an obligation of good faith and fair dealing to facilitate performance of the contracts it signs, including its power purchase agreement with St.

Louis Solar, where it is consistent with and in furtherance of the agreed-upon terms of the contracts or where it effectuates the reasonable contractual expectations of the parties.

445. PGE violated the duty of good-faith and fair dealing under the PPA by refusing to agree to amend the initial delivery date and the scheduled COD in light of the unexpected interconnection delays.

446. PGE violated its obligation of good faith and fair dealing by refusing to agree to amend the scheduled COD to within three years of the PPA effective date.

447. PGE violated its obligation of good faith and fair dealing by refusing to agree to amend the scheduled COD when St. Louis Solar demonstrated that the extension was reasonable and necessary.

448. PGE violated its obligation of good faith and fair dealing by refusing to agree to amend the scheduled COD to align with the schedule for interconnection in the interconnection agreement.

449. PGE violated its obligation of good faith and fair dealing by refusing to agree to amend the scheduled COD despite expecting interconnection to take as much as eight months or longer beyond the scheduled COD.

450. PGE violated its obligation of good faith and fair dealing by refusing to amend the PPA to reflect the delays to interconnection when interconnection is a clear prerequisite to St. Louis Solar being able to achieve COD.

451. PGE violated its duty of good faith and fair dealing by billing St. Louis Solar for alleged damages when PGE did not suffer any damages.

452. PGE has failed to demonstrate that it suffered damages.

**Deleted:** <#>If PGE terminates the PPA for failure to achieve COD, then PGE has violated its obligation of good faith and fair dealing because the PPA only provides for termination for failure to achieve COD where St. Louis Solar is “unable to cure the default” and St. Louis Solar would have been able to cure the default but for PGE’s failure to provide interconnection. ¶  
If PGE terminates the PPA for failure to achieve COD, then PGE has violated its obligation of good faith and fair dealing because the PPA only provides for termination for failure to achieve COD where St. Louis Solar is “unable to cure the default” and St. Louis Solar would have been able to cure the default but for PGE’s errors or mistakes in procuring interconnection service. ¶  
If PGE terminates the PPA for failure to achieve COD, then PGE has violated its obligation of good faith and fair dealing because the PPA only provides for termination for failure to achieve COD where St. Louis Solar is “unable to cure the default” and St. Louis Solar would have been able to cure the default but for PGE’s refusal to allow St. Louis Solar to finalize interconnection. ¶

453. PGE violated its duty of good faith and fair dealing by billing St. Louis Solar for alleged damages without demonstrating that PGE suffered actual damages.

454. If PGE suffered actual damages, they were self-inflicted.

455. PGE has failed to demonstrate that St. Louis Solar caused PGE damages.

456. St. Louis Solar has not caused PGE to suffer damages.

457. PGE violated its duty of good faith and fair dealing by billing St. Louis Solar for alleged damages when St. Louis Solar did not cause PGE to suffer damages.

458. PGE violated its obligation of good faith and fair dealing by billing St. Louis Solar for alleged damages for failure to achieve COD when PGE was responsible for COD not being met.

459. PGE violated its obligation of good faith and fair dealing by billing St. Louis Solar for alleged damages for failure to achieve COD without demonstrating that the billing was proper under the PPA.

460. PGE violated its obligation of good faith and fair dealing by refusing to refund St. Louis Solar for the payments St. Louis Solar paid PGE for alleged damages for failure to achieve COD when PGE was responsible for the failure to achieve COD.

461. PGE violated its obligation of good faith and fair dealing by refusing to stop billing St. Louis Solar for the payments St. Louis Solar paid PGE for alleged damages for failure to achieve COD when PGE was responsible for the failure to achieve COD.

462. Even if billing for alleged damages was not a violation of good faith and fair dealing, it was inappropriate under the circumstances.

463. It was inappropriate and unreasonable for PGE to bill St. Louis Solar.

464. If PGE has suffered damages and those damages are assigned to St. Louis Solar, the amount of damages should be reassessed in light of any change that is made to the scheduled COD.

