

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

DR 57

In the Matter of

RENEWABLE ENERGY COALITION,
COMMUNITY RENEWABLE
ENERGY ASSOCIATION, AND
OREGON SOLAR + STORAGE
INDUSTRIES ASSOCIATION

Petitioners.

PETITION FOR DECLARATORY
RULING

I. INTRODUCTION AND SUMMARY

Pursuant to ORS 756.450 and OAR 860-001-0430, the Renewable Energy Coalition (the “Coalition”), the Community Renewable Energy Association (“CREA”), and the Oregon Solar + Storage Industries Association (“OSSIA”)¹ (collectively the “Interconnection Trade Associations”) hereby submit this petition for declaratory ruling (the “Petition”). This Petition seeks the Public Utility Commission of Oregon’s (the “Commission’s” or “OPUC’s”) resolution of important legal issues regarding a utility’s obligations towards a small generation interconnection customer (generally “Interconnection Customer”) that wishes to pursue, or has pursued, an independent system impact study (“iSIS”) pursuant to OAR 860-082-0060(7)(h).

¹ OSSIA’s legal name is Oregon Solar Energy Industries Association (“OSEIA”), but will be referred to as OSSIA in this Petition.

The Interconnection Trade Associations seek Commission guidance on the iSIS rule for two purposes: 1) to enable Interconnection Customers to pay for and obtain iSISs that will provide substantive value; and 2) to reduce litigation over complicated technical matters by providing guidance upfront regarding the straightforward legal questions. The Interconnection Trade Associations emphasize that, in essence, they seek only a Commission order clarifying that the rule continues to impose the *same* substantive requirements upon utilities as it did when adopted in 2009. Recent litigation suggests that at least one utility disputes, and others may dispute, the rule's efficacy, which underscores the need for clarity from the Commission. If the Commission does not provide a Declaratory Ruling now, then it will be required to do so in a separate complaint proceeding. It is preferable to provide clear guidance through this Petition rather than in a contested case proceeding.

As further explained in this Petition, the Interconnection Trade Associations respectfully request that the Commission issue a declaratory ruling containing the following findings:

1. Interconnection Customers have a unilateral right to conduct an iSIS under OAR 860-082-0060(7)(h).
2. A utility must provide the Interconnection Customer with sufficient information for an iSIS to be performed such that the Interconnection Customer may exercise its unilateral right to conduct an iSIS under OAR 860-082-0060(7)(h).

3. A utility must provide the Interconnection Customer access to the utility’s system that is sufficient for the Interconnection Customer to complete its iSIS pursuant to OAR 860-082-0060(7)(h).
4. A utility must review an Interconnection Customer’s iSIS to evaluate and address the alternative findings: 1) reasonably, including but not limited to the utility acting consistently with Good Utility Practice; 2) in a non-discriminatory manner; 3) to determine if the interconnection facilities or system upgrade are necessary to safely interconnect and mitigate the existence of actual adverse system impacts caused by the Interconnection Customer’s interconnection; and, 4) because the utility’s review is pursuant to both Commission rules and the utility’s contractual obligations under the System Impact Study (“SIS”) Agreement and/or Facilities Study Agreement, in a manner consistent with the utility’s contractual duty of good faith and fair dealing.

II. CONTACT INFORMATION

The contact information for the representatives of REC, CREA and OSSIA with respect to this petition is as follows:

Renewable Energy Coalition
Attn: John Lowe
PO Box 25576
Portland, OR 97298
Telephone: (503) 997-3033
jravenesanmarcos@yahoo.com

Oregon Solar + Storage
Industries Association
Attn: Angela Crowley-Koch
PO Box 14927
Portland, OR 97293-0927
Telephone: (503) 867-3378
angela@oseia.org

Community Renewable Energy
Association
Attn: Mike McArthur
802 Chenowith Loop Road
Telephone: (541) 980-2089
[mwm@community-
renewables.org](mailto:mwm@community-renewables.org)

The contact information for the representatives of PacifiCorp with respect to this petition is as follows:

PacifiCorp, DBA Pacific
Power
825 NE Multnomah St, Ste 2000
Portland, OR 97232
Telephone: (888) 221-7070
oregondockets@pacificorp.com

Carla Scarsella
Pacific Power
825 Multnomah St, Ste 2000
Portland, OR 97232
Telephone: (503) 813-6338
carla.scarsella@pacificorp.com

The contact information for the representatives of Idaho Power with respect to this petition are as follows:

