

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**Docket No. UM 2057**

ST. LOUIS SOLAR, LLC,

Complainant,

v.

PORTLAND GENERAL ELECTRIC  
COMPANY,

Defendant.

ST. LOUIS SOLAR’S MOTION TO  
DISMISS OR, IN THE  
ALTERNATIVE, TO STRIKE PGE’S  
COUNTERCLAIMS

**I. INTRODUCTION**

Pursuant to OAR 860-001-420 and ORCP 21A,<sup>1</sup> St. Louis Solar, LLC (“St. Louis Solar”), hereby moves the Oregon Public Utility Commission (“OPUC” or the “Commission”) to dismiss the counterclaims alleged by Portland General Electric Company (“PGE”). PGE’s alleged counterclaims are not valid counterclaims but are, at best, only defenses. To the extent PGE seeks to assert a counterclaim for contractual damages, that counterclaim belongs before a court, not this Commission. Hearing it in this proceeding would reverse decades-long Commission precedent, which St. Louis Solar has continued to rely upon in *not* asserting its own claims for contractual damages, statutory treble damages, and attorneys’ fees. St. Louis Solar respectfully requests that

---

<sup>1</sup> OAR 860-001-0000(1) (“The Oregon Rules of Civil Procedure (ORCP) also apply in contested case and declaratory ruling proceedings unless inconsistent with these rules, a Commission order, or an Administrative Law Judge (ALJ) ruling.”).

the Commission dismiss or strike PGE's counterclaims and that the Commission issue an order confirming that Commission does not have jurisdiction over damages.

St. Louis Solar has requested that PGE refund amounts that it should not have collected under the Commission approved standard contract, which is different from a claim for damages. St. Louis Solar brought this claim because it understood that the Commission has asserted jurisdiction over standard contract provisions and has the authority to require PGE to refund amounts improperly collected. St. Louis Solar has been damaged by PGE in other ways, and did not raise other claims because they are not directly related to the terms of the Commission approved standard contract that the Commission has asserted jurisdiction over. These include but are not limited to: 1) PGE charged St. Louis Solar for a recloser (switcher) that it did not install; 2) PGE charged St. Louis Solar for but did not actually re-conductor the line; 3) PGE required St. Louis Solar install relays that PGE should have installed; and 4) St. Louis Solar's higher financing costs due to PGE's delays.

If the Commission finds that it has jurisdiction over contractual damages, St. Louis Solar respectfully requests that the Commission find that it also has jurisdiction over statutory damages and attorneys' fees. To do otherwise would create an unfair and absurd result. At minimum, St. Louis Solar asks for clarity as to what claims the Commission is willing to hear, so that St. Louis Solar is not prejudicially harmed and can either amend its complaint to bring forth additional claims or bring them before a court without being precluded. The Commission should provide that clarity by dismissing or at least striking PGE's counterclaims.

## II. SUMMARY

St. Louis Solar seeks relief in this proceeding for PGE’s breach of the power purchase agreement (“PPA”), breach of the interconnection agreement, breach of the covenant of good faith and fair dealing, and violations of Commission rules and state statutes.<sup>2</sup> PGE failed to provide interconnection service, charged for work it was obligated for perform but did not, and charged for delay damages despite causing the delay itself.<sup>3</sup> As part of the requested relief, St. Louis Solar requests a refund of the amounts PGE improperly charged for the failure to reach its commercial operation date (“COD”) and collected from St. Louis Solar as well as appropriate amendments to the PPA.<sup>4</sup>

Against these claims, PGE asserts counterclaims that are, at best, improperly pled defenses.<sup>5</sup> First, PGE asserts St. Louis Solar breached the PPA and therefore PGE asserts it is entitled to the delay damages it improperly collected.<sup>6</sup> Second, PGE asserts that PGE complied with the interconnection agreement and its interconnection obligations.<sup>7</sup> In neither counterclaim does PGE seek relief from St. Louis Solar. Instead, PGE seeks only a Commission order finding that St. Louis Solar is not entitled to the relief St. Louis Solar requested.<sup>8</sup> These are *not* counterclaims.<sup>9</sup> At best, they could be improperly pled

---

<sup>2</sup> Complaint at PP. 163-324.