465. PGE should refund St. Louis Solar for all amounts paid that do not reflect actual damages to PGE caused by St. Louis Solar.

466. PGE should pay St. Louis Solar for interest on all amounts paid that do not reflect actual damages to PGE caused by St. Louis Solar.

467. PGE should pay St. Louis Solar for interest on all amounts paid that were not yet due when billed.

468. PGE violated its obligation of good faith and fair dealing by demanding that the second amendment to the PPA contain a term benefitting PGE when the purpose of the second amendment was to provide partial relief to St. Louis Solar for PGE's delays to interconnection.

469. PGE violated its obligation of good faith and fair dealing by demanding that the second amendment to the PPA contain a term unrelated to providing relief from interconnection delays.

470. PGE violated its obligation of good faith and fair dealing by demanding that the second amendment to the PPA contain a term that was unreasonable and unfair.

471. PGE violated its obligation of good faith and fair dealing by demanding that the second amendment to the PPA contain a term that is unconscionable.

472. PGE violated its obligation of good faith and fair dealing by demanding that the second amendment to the PPA contain a term thatwould specifically allow PGE to avoid complying with an order of the Commission.

473. PGE violated its obligation of good faith and fair dealing by demanding that the second amendment to the PPA contain a term that would specifically allow PGE to violate PURPA.

474. St. Louis Solar is entitled to relief because PGE violated its obligation of good faith and fair dealing under the PPA.

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

**St. Louis Solar is entitled to relief because PGE has breached the interconnection agreement by failing to provide interconnection on schedule or within a reasonable amount of time, by failing to perform work that PGE was obligated to perform, and by requiring St. Louis Solar to perform additional work that was not called for under the interconnection agreement.**<sup>21</sup>

475. Complainant re-alleges all the preceding paragraphs.

476. PGE is obligated to make interconnections with any QF that may be necessary to accomplish the required purchases. 18 CFR 292.303(c); OAR 860-029-0030(3).

477. PGE and St. Louis Solar executed an interconnection agreement for the purpose of PGE's completion of the interconnection.

478. The interconnection agreement provides a schedule of "critical milestones."

479. The designation of the milestones as critical demonstrates that time was of the essence in performing under the interconnection agreement.

<sup>21</sup> To the extent that OAR 860-082-0085 applies to a complaint regarding a PPA, St. Louis Solar seeks a waiver of this rule pursuant to OAR 860-001-0000(2). For purposes of the waiver, if required, this Complaint shall serve as a request in writing.

480. The interconnection agreement provides for PGE to “complete the interconnection facilities” no later than September 27, 2019.

481. PGE failed to complete the interconnection facilities by September 27, 2019.

482. As of February 3, 2020, PGE ~~had~~ still not completed the interconnection facilities.

Deleted: has

483. PGE failed to complete the interconnection facilities within a reasonable amount of time.

484. The interconnection agreement calls for PGE to place the St. Louis Solar facility “in-service” no later than October 31, 2019.

485. PGE failed to place the St. Louis Solar facility in-service by October 31, 2019.

486. As of February 3, 2020, PGE ~~had~~ still not placed the St. Louis Solar facility in-service.

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487. PGE failed to place the St. Louis Solar facility “in-service” within a reasonable amount of time.

488. PGE’s failure to complete the facilities on schedule is a violation of the interconnection agreement.

489. PGE’s failure to complete the facilities within a reasonable amount of time is a violation of the interconnection agreement.

490. PGE’s failure to place the facility in-service on schedule is a violation of the interconnection agreement.

491. PGE's failure to place the facility in-service within a reasonable amount of time is a violation of the interconnection agreement.

492. PGE billed St. Louis Solar for alleged delay damages on the basis of the facility not being in-service.

493. PGE owes damages to St. Louis Solar for the violations of the interconnection agreement.

494. PGE owes damages to St. Louis Solar under the interconnection agreement for the alleged delay damages PGE billed under the PPA.