Idaho Power Company
PO Box 70
Boise, ID 83707-0070
Telephone: (208) 388-2200
dockets@idahopower.com

Donovan E Walker
Idaho Power Company
PO Box 70
Boise, ID 83707-0070
Telephone: (208) 388-5317
dockets@idahopower.com;
dwalker@idahopower.com

The contact information for the representatives for Portland General Electric Company (“PGE”) are as follows:

PGE Rates & Regulatory Affairs
Portland General Electric
Company
121 SW Salmon Street,
1WTC0306
Portland, OR 97204
Telephone: (503) 464-8000
pge.opuc.filings@pgn.com

David F White
Portland General Electric Company
121 SW Salmon St., 1WTC1301
Portland, OR 97204
Telephone: (503) 464-7701
david.white@pgn.com

III. BACKGROUND

When the Commission adopted its Small Generator Interconnection Rules (“Interconnection Rules”) in 2009, stakeholders correctly anticipated that some Interconnection Customers may wish to obtain an iSIS in addition to a utility-performed SIS.² After informal rulemaking discussions, Commission Staff included virtually identical rule language in its first formal rule proposal, and there was no, or at least very little, discussion or controversy surrounding an Interconnection Customer’s right to an iSIS in the formal rulemaking process.³ In the twelve years since then, the opportunity to obtain an iSIS and have the utility substantively review the iSIS has become even more significant to customers, because the utility-performed studies are problematic and

² *In Re Rulemaking to Adopt Rules Related to Small Generator Interconnection*, Docket No. AR 521, Order No. 09-196 Appendix A at 21 (June 8, 2009).

³ *See* Docket No. AR 521, Staff’s Comments, Attach. Staff’s Proposed Rules at 22 (Oct. 2, 2007) (proposing that “If the Applicant sponsored a separate independent impact study, the EDC must also evaluate and address any alternative findings from that study”).

alternative opportunities for relief have become unfeasible.⁴ The Interconnection Trade Associations file this Petition for Declaratory Ruling because they seek clarification from the Commission that the Interconnection Rule concerning an iSIS continues to impose the same substantive requirements on utilities as it did when adopted in 2009. Recent litigation suggests that at least one utility disputes, and others may dispute, the rule’s efficacy, which underscores the need for clarity from the Commission.

A. The Commission Adopted its Interconnection Rules in 2009

The Commission’s 2009 rule adoption order concluded a substantial review of interconnection matters after the Oregon Legislature, in 2005, authorized the Commission to adopt rules increasing the size of net metering facilities.⁵ The Commission adopted rules for net metering facilities up to 2 MW in size in 2007, and the Commission

⁴ See generally *Butler Solar, LLC v. PGE*, Docket No. UM 1903, Complaint (Oct. 9, 2017); *Dunn Rd. Solar v. PGE*, Docket No. UM 1963, Complaint (July 26, 2018); *Sandy River Solar, LLC v. PGE*, Docket No. UM 1967, Complaint (Aug. 24, 2018); *Madrass PVI, LLC v. PGE*, Docket No. UM 2009, Complaint (April 22, 2019); *Waconda Solar, LLC v. PGE*, Docket No. UM 1971, First Amended Complaint (July 31, 2019); *Sunthurst Energy, LLC v. PacifiCorp*, Docket No. UM 2118, Complaint (Sept. 29, 2020); *Dalreed Solar LLC v. PacifiCorp*, Docket No. UM 2125, Complaint (Nov. 3, 2020); and *Zena Solar, LLC v PGE*, Docket No. UM 2164, Complaint (May 24, 2021).

⁵ See 2005 Or. Laws ch. 145, section 1 (codified at ORS 757.300, as amended). The Commission has previously issued at least one Declaratory Ruling regarding net metering customers. See generally *In Re Honeywell Int’l Inc and Honeywell Global Finance Inc. and PacifiCorp dba Pacific Power*, Docket No. DR 40, Order No. 08-388 at 2, 20 (July 31, 2008) (interpreting net-metering rules and statutes to address “[q]uestions about the proper interpretation of these statutes and rules [that] have created uncertainty about a common financing method that encourages the development of solar power” and issuing a declaratory ruling to address both specific entities as well as “similarly situated businesses”).

