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**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

ST. LOUIS SOLAR, LLC,

Complainant,

v.

PORTLAND GENERAL ELECTRIC  
COMPANY,

Defendant.

DOCKET NO. UM 2057

SECOND 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> St. Louis

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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-

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.

## II. SERVICE

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

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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

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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.

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, 756.500-756.558, 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. However, St. Louis Solar understands that the Commission has held that it has primary and concurrent jurisdiction over post-contract execution claims.<sup>6</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.

## VI. FACTUAL BACKGROUND

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

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

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

13. 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>).

14. The original PPA set forth an in-service date of September 30, 2017.

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<sup>6</sup> *PGE v. Pacific Northwest Solar, LLC*, Docket No. UM 1894, Order No. 18-025 at 7 (Jan. 25, 2018).

15. The original PPA set forth a scheduled Commercial Operation Date (“COD”) of October 31, 2017.
16. St. Louis Solar agreed to the in-service date and scheduled COD on the basis of representations made by PGE during the negotiations process that interconnection would likely be completed prior to those dates.
17. On November 1, 2016, St. Louis Solar received a Feasibility Study.
18. On April 24, 2017, St. Louis Solar received a System Impact Study Report.
19. 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).
20. PGE’s actions caused material and harmful interconnection delays.
21. On February 1, 2017, PGE and St. Louis executed the first amendment to the PPA.
22. The amendment postponed the scheduled COD to March 31, 2018.
23. 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.
24. On November 30, 2017, St. Louis Solar received a Facility Study.
25. 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).

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

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

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

29. The Interconnection Agreement specifies that St. Louis Solar was responsible for conducting testing and commissioning after PGE completed the interconnection facilities and on or before October 11, 2019.

30. The Interconnection Agreement specifies that PGE was responsible for ensuring the project achieved its “in-service date” on or before October 31, 2019.

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

32. The amendment postponed the date of initial deliveries of Net Output until January 10, 2019.

33. The amendment postponed the scheduled COD until February 10, 2019.

34. 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.

35. St. Louis Solar agreed to a scheduled COD of February 10, 2019, rather than a date after the in-service date of October 31, 2019, because that was the latest date that PGE would agree to..

36. On or before November 30, 2018, St. Louis Solar paid the remaining balance due to PGE under the interconnection agreement.

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

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

39. Since December 2018, St. Louis Solar has been ready to be energized.

40. Since December 2018, St. Louis Solar has been waiting for PGE to complete the interconnection so that St. Louis Solar can begin to sell power pursuant to the PPA.

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

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

43. 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.

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

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

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

47. 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.

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

49. On April 3, 2019, PGE began sending St. Louis Solar monthly invoices for alleged damages arising from the failure to achieve COD.

50. On April 25, 2019, PGE sent St. Louis Solar a second invoice for alleged damages.

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

52. St. Louis Solar has not received an invoice since April 2019.

53. It is unclear if PGE intends to send additional invoices.

54. PGE has refused to agree that it will not send future invoices.

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

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

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

58. PGE first informed St. Louis Solar of the need to cross a railroad on May 17, 2019.

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

60. 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.

61. 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.

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

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

64. 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.

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

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

67. 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.

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

69. 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 the alleged damages in the future.

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

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

72. 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.

73. On October 7, 2019, PGE represented that interconnection would be completed quickly once the last permit was obtained.

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

75. On October 31, 2019, PGE notified St. Louis Solar that PGE had received the last permit needed to cross the railroad.

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

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

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

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

80. On December 2, 2019, PGE responded that the relay was St. Louis Solar's responsibility and cited PGE's 2019 Distribution Interconnection Standards. PGE did not cite Distribution Interconnection Standards published prior to 2019.

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

82. 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.

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

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

85. On December 31, 2019, PGE notified St. Louis Solar that PGE would inspect the facility in the coming week.

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

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

88. On January 9, 2020, PGE responded that the work could not be completed before PGE approved St. Louis Solar's relay settings.

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



90. On January 15, 2020, PGE responded that it was scheduling the work to be done.

91. On January 15, 2020, PGE responded that the work could not be completed before PGE approved St. Louis Solar's relay settings.

92. On January 16, 2020, St. Louis Solar inquired with PGE about what relay settings and equipment would meet PGE's standards.

93. On January 20, 2020, PGE responded with information about the necessary relay specifications.

94. On January 20, 2020, St. Louis Solar confirmed that the necessary relay specifications had been met and that the project was ready for PGE to finalize.