495. PGE breached the interconnection agreement by failing to procure and install the relay.

496. PGE breached the interconnection agreement by demanding that St. Louis Solar install fuses when the installation of different fuses than those PGE already approved was either not called for under the interconnection agreement or was work that PGE was obligated to perform.

497. St. Louis Solar is entitled to relief because PGE has breached the interconnection agreement.

498. St. Louis Solar is entitled to relief because PGE should agree to amend the PPA to provide relief to St. Louis Solar for the delays to interconnection.

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

**St. Louis Solar is entitled to relief because PGE has violated the Commission's Small Generator Interconnection Rules.**

499. Complainant re-alleges all the preceding paragraphs.

**Deleted:** St. Louis Solar is entitled to relief because PGE should complete the interconnection.

**Deleted:** rules by failing to provide interconnection within a reasonable amount of time

500. OAR 860-082-0025(g) states that “A public utility must meet all applicable deadlines in the small generator interconnection rules unless the deadlines have been waived by agreement with an applicant or interconnection customer or by Commission order. If the public utility cannot meet an applicable deadline, then the public utility must provide written notice to the applicant or interconnection customer explaining the reasons for the failure to meet the deadline and an estimated alternative deadline.”

501. PGE violated the Commission’s rules by failing to meet applicable deadlines and by failing to justify the delays.

502. PGE violated the Commission’s rules by providing non-standard study agreements.

503. PGE is obligated to make interconnections with any QF that may be necessary to accomplish the required purchases. 18 CFR 292.303(c); OAR 860-029-0030(3).

504. PGE failed to interconnect St. Louis Solar on the timeline agreed in the interconnection agreement.

**Deleted:** has  
**Deleted:** make interconnection with St. Louis Solar. ¶  
PGE has failed to make interconnection with St.

505. PGE failed to interconnect St. Louis Solar within a reasonable amount of time.

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506. St. Louis Solar is entitled to relief because PGE’s failure to provide interconnection, including interconnection studies, within a reasonable amount of time is in violation of the Commission’s rules.

**Deleted:**

**Deleted:** and will subject St. Louis Solar to additional cost and time delay. ¶  
St. Louis Solar is entitled to relief because PGE should complete the interconnection. ¶  
St. Louis Solar is entitled to relief because PGE should provide agree to amend the PPA to provide relief to St. Louis Solar for the delays to interconnection



**Complainant's Fifth Claim for Relief**

**St. Louis Solar is entitled to relief because PGE has violated ORS 757.020 by charging an unreasonable and unjust rate for interconnection service.**

507. Complainant re-alleges all the preceding paragraphs.

508. PGE is obligated to furnish adequate and safe interconnection service to its customers for a reasonable and just charge. ORS 757.020.

509. PGE failed to provide adequate interconnection service.

510. PGE failed to provide adequate interconnection service in a timely manner.

511. PGE's failure to provide adequate interconnection service in a timely manner has caused economic damages to St. Louis Solar from the loss of power sales.

512. PGE's failure to provide adequate interconnection service in a timely manner has caused economic damages to St. Louis Solar from the loss of power sales at fixed prices.

513. PGE's failure to provide adequate interconnection service in a timely manner has caused economic damages to St. Louis Solar from PGE's assertion of damages billable to St. Louis Solar from the delay in achieving COD.

514. The economic losses suffered by St. Louis Solar amount to an unreasonable and unjust increase in the cost of interconnection service from PGE.

515. PGE has incorrectly charged for interconnection service that PGE was obligated to perform under the interconnection agreement.

516. PGE has incorrectly charged for interconnection service that either was not authorized under the interconnection agreement or that PGE was obligated to perform under the interconnection agreement.

517. Billing for work that PGE was obligated to perform amounts to an unreasonable and unjust increase in the cost of interconnection service from PGE

518. PGE has violated its statutory obligation to provide interconnection service at a “reasonable and just charge.”

519. St. Louis Solar is entitled to relief because PGE violated ORS 757.020 and caused St. Louis Solar to suffer significant economic losses.