<sup>3</sup> *Id.* at PP. 74, 77, 82-86.

<sup>4</sup> *Id.* at PP. 308-311, 317.

<sup>5</sup> *See* ORCP 19B (addressing mistakenly designated counterclaims and defenses).

<sup>6</sup> PGE, Answer, Affirmative Defenses, and Counterclaim at PP. 451-457.

<sup>7</sup> *Id.* at PP. 458-465.

<sup>8</sup> *Id.* at PP. 456-457, 465, 467.

<sup>9</sup> *See* OAR 860-001-0400; ORCP 18; *see also* ORCP 13B, 22A.

defenses, but PGE already raised both defenses, and this matter is therefore redundant.<sup>10</sup> PGE's counterclaims should be dismissed; alternatively, they should be deemed defenses, found redundant, and stricken.

Even if PGE's counterclaim that St. Louis Solar breached the PPA were properly pled, the Commission has declined to exercise jurisdiction over damages.<sup>11</sup> St. Louis Solar is not opposed to the Commission exercising jurisdiction over damages, as St. Louis Solar could assert several claims against PGE for contractual damages, statutory treble damages, and attorneys' fees, which St. Louis Solar did not think the Commission wished to adjudicate.<sup>12</sup> St. Louis Solar had expected that it would need to bring these claims before a jury in order to obtain relief. Resolving all of these claims in a single proceeding would be simpler, but hearing only some damages claims, but not others, and not allowing St. Louis Solar to recover its attorneys' fees it is entitled to would be unfair and lead to an absurd result. Thus, if the Commission is willing to hear some damages claims, it ought to hear all of them and award St. Louis Solar attorneys' fees.

---

<sup>10</sup> See ORCP 19B, 21A; PGE, Answer, Affirmative Defenses, and Counterclaim at PP. 427-435.

<sup>11</sup> *T.G. v. Qwest*, Docket No. UCR 188, Order No. 18-212 (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>12</sup> See ORS 756.185.

However, St. Louis Solar doubts that the Commission is interested in reversing its longstanding precedent and adjudicating over damages, and the Commission should simply dismiss or strike PGE’s counterclaims. St. Louis Solar respectfully requests clarity from the Commission in an order as to its jurisdiction over damages and the specific issues that it wishes to adjudicate, so as to avoid any future dispute over preclusion.

### **III. LEGAL STANDARD**

The Commission has adopted Oregon Administrative Rules (“OARs”) to govern practice and procedure before the Commission.<sup>13</sup> In addition, the Commission has adopted the Oregon Rules of Civil Procedure (“ORCP”) in contested cases where the ORCPs are not inconsistent with its rules, an order, or a ruling.<sup>14</sup>

A motion to dismiss may assert, as defenses, a “lack of jurisdiction over the subject matter” as well as “failure to state ultimate facts sufficient to constitute a claim,” among others.<sup>15</sup> In addition, any claim or portions of a claim may be stricken if it is “sham, frivolous, irrelevant, or redundant” matter.<sup>16</sup>

### **IV. PGE’S COUNTERCLAIMS FAIL TO STATE ULTIMATE FACTS SUFFICIENT TO CONSTITUTE A CLAIM**

PGE’s alleged counterclaims should be dismissed as invalid counterclaims, stricken as redundant defenses, or stricken as sham or frivolous pleadings.

---

<sup>13</sup> OAR 860-001-0000(1).

<sup>14</sup> *Id.*

<sup>15</sup> ORCP 21A(1), (8).

<sup>16</sup> ORCP 21E.