95. As of February 3, 2020, PGE had failed to complete the interconnection facilities.

96. The failure to complete interconnection on or before February 3, 2020 was due to PGE's actions and inactions.

97. St. Louis Solar believes that interconnection could have been completed months earlier but for PGE's ineffective approach and mistakes.

98. If PGE's actions were not mistakes, then they were negligent.

99. If PGE's actions were not negligent, then they were malfeasant.

100. St. Louis Solar could not conduct the necessary testing and commissioning that the interconnection agreement states must be done until after the interconnection facilities are complete.

101. St. Louis Solar was unable to sell power pursuant to the PPA because of PGE's failure to complete interconnection.

102. PGE's failure to complete interconnection is the reason why COD was not achieved until April 6, 2020.

103. On January 24, 2020, St. Louis Solar sent PGE a letter.

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

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

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

107. 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.

108. On January 30, 2020, PGE responded to St. Louis Solar via letter.

109. In the January 30 letter, PGE refused to change the initial delivery date.

110. In the January 30 letter, PGE refused to change the scheduled COD.

111. In the January 30 letter, PGE refused to change the commencement date for fixed price payments.

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

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

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

115. The PPA has been interpreted to begin fixed price payments beginning on the date of PPA execution.<sup>7</sup>

116. This interpretation is being appealed and may change.<sup>8</sup>

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

118. In July 2017, the Commission ordered PGE to change its standard contracts to offer pricing beginning on the date of power delivery.<sup>9</sup>

119. 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>10</sup>

120. Because St. 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. Louis Solar is significantly harmed by every delay to power delivery.

121. 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.

122. 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

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<sup>7</sup> *NIPPC et al. vs. PGE*, Docket No. UM 1805, Order No. 17-256 at 1 (July 13, 2017).

<sup>8</sup> Docket No. UM 1931, Order No. 19-255 (August 2, 2019); Docket No. UM 1931, Petition for Judicial Review (Jan. 10, 2020).

<sup>9</sup> Docket No. UM 1805, Order No. 17-256 at 4.

<sup>10</sup> *Id.*

standard contracts with PGE should begin at the date of PPA execution or at the scheduled COD.<sup>11</sup>

123. 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.

124. 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.

125. 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.”

126. 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.

127. 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.

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<sup>11</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.

128. 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.

129. 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.

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

131. The risk of additional delays to COD was high, as demonstrated by the current petition for an extension of the project's COD.

132. The Commission did not order PGE to change the commencement date.<sup>12</sup>

133. 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).

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

135. In the 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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<sup>12</sup> Docket No. UM 1805, Order No. 17-256 at 2.

136. In its letter dated January 24, 2020, St. Louis Solar requested the date be changed to at least 92 days from the Effective Date (i.e., at least November 9, 2016) (an extension of approximately 3 months).

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

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

139. PGE did not address St. Louis Solar's request in its responsive letter dated January 30, 2020.

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

141. St. Louis Solar suffered harm from lost fixed-price payments for every delay to power delivery.

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

143. 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.

144. 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.

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

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

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

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

149. 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.

150. 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.

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

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

153. 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.

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

155. On February 3, 2020, St. Louis Solar provided the one-line diagram that PGE had requested on January 30, 2020.

156. 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.

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

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

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

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

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

162. 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."

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

164. 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.



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

166. 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.

167. 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.

168. 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.

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

170. 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.

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

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

173. 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.

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

175. 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.

176. 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.

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

178. 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.

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

180. 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.”

181. 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?”

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

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

184. 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.

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

186. 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.

187. 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."

188. 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."

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

190. 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.

191. 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.

192. 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.

193. 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.

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

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

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

197. 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.

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

199. 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.

200. 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

214. 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.

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

216. 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.

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

218. 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.

219. 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.

220. The fourth amendment to the PPA amended Section 9.2 of the PPA to extend the cure period until April 9, 2020.
221. PGE refused to agree to any other changes in the fourth amendment.
222. 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.
223. On March 26, 2020, PGE confirmed availability to perform a witness test on March 27, 2020.
224. On or about March 26, 2020, PGE placed the interconnection in service.
225. On April 1, 2020, St. Louis Solar completed the 5-day testing.
226. On April 6, 2020, PGE deemed St. Louis Solar to have achieved COD.
227. 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 until on or about March 26, 2020.
228. 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).

## 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.**

229. Complainant re-alleges all the preceding paragraphs.



230. 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).

231. 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.

232. 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.

233. PGE violated this term in negotiating the amendments to the PPA.

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

235. PGE refused at that time to agree to a later date.

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

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

238. 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).