520. PGE should refund St. Louis Solar for the amount incorrectly billed for work that PGE was obligated to perform.

521. PGE should agree to amend the scheduled COD.

522. PGE should agree to amend the commencement date of fixed price payments.

523. PGE should agree to amend the PPA so that St. Louis Solar does not suffer lost power sales.

**Deleted:** termination date. ¶  
PGE should agree to amend the

524. PGE should agree to amend the PPA so that St. Louis Solar does not suffer lost power sales at fixed prices.

525. PGE should agree that St. Louis Solar should receive fixed-price payments beginning on the date that power is delivered, not on the date of execution.

526. PGE should agree that St. Louis Solar should receive fixed-price payments beginning on the date that PGE represented that St. Louis Solar was likely to achieve commercial operations.

**Complainant's Sixth Claim for Relief**

**St. Louis Solar is entitled to relief because PGE has violated its contractual duty towards St. Louis Solar of good faith and fair dealing under the interconnection agreement.**

**Deleted:** <#>PGE should agree to extend the PPA termination date to provide for the full term of the PPA, beginning on the amended scheduled COD that aligns with the date interconnection is complete. ¶

527. Complainant re-alleges all the preceding paragraphs.

528. PGE has an obligation of good faith and fair dealing to facilitate performance of the contracts it signs, including its interconnection agreement with St. Louis Solar, where it is consistent with and in furtherance of the agreed-upon terms of the contracts or where it effectuates the reasonable contractual expectations of the parties.

529. PGE violated its obligation of good faith and fair dealing by refusing to agree that interconnection work should be done as soon as possible.

530. PGE violated its obligation of good faith and fair dealing by asserting that interconnection work did not need to be performed before the last possible date for completion.

531. PGE violated its obligation of good faith and fair dealing by refusing to allow St. Louis Solar to complete interconnection when it appeared PGE would not be able to perform on time and delays cause St. Louis Solar to suffer losses.

532. PGE violated its obligation of good faith and fair dealing by agreeing to charge St. Louis Solar a certain amount and later refusing to complete work until St. Louis Solar paid more than agreed.

533. PGE violated its obligation of good faith and fair dealing by agreeing to perform certain work and later refusing to complete interconnection unless St. Louis Solar performed the work that PGE was obligated to perform.

534. PGE violated its obligation of good faith and fair dealing by failing to provide adequate notice that PGE would require St. Louis Solar to complete the work that PGE was obligated to perform.

535. PGE violated its obligation of good faith and fair dealing by demanding that St. Louis Solar perform work that either was not called for under the interconnection agreement or that PGE was obligated to perform.

536. PGE violated its obligation of good faith and fair dealing by delaying interconnection on the basis of a dispute over billing.

537. PGE violated its obligation of good faith and fair dealing by delaying interconnection on the basis of a dispute over which party was obligated to perform.

538. St. Louis Solar is entitled to relief because PGE violated its obligation of good faith and fair dealing under the interconnection agreement.

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

**St. Louis Solar is entitled to relief because PGE violated ORS 757.325 by discriminating against St. Louis Solar.**

539. Complainant re-alleges all the preceding paragraphs.

540. PGE cannot make or give undue preference, unreasonable preference or advantage to any particular person, or subject any particular person to any undue or unreasonable prejudice or disadvantage in any respect. ORS 757.325.

541. PGE subjected St. Louis Solar to undue and/or unreasonable prejudice or disadvantage by not completing interconnection in a timely manner.

542. PGE subjected St. Louis Solar with undue and unreasonable disadvantage by refusing to agree to amendments in light of delays caused by PGE.

543. PGE subjected St. Louis Solar with undue and unreasonable disadvantage by billing St. Louis Solar for delay damages when PGE was causing the delay.

544. PGE gave undue preference and/or unreasonable preference to itself by delaying interconnection and collecting damages from St. Louis Solar on the basis of the delay.

545. PGE gave undue preference and/or unreasonable preference requiring the inclusion of a term in the second amendment to the PPA to allow PGE to avoid following a potential order by the Commission.