## A. Legal Standard

ORCP 21A provides that a “failure to state ultimate facts sufficient to constitute a claim” is a defense upon which the Commission may dismiss a claim, including a counterclaim.<sup>17</sup> This failure is a failure to comply with pleading requirements, such as ORCP 18. ORCP 18 requires that all claims contain a “plain and concise statement of the ultimate facts constituting a claim for relief.” Similarly, OAR 860-001-0400 requires that all initiating pleadings contain “A clear and concise statement of the authorization, action, or relief sought” and “Appropriate references to the statutory provision or other authority under which the filing is made,” among other items.<sup>18</sup>

The statute enabling relief may also impose pleading requirements. PGE cites ORS 756.500 as providing jurisdiction for its counterclaims.<sup>19</sup> ORS 756.500 allows for complaints to be filed which “state all grounds of complaint on which the complainant seeks relief or the violation of any law claimed to have been committed by the defendant, and the prayer of the complaint shall pray for the relief to which the complainant claims the complainant is entitled.”<sup>20</sup>

In addition to the above general requirements, a counterclaim must be a claim specifically against the Complainant. Neither the OARs nor the ORCPs define the term *counterclaim*, but the term is commonly understood to mean a claim raised by a defendant against a plaintiff. ORCP 18 categorizes a counterclaim as a “pleading which

---

<sup>17</sup> ORCP 21A(8).

<sup>18</sup> OAR 860-001-0400.

<sup>19</sup> PGE, Answer, Affirmative Defenses, and Counterclaim at P. 444.

<sup>20</sup> ORS 756.500(3).

asserts a claim for relief,” like an original claim.<sup>21</sup> ORCP 13B and ORCP 22A specify that a counterclaim is a pleading raised by a defendant against a plaintiff.<sup>22</sup>

Finally, a counterclaim must be more than a mere defense. ORCP 19B recognizes that a party may “mistakenly designate[] a defense as a counterclaim or a counterclaim as a defense.”<sup>23</sup> Neither the OARs nor the ORCPs define the term *defense*, but the term is commonly understood to mean a legal or factual ground upon which an opposing party’s claim may, in all or in part, be denied. ORCP 19B provides examples of affirmative defenses, such as comparative or contributory negligence.<sup>24</sup> A counterclaim is distinguishable from a defense; in addition to ORCP 19B, 14 other ORCPs differentiate between a “claim” and a “defense.”<sup>25</sup>

---

<sup>21</sup> ORCP13B (“An answer may include a counterclaim against a plaintiff”); ORCP 18 (“A pleading which asserts a claim for relief, whether an original claim, counterclaim, cross-claim, or third party claim . . .”).

<sup>22</sup> ORCP 22A(1) (“Each defendant may set forth as many counterclaims, both legal and equitable, as that defendant may have against a plaintiff.”).

<sup>23</sup> ORCP 19B (“When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.”).

<sup>24</sup> ORCP 19B (“accord and satisfaction; arbitration and award; assumption of risk; claim preclusion; comparative or contributory negligence; discharge in bankruptcy; duress; estoppel; failure of consideration; fraud; illegality; injury by fellow servant; issue preclusion; laches; license; payment; release; statute of frauds; statute of limitations; unconstitutionality; waiver; and any other matter constituting an avoidance or affirmative defense”).

<sup>25</sup> ORCP 13A (“The pleadings are the written statements by the parties of the facts constituting their respective claims and defenses.”); ORCPs 16C, 16D, 21E, 23C, 32A, 32E, 33D, 36B, 46B, 47A, 47B, 47H, 71B (“claim[s] or defense[s]”).

**B. PGE’s Counterclaims Should Be Dismissed for Failing to State Ultimate Facts Sufficient to Constitute a Claim**

PGE’s counterclaims fail to state ultimate facts sufficient to constitute a claim.

To state a valid counterclaim, PGE must comply with the pleading requirements to bring a claim against St. Louis Solar specifically, and allege enough to show that the counterclaim is more than a mere defense. PGE has failed to do either of these.