promptly launched its OAR 860-082 rulemaking for Interconnection Customers up to 10 MW in size.⁶ These rules built upon the Federal Energy Regulatory Commission’s (“FERC’s”) Small Generator Interconnection Procedure (“SGIP”) issued in 2005 and the Mid-Atlantic Distributed Resource Initiative’s (“MADRI’s”) then recently developed model rule.⁷ In December 2007, the Regulatory Assistance Project (“RAP”) recognized Oregon’s then-ongoing interconnection rulemaking as reflecting improvements to MADRI’s model rule.⁸ The Interconnection Trade Associations understand the iSIS provision to be one of these improvements. Staff proposed the iSIS rule at the start of the formal rulemaking, and the rule had virtually no changes.⁹

⁶ *In Re Rulemaking to Adopt Rules Related to Net Metering*, Docket No. 515, Order No. 07-319 at 1 (July 24, 2007); Docket No. AR 521, Staff Report for July 24, 2007 Public Meeting (proposing to open the rulemaking). Staff later referenced the relationship between the net metering and interconnection rulemakings. Docket No. AR 521, Staff’s Initial Comments at 1-2.

⁷ See RAP, Introduction to Interconnection Rules, Presentation to Utah Public Service Commission Distributed Generation Interconnection Workshop at 6 (Dec. 4, 2007), available at <https://pscdocs.utah.gov/misc/07docs/0799907/RAPInterconRules.pdf>; see generally FERC Order 2006, *Standardization of Small Generator Interconnection Agreements & Procedures*, 111 FERC ¶ 61,220 (May 12, 2005); MADRI, Model Small Generator Interconnection Procedures (Nov. 22, 2005), available at https://www.madrionline.org/wp-content/uploads/2017/02/inter_modelsmallgen-1.pdf.

⁸ RAP, Introduction to Interconnection Rules at 6 (“Oregon improves on MADRI Model Rule”).

⁹ Compare Docket No. AR 521, Staff’s Comments, Attach. Staff’s Proposed Rules at 22 (Oct. 2, 2007) (“If the Applicant sponsored a separate independent impact study, the EDC must also evaluate and address any alternative findings from that study”), with OAR 860-082-0060(7)(h) (“If an applicant provides an independent system impact study to the public utility, then the public utility must evaluate and address any alternative findings from that study.”).

B. A Brief Overview of the Interconnection Rules

The Commission’s Interconnection Rules, including the iSIS rule, continue to apply today. Before interconnecting a generating facility to the utility’s distribution or transmission system, a facility representative (e.g., developer, owner) must first apply for authorization from the utility and, if need be, pay for the construction of “interconnection facilities”¹⁰ and “system upgrades”¹¹ to maintain the system’s safety and reliability.¹²

1. The Interconnection Process Generally

The Commission’s rules provide a tiered approach for utilities processing interconnection applications. The highest tier, Tier 4, aims to address Interconnection Customers whose facilities are most likely to pose a risk to the utility’s system and thereby most likely to require interconnection facilities or system upgrades.¹³ In contrast, facilities that may qualify under the lower tier application processes include those with a smaller nameplate capacity (25 kW or less, versus up to 10 MW) or those that do not export power onto the utility’s system.¹⁴ Stated differently, Tier 4 interconnection

¹⁰ OAR 860-082-0015(16) (“Interconnection facilities’ means the facilities and equipment required by a public utility to accommodate the interconnection of a small generator facility to the public utility’s transmission or distribution system and used exclusively for that interconnection. Interconnection facilities do not include system upgrades.”).

¹¹ OAR 860-082-0015(34) (“System upgrade’ means an addition or modification to a public utility’s transmission or distribution system or to an affected system that is required to accommodate the interconnection of a small generator facility.”).

¹² OAR 860-082-0025(1).

¹³ See OAR 860-082-0060(1)(a); see also OAR 860-082-0045(1), -0050(1), -0055(1).

¹⁴ OAR 860-082-0045(1)(b), -0055(1)(d), -0060(1)(b).

applications are the most technically complicated and the most likely to require expensive interconnection facilities and/or system upgrades. The iSIS rule only applies to Tier 4 Interconnection Customers, thus Tier 4 is the focus of this Petition for Declaratory Ruling.¹⁵

Utilities may require Tier 4 Interconnection Customers to undergo up to three different types of technical studies: 1) a Feasibility Study; 2) a SIS; and 3) a Facilities Study.¹⁶ The studies increase in complexity. The Feasibility Study identifies “any potential adverse system impacts ... that may result from the interconnection.”¹⁷ The SIS identifies and details “the impacts ... that would result ... if no modifications ... were made.”¹⁸ Finally, the Facilities Study identifies “the interconnection facilities and system upgrades required to safely interconnect” and determines the associated costs.¹⁹ Once the

¹⁵ There are analogous provisions in Tiers 2 and 3, but this Petition for Declaratory Rule focuses only on the iSIS Rule. *See* OAR 860-082-0050(3)(b)(B), - 0055(3)(b)(B) (requiring the utility to “[r]eview any independent analysis of the proposed interconnection provided by the applicant”).