239. 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).

240. PGE and St. Louis Solar executed an interconnection agreement in March 2018.

241. 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.

242. 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.

243. 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.

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

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

246. PGE is currently violating this term by unreasonably withholding its agreement to a later COD that is reasonable and necessary.

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

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

249. PGE has refused to amend the PPA to adopt a later COD.

250. A later COD is necessary because the delayed interconnection made achieving the scheduled COD impossible.

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

252. PGE's refusal is unreasonable because the delays to the interconnection caused by PGE are the only reason that St. Louis Solar has not yet achieved COD.

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

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

255. Complainant re-alleges all the preceding paragraphs.

256. 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.

257. 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.

258. 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.

259. 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.

260. 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.

261. 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.

262. 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.

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

264. 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.

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

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

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

268. 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.

269. 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.

270. 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.

271. 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.

272. 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.

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

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

275. 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.

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

277. 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.

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

279. 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.

280. 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.

281. 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.

282. 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.

283. 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.

284. 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>13</sup>**

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<sup>13</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

285. Complainant re-alleges all the preceding paragraphs.
286. 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).
287. PGE and St. Louis Solar executed an interconnection agreement for the purpose of PGE's completion of the interconnection.
288. The interconnection agreement provides a schedule of "critical milestones."
289. The designation of the milestones as critical demonstrates that time was of the essence in performing under the interconnection agreement.
290. The interconnection agreement provides for PGE to "complete the interconnection facilities" no later than September 27, 2019.
291. PGE failed to complete the interconnection facilities by September 27, 2019.
292. As of February 3, 2020, PGE had still not completed the interconnection facilities.
293. PGE failed to complete the interconnection facilities within a reasonable amount of time.
294. The interconnection agreement calls for PGE to place the St. Louis Solar facility "in-service" no later than October 31, 2019.

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purposes of the waiver, if required, this Complaint shall serve as a request in writing.

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

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

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

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

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

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

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

302. 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.

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

304. 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 rules by failing to provide interconnection within a reasonable amount of time.**

305. Complainant re-alleges all the preceding paragraphs.

306. 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).

307. PGE failed to make interconnection with St. Louis Solar on the timeline agreed in the interconnection agreement.

308. PGE failed to make interconnection with St. Louis Solar within a reasonable amount of time.

309. St. Louis Solar is entitled to relief because PGE's failure to provide interconnection on time or within a reasonable amount of time is in violation of the Commission's rules and subjected St. Louis Solar to additional cost and time delay.

310. 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 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.**

311. Complainant re-alleges all the preceding paragraphs.

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

313. PGE failed to provide adequate interconnection service.

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

315. 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.

316. 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.

317. 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.

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

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

320. 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.

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

322. PGE has violated its statutory obligation to provide interconnection service at a "reasonable and just charge."

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

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

325. PGE should agree to amend the scheduled COD.

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

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

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

329. PGE should agree that St. Louis Solar should receive fixed-price payments beginning on the date that power began to be delivered, not on the date of execution.

330. 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.**

331. Complainant re-alleges all the preceding paragraphs.

332. 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.

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

334. 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.

335. 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.

336. 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.

337. 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.

338. 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.

339. 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.

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

341. 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.

342. 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.**

343. Complainant re-alleges all the preceding paragraphs.

344. 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.

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

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

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

348. 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.

349. 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.

350. 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.**

351. Complainant re-alleges all the preceding paragraphs.

352. 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.

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

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

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

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

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

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

359. 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.

360. 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.

361. 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:

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

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

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

365. Requiring that PGE grant an extension of St. Louis Solar's PPA COD to account for the delayed in-service date PGE caused.

366. Requiring that PGE grant an extension of St. Louis Solar's PPA COD and commencement date of fixed price payments to coincide with the actual interconnection in-service date (i.e., April 6, 2020) (i.e., an extension of approximately 47 months).<sup>14</sup>

367. Alternatively, requiring PGE to extend the COD and fixed-price period under the PPA to reflect the delay from the date that 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).

368. Alternatively, requiring PGE to extend the COD and fixed-price period under the PPA for the period from October 31, 2019, when PGE should have completed the interconnection, to when the interconnection was actually finalized (i.e., an extension of approximately 5 months).

369. 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.

370. 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).

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

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<sup>14</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.



372. 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.

373. 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.

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

375. 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.

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

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

378. 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.

379. 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.

380. 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

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

382. 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 806-029-0030(1), and OAR 806-029-0030(3).

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

Dated this 19th day of October 2020.

Respectfully submitted,



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