546. St. Louis Solar is entitled to relief because PGE has violated ORS 757.325 with respect to St. Louis Solar.

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

**St. Louis Solar is entitled to relief because PGE violated ORS 746.040 by engaging in unjust and unreasonable practices with respect to St. Louis Solar and other interconnection customers.**

547. Complainant re-alleges all the preceding paragraphs.

548. PGE is obligated to refrain from engaging in unjust and unreasonable practices with respect to its customers, including interconnection customers, and the public generally. ORS 746.040.

549. PGE's behavior in delaying a QF's interconnection and subsequently billing the QF for delay damages is unjust and unreasonable.

550. PGE subjected St. Louis Solar to interconnection delays and subsequently billed for delay damages.

551. PGE has subjected other QFs to interconnection delays and subsequently billed for delay damages.

552. PGE has established a practice of subjecting QFs to interconnection delays and subsequently billing the QFs for delay damages.

553. PGE has established a practice that is unjust and unreasonable with respect to its interconnection customers.

554. PGE has established a practice that is unjust and unreasonable with respect to its interconnection customers and which harms the public generally.

555. PGE has a statutory obligation to refrain from engaging in a practice that is unjust and unreasonable with respect to its interconnection customers and the public generally.

556. PGE violated its statutory obligation by engaging in a practice that is unjust and unreasonable with respect to its interconnection customers and the public generally.

557. St. Louis Solar is entitled to relief because the actions of PGE towards St. Louis Solar were part of a practice of PGE that violates ORS 746.040.

### VIII. PRAYER FOR RELIEF

WHEREFORE, Complainant respectfully requests the Commission issue an order:

558. Finding that relief is warranted due to PGE's slowed interconnection process.

559. Finding that St. Louis Solar's inability to cure the default of not achieving COD ~~was~~ due entirely or in part to PGE.

560. ~~Finding that PGE violated the PPA by withholding agreement to a COD within three years of the effective date.~~

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~~Deleted:~~ with St. Louis Solar on

~~Deleted:~~ grounds of St. Louis Solar's default in not achieving COD.

561. Finding that PGE has violated the PPA by unreasonably withholding agreement to a later COD that St. Louis Solar has demonstrated is reasonable and necessary.

562. Finding that PGE violated the PPA by collecting delay damages when PGE caused the delays.

Deleted: <#>Requiring PGE to complete the interconnection with St. Louis Solar, if such interconnection has not been completed as of the filing of this Complaint.  
Requiring that PGE

563. Requiring or otherwise finding that PGE is obligated to grant an extension of St. Louis Solar's PPA COD to account for the delayed in-service date PGE caused.

564. Requiring or otherwise finding that PGE is obligated to grant an extension of St. Louis Solar's PPA COD to coincide with the actual interconnection in-service date (i.e., April 6, 2020).

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565. Alternatively, requiring or otherwise finding that PGE is obligated to grant an extension of St. Louis Solar's PPA COD to coincide with the in-service date estimated under the interconnection agreement (i.e., October 31, 2019).

566. Alternatively, requiring or otherwise finding that PGE is obligated to grant an extension of St. Louis Solar's PPA COD to within three years of the PPA Effective date (i.e., June 10, 2019).

567. Requiring or otherwise finding that PGE is obligated to grant an extension of St. Louis Solar's PPA commencement date of fixed price payments to coincide with the actual interconnection in-service date, (i.e., an extension of the approximately 47 months).<sup>22</sup>

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<sup>22</sup> St. Louis Solar includes this prayer for relief as a placeholder in the event that the pending appeal of the Commission's order on this matter is overturned. St. Louis Solar does not seek to relitigate this matter if the Commission's order is upheld on appeal.

568. Alternatively, requiring PGE or otherwise finding that PGE is obligated to extend the fixed-price period under the PPA to reflect the delay from the St. Louis Solar was constructed and could have achieved commercial operations (i.e., January 23, 2019) to when the interconnection was actually finalized (i.e., an extension of approximately 14.5 months).