First, PGE must allege facts showing that St. Louis Solar harmed PGE. PGE’s first counterclaim alleges that St. Louis Solar breached the PPA.<sup>26</sup> PGE’s second counterclaim does not allege any wrongdoing by St. Louis Solar; viewed in the most favorable light, it might allege that St. Louis Solar breached the interconnection agreement.<sup>27</sup> Both allegations could theoretically show St. Louis Solar caused PGE harm by breaching contract.

Next, PGE must state what relief it is owed from St. Louis Solar. PGE’s first counterclaim alleges that PGE is entitled to damages for St. Louis Solar’s breach of the PPA.<sup>28</sup> However, PGE admits that St. Louis Solar paid the invoices in full and that no further damages are due.<sup>29</sup> As such, there is no relief owed. Essentially, the

---

<sup>26</sup> PGE, Answer, Affirmative Defenses, and Counterclaim at PP. 451-457.

<sup>27</sup> *Id.* at PP. 458-465. St. Louis Solar did not breach the interconnection agreement but makes this hypothesis for the sake of argument.

<sup>28</sup> *Id.* at PP. 456-457.

<sup>29</sup> *Id.* at P. 334 (“PGE has not invoiced St. Louis Solar for any additional damages under Section 9.2 of the PPA because there were no other periods between breach for failure to achieve scheduled COD and cure of that breach during which market rates exceeded contract rates leading to damages under Section 9.2 of the PPA.”); *id.* at P. 335 (“St. Louis Solar timely paid PGE the full amount owed to PGE as damages under Section 9.2 and reflected in the April 3, 2019, and April 25, 2019, invoices.”).



Commission cannot order St. Louis Solar to pay damages that it has already paid. PGE’s second counterclaim does not allege that PGE is entitled any damages, even when viewed as an allegation for breach of the interconnection agreement (which is unclear if that is what it is). As such, PGE has failed to state that any relief is owed from St. Louis Solar under either counterclaim.

Finally, PGE must show that its claims are more than mere defenses. PGE does not do so. On the contrary, PGE’s requested relief is, essentially, a release from St. Louis Solar’s claims against PGE. St. Louis Solar asserts that PGE owes it a refund for the damages paid and that PGE should agree to amend the PPA; PGE asserts that no refund nor amendments are due.<sup>30</sup> St. Louis Solar asserts that PGE breached its interconnection obligations and owes a refund for contracted work it did not do; PGE claims it complied with those obligations.<sup>31</sup> In short, St. Louis Solar asserts A is true; PGE asserts A is not true. PGE’s allegations are not counterclaims but are, at best, defenses.

The Commission should dismiss or strike PGE’s counterclaims for failing to state facts sufficient to constitute claims, as PGE has failed to show any relief is owed from St. Louis Solar. If anything, PGE’s counterclaims are mistakenly designated defenses.<sup>32</sup>

---

St. Louis Solar reserves its right to argue that the payments were made under duress of fearing PGE would delay interconnection further if they were not paid and would cause even greater economic harm to St. Louis Solar.

<sup>30</sup> Compare Complaint at PP. 264-272, with PGE, Answer, Affirmative Defenses, and Counterclaim at PP. 453-457.

<sup>31</sup> Compare Complaint at PP. 246-248, 260, with PGE, Answer, Affirmative Defenses, and Counterclaim at PP. 459-460.

<sup>32</sup> See ORCP 19B; see also, e.g., *First Nat’l Bank of Elkhart, Ind. v. R & L Wood Products, Inc.*, 917 F.2d 24, 24 (6th Cir. 1990) (unpublished) (“Although the pleading is styled ‘Amended Counterclaim,’ it lacks essential characteristics of a counterclaim. Most importantly, no prayer for relief was included in the pleading.