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569. Alternatively, requiring or otherwise finding that PGE is obligated to extend the fixed-price period under the PPA for the period from October 31, 2019, when PGE should have completed the interconnection, to when the interconnection is actually finalized (i.e., an extension of approximately 5 months).

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570. If the Commission wishes not to order PGE to amend the PPA, the Commission can grant alternative relief through finding St. Louis Solar is entitled to damages or by striking language in the second amendment as unconscionable and enforcing the second amendment as revised to state that the fixed price payment period commenced on October 31, 2017.

571. Finding that the inclusion of a term in the second amendment to the PPA to allow PGE to avoid following a potential order by the Commission was discriminatory, unjust and unreasonable.

572. Requiring that PGE file any amendments to standard contract PPAs, or summaries thereof, with the Commission as updates to the filings made pursuant to OAR 860-029-0030(7).

573. Finding that PGE is not authorized to charge damages from any QF for not achieving COD unless PGE suffered actual damages.



574. Finding that PGE was not authorized to charge damages from St. Louis Solar for not achieving COD because St. Louis Solar did not cause PGE to suffer damages.

575. Finding that PGE was not authorized to charge damages from St. Louis Solar for not achieving COD, because the damages, if any, were self-inflicted by PGE through its own failure to complete the interconnection.

576. Requiring PGE to refund St. Louis Solar for the alleged damages that PGE wrongfully charged to St. Louis Solar.

577. Requiring PGE to pay St. Louis Solar interest on the money St. Louis Solar paid PGE for the alleged damages which St. Louis Solar did not owe or did not owe at that time.

578. Finding that PGE was obligated to obtain and install the new relay under the interconnection agreement.

579. Finding that PGE was obligated to do any work necessary to remedy the fuse issue.

580. Ordering PGE to refund St. Louis Solar for any costs for interconnection service that were wrongly incurred due to PGE's mistakes or misdeeds.

581. Finding PGE in violation of its obligation to not make or give undue preference, unreasonable preference to any other person or itself, or subject St. Louis Solar to undue or unreasonable prejudice or disadvantage in any respect.

582. Requiring that PGE not make or give undue preference, unreasonable preference to any other person or itself, or subject St. Louis Solar to undue or unreasonable prejudice or disadvantage in any respect.

583. 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

584. Requiring PGE to refrain from engaging in unjust and unreasonable practices with respect to its customers, including interconnection customers, and the public generally.

585. Finding that St. Louis Solar is entitled to contractual damages, pursuant to the damage's provisions in the PPA and in the interconnection agreement, statutory damages pursuant to ORS 756.185, and/or attorneys' fees pursuant to ORS 756.185.

586. To the extent that the Commission finds that it lacks authority to provide any relief requested above or declines to exercise jurisdiction to provide any relief requested above, issuing an order finding that St. Louis Solar is entitled to relief from PGE in the form of damages sufficient to reflect the amounts in controversy, plus attorneys' fees, so that St. Louis Solar can seek relief from a court of competent jurisdiction.

587. Instituting penalties up to \$10,000 pursuant to ORS 756.990 against PGE and paid by PGE's shareholders for each violation of ORS 757.020, ORS 758.325, ORS 758.525(2), ORS 758.535(2), ORS 758.535(2)(b), ORS 758.535(3)(b), 18 CFR 292.303(a), 18 CFR 292.303(c), 18 CFR 292.304(d), OAR ~~860-029-0030(1)~~, OAR ~~860-029-0030(3)~~; OAR 860-082-0025; and OAR 860-082-0060.

588. Granting any other such relief as the Commission deems necessary.

Dated this ~~26th~~ day of ~~August~~ 2020.

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Respectfully submitted,

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Irion A. Sanger  
Joni L. Sliger  
Sanger Law, PC  
1041 SE 58th Place  
Portland, OR 97215  
Telephone: 503-756-7533  
Fax: 503-334-2235  
irion@sanger-law.com

Of Attorneys for St. Louis Solar, LLC