However, PGE has already and separately raised these defenses.<sup>33</sup> As such, the counterclaim-defenses in PGE’s pleading are redundant matter.<sup>34</sup> If PGE’s allegations are neither counterclaims nor defenses, then they must be sham or frivolous pleadings.<sup>35</sup>

## V. PGE’S COUNTERCLAIM FOR DAMAGES MUST BE DISMISSED FOR LACK OF JURISDICTION

PGE’s counterclaim seeking alleged damages under the PPA must be dismissed for lack of jurisdiction. If the Commission finds it has jurisdiction, it should state so clearly in a written order, so the parties are not precluded from raising all relevant claims.

### A. Legal Standard

The Commission dismiss a claim if there is a “lack of jurisdiction over the subject matter.”<sup>36</sup> The Oregon State Constitution provides original jurisdiction in the Oregon Supreme Court and allows for the creation of entities with inferior jurisdiction by state statute.<sup>37</sup> The Commission is an administrative agency, created by state statute.<sup>38</sup> Oregon state law provides that the Commission “is vested with power and jurisdiction to supervise and regulate every public utility and telecommunications utility in this state,

---

The pleading only responds to the plaintiff’s complaint by raising a defense, and fails to allege a claim against the plaintiff. . . . Accordingly, the pleading is an affirmative defense.”); *Alton Mem’l Hosp. v. Metro. Life Ins. Co.*, 656 F.2d 245, 248-250 (7th Cir. 1981) (affirming the trial court’s order finding that alleged counterclaims were mistakenly designated defenses and dismissing them). These cases applied Federal Rule of Civil Procedure 8(c), which is similar to ORCP 19B.

<sup>33</sup> PGE, Answer, Affirmative Defenses, and Counterclaim at PP. 428-435.

<sup>34</sup> *See* ORCP 21E.

<sup>35</sup> *See id.*

<sup>36</sup> ORCP 21A(1).

<sup>37</sup> Or. Constitution, Art. VII, Sections 1, 2, 2b.

<sup>38</sup> ORS 183.310, 756.014.

and to do all things necessary and convenient in the exercise of such power and jurisdiction.”<sup>39</sup> Courts have interpreted this provision to confer a broad grant of authority to the Commission.<sup>40</sup>

The Commission has consistently held that it lacks jurisdiction to hear claims for damages. In *Schaefer v. CenturyTel of Or.*, the Commission held that it “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.”<sup>41</sup> Further, in *Shepherd v. U.S. W. Commc’n*, the Commission noted that “in general it has no jurisdiction to award monetary damages.”<sup>42</sup> Similarly, in *Mattox v. PGE*, the Commission held that it has “no jurisdiction nor statutory power to make a money judgment in favor of either party, nor does [it] have any power to enforce such a judgment.”<sup>43</sup> These cases are only examples of the Commission’s long-standing precedent that it lacks jurisdiction over damages.<sup>44</sup>

### **B. PGE’s Counterclaim for Damages is Outside of the Commission’s Jurisdiction**

Pursuant to OAR and ORCP 21A(1), St. Louis Solar respectfully requests that the Commission dismiss PGE’s first counterclaim for lack of jurisdiction over the subject

---

<sup>39</sup> ORS 756.040.

<sup>40</sup> *E.g.*, *Citizens Util. Bd. v. Commission*, 154 Or App 702, 716 (1998).

<sup>41</sup> Docket No. UC 569, Order No. 01-157 (Feb. 8, 2001); *see also* Docket No. UCR 188, Order No. 18-212 (June 6, 2018).

<sup>42</sup> Docket No. UC 477, Order No. 99-749 (Dec. 12, 18, 1999).

<sup>43</sup> Docket No. UC 36, Order No. 85-196 (March 7, 1985).

<sup>44</sup> *See* Docket No. UCR 188, Order No. 18-212 (June 6, 2018) (quoting *Schaefer*); Docket No. UM 1670, Ruling at 5 (Apr. 28, 2014); Docket No. UC 368, Order No. 98-473 (Nov. 18, 1998); Docket No. UC 201, Order No. 92-825 at 11 (June 8, 1992).

matter.<sup>45</sup> PGE’s first counterclaim asks the Commission to award PGE monetary damages.<sup>46</sup> The Commission does not have jurisdiction to award damages, as it has consistently held.<sup>47</sup> As a result, the Commission does not have jurisdiction to award damages, if any, to PGE. It must dismiss the counterclaim for lack of jurisdiction.

**VI. THE COMMISSION SHOULD CLARIFY THE EXTENT OF ITS JURISDICTION AND PRESERVE THE RIGHTS OF THE PARTIES**

St. Louis Solar recognizes that the Commission might reverse its precedent and find that it has jurisdiction to award damages. St. Louis Solar would not challenge the Commission’s assertion of jurisdiction but notes that doing so would upset the parties’ settled expectations. Further, St. Louis Solar notes that exercising jurisdiction over damages is not necessary to resolve this case, since the parties are free to go to court after this proceeding to seek damages. If the Commission exercises jurisdiction, then they would be at risk of being precluded from that future court case, and so the parties would be forced to bring all of their potential damages claims before the Commission.

The Commission might reverse its precedent because it recently asserted jurisdiction over contracts for the first time, specifically over executed standard PPAs between PGE and qualifying facilities (“QFs”) under the Public Utility Regulatory

---

<sup>45</sup> ORCP 21A(1).

<sup>46</sup> PGE, Answer, Affirmative Defenses, and Counterclaim at PP. 452-457. To the extent PGE seeks further relief in this counterclaim, St. Louis Solar maintains such other claims are improperly pled defenses and should be dismissed.

<sup>47</sup> Docket No. UCR 188, Order No. 18-212 (June 6, 2018); Docket No. UM 1670, Ruling at 5 (Apr. 28, 2014); Docket No. UC 569, Order No. 01-157 (Feb. 8, 2001); Docket No. UC 477, Order No. 99-749 (Dec. 12, 18, 1999); Docket No. UC 368, Order No. 98-473 (Nov. 18, 1998); Docket No. UC 201, Order No. 92-825 at 11 (June 8, 1992); Docket No. UC 36, Order No. 85-196 (March 7, 1985).

Policies Act (“PURPA”), such as St. Louis Solar.<sup>48</sup> However, at that time, the Commission specifically asserted jurisdiction over contractual provisions regarding changes to a QF’s nameplate capacity and declined to assert jurisdiction over all contractual provisions.<sup>49</sup> The Commission explained that:

We do not agree that the issue presented in this complaint is simply a common law contract interpretation issue. However, we do not intend to suggest that the Commission necessarily has primary jurisdiction over every issue involved in standard power purchase agreements. Rather, in applying the criteria for primary jurisdiction, we find that the issue presented in this complaint would benefit from the Commission’s expertise, uniform resolution is important, and that a judicial resolution could adversely impact our ability to apply our PURPA policy, rules, and orders in a uniform and consistent manner.<sup>50</sup>

Thus, the Commission reserved its judgment to decide which provisions are appropriate for the Commission to adjudicate and which are not.

In its Complaint, St. Louis Solar has asked the Commission to interpret various provisions in PGE’s standard PPA, but St. Louis Solar has not asked the Commission to award damages.<sup>51</sup> The distinction is a meaningful one. In essence, St. Louis Solar has asked the Commission to interpret PGE’s PPA and determine whether damages were owed or not; if the answer is no, St. Louis Solar is entitled to a full refund.

St. Louis Solar wishes to clarify that PGE’s claim for damages is not the same as St. Louis Solar’s claim for a refund. St. Louis Solar is not bringing any claims for damages (although it has several); it seeks only a refund of all charges PGE improperly

---

<sup>48</sup> *E.g.*, *PGE v. Pac. Nw. Solar*, Docket No. UM 1894, Order 18-025 at 7 n. 15 (Jan. 25, 2018).

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *See* Complaint at PP. 264, 317.

billed. Unlike damages awards, refunds are clearly under the Commission’s jurisdiction.<sup>52</sup> Further, the Commission has clearly exercised jurisdiction over refunds by adopting rules to govern utility refunds to customers.<sup>53</sup>

Under the Complaint, a threshold question is whether it was appropriate for PGE to refuse to extend St. Louis Solar’s COD<sup>54</sup> after PGE delayed interconnection and made it impossible for St. Louis Solar to achieve its COD.<sup>55</sup> Under these circumstances, it was inappropriate for PGE to invoice St. Louis Solar for delay damages, *regardless of the amount*. St. Louis Solar would be satisfied with a Commission decision on this specific issue that: 1) PGE should have agreed to extend St. Louis Solar’s COD; 2) no invoices should have been sent for the time prior to the appropriate extended COD; and 2) therefore any amount invoiced prior to the appropriate COD should be refunded.<sup>56</sup>

Even if the appropriate COD was extended by just two months, PGE might not have sought any delay damages at all. PGE sent St. Louis Solar two invoices for damages in April 2019.<sup>57</sup> PGE admits that no damages were incurred for St. Louis Solar’s alleged breach of contract after that time.<sup>58</sup> PGE refused to extend the COD

---

<sup>52</sup> ORS 757.022 (providing regulated utilities the power to correct bills).

<sup>53</sup> *E.g.*, OAR 860-021-0135 (requiring regulated utilities to issue refunds).

<sup>54</sup> Or grant other amendments.

<sup>55</sup> This proceeding separately raises questions as to the interconnection agreement, but those questions do not depend upon an interpretation of PGE’s standard PPA.

<sup>56</sup> *See* Complaint at PP. 308-309, 317

<sup>57</sup> Complaint at PP. 51-52.

<sup>58</sup> PGE, Answer, Affirmative Defenses, and Counterclaim at P. 334 (admitting that “there were no other periods between breach for failure to achieve scheduled COD and cure of that breach during which market rates exceeded contract rates leading to damages under Section 9.2 of the PPA.”).  
St. Louis Solar does not agree with PGE’s calculation of damages; however, PGE and St. Louis Solar agree that no damages were due after April 2019.

beyond February 2019.<sup>59</sup> With even a two-month extension, PGE might not have even attempted to charge St. Louis Solar for delay damages.

Specific claims for damages that St. Louis Solar can raise, either before this Commission (if it has jurisdiction) or a court, include but are not limited to:

- PGE charged St. Louis Solar for a recloser (switcher) that it did not install (unknown portion of \$629,000 paid for work not performed);
- PGE did not re-conductor the line (unknown portion of \$629,000 paid for work not performed);
- PGE required St. Louis Solar install relays that PGE should have installed (approximately \$16,044.38); and
- Higher financing costs due to PGE's delays.

These damages are not directly related to the terms of the Commission approved standard contract that the Commission has asserted jurisdiction; therefore, St. Louis Solar has not brought them before the Commission.

Because the Commission lacks jurisdiction over damages, PGE's counterclaim for damages should be dismissed for lack of jurisdiction. If the Commission decides to exercise jurisdiction, St. Louis Solar requests a clear order to that effect. St. Louis Solar has claims for damages against PGE which it does not wish to be precluded from raising.

---

<sup>59</sup> PGE, Answer, Affirmative Defenses, and Counterclaim at PP. 169, 181, 183 (admitting that PGE would not and “will not agree to amend the PPA to modify the scheduled COD in Section 2.2.2 to a date later than February 10, 2019”).

## VII. CONCLUSION

For the reasons articulated above, the Commission should grant St. Louis Solar's motion to dismiss or, in the alternative, to strike all of PGE's counterclaims. In addition, the Commission should issue an order confirming that Commission does not have jurisdiction over damages.

Dated this June 5th of 2020.

Respectfully submitted,

Sanger Law, PC



---

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*