¹⁶ OAR 860-082-0060(6), (7), (8). PacifiCorp uses slightly different terms, but these differences are not significant for purposes of this Petition, as the iSIS Rule remains applicable to PacifiCorp. *In Re PacifiCorp’s Application for an Order Approving Queue Reform Proposal*, Docket No. UM 2108, PacifiCorp Compliance Filing, Attachment 6 at 24-32 (providing the applicable rules after the Commission granted a partial waiver from OAR 860-082 to PacifiCorp).

The Interconnection Customer and utility may agree to skip a study. On the other hand, one or more of the three studies may need to be repeated if higher queued Interconnection Customers withdraw their applications, as each application assumes the construction of the facilities ahead of it. *See* OAR 860-082-0060(4), (6)(e), (7)(f).

¹⁷ OAR 860-082-0060(6)(e).

¹⁸ OAR 860-082-0060(7)(e).

¹⁹ OAR 860-082-0060(8)(e).

study process is complete, the utility must provide the Interconnection Customer an interconnection agreement, under which the Interconnection Customer pays for and receives interconnection service.²⁰ In brief summary, the Commission has adopted rules to govern a process wherein utilities engage in highly technical studies which ultimately set forth the costs that Interconnection Customers must pay in order to receive interconnection service.

2. Customer Protections in the Interconnection Rules

The Commission’s rules provide some limited protections for Interconnection Customers, regarding both costs and the timeliness of the process.

Regarding costs, OAR 860-082-0035 mandates that Interconnection Customers must pay only for interconnection facilities or system upgrades that are “necessary” to safely interconnect and mitigate the existence of actual “adverse system impacts” that are “caused by” the Interconnection Customer’s interconnection.²¹ In other words, Interconnection Customers are not required to pay for equipment that the utility otherwise needs to install, that is in excess of what the Interconnection Customer needs, or that is not needed at all. Further, the rule states that Interconnection Customers do not need to pay any and all costs for interconnection facilities or system upgrades, but only those costs that are “reasonable.”²²

²⁰ OAR 860-082-0025(7)(e).

²¹ OAR 860-082-0035(2), (4).

²² OAR 860-082-0035(2), (4).

The Commission affirmed the intent of these protections in its rule adoption order. It stated that:

[The Industrial Customers of Northwest Utilities (“ICNU”)] argues that a similar [cost-sharing] process should be included in our small generator interconnection rules to ensure that one small generator facility does not pay the entire cost of system upgrades that primarily benefit the public utility or other small generators. ICNU also fears that a public utility might require a small generator to pay for system upgrades that the utility planned to make with or without the small generator’s interconnection.

Because not all small generator facilities under this Commission’s jurisdiction will be using a public utility’s transmission system, a process allowing cost sharing of system upgrades using transmission credits is not feasible. The participants in the rulemaking process were unable to find another method of sharing such costs. The proposed rules, however, include language that is meant to strictly limit a public utility’s ability to require one small generator facility to pay for the cost of system upgrades that primarily benefit the utility or other small generator facilities, or that the public utility planned to make regardless of the small generator interconnection. Under the proposed rules, a public utility may only require a small generator facility to pay for system upgrades that are “necessitated by the interconnection of a small generator facility” and “required to mitigate” any adverse system impacts “caused” by the interconnection. We therefore believe the proposed rules adequately protect small generator facilities and that ICNU’s fears are unfounded.²³

Similarly, the Commission’s rules provide some protections for Interconnection Customers from undue delays. The Commission’s Rules provide strict timelines for the utilities to complete at least some tasks in the interconnection process, although the rules

²³ Docket No. AR 521, Order No. 09-196 at 4-5.

themselves do not impose strict requirements on completing the studies.²⁴ To alleviate the workload on utilities and ensure timely study reports, the Commission’s Rules state that a utility may contract with a third-party consultant to complete an interconnection study for the Interconnection Customer instead of the utility conducting the study, and the Rules allow a customer, with the utility’s agreement, to hire a third-party consultant to complete an interconnection study instead of the utility.²⁵ The Rules also authorize an Interconnection Customer and utility to agree to have a third-party perform any required construction work.²⁶

3. The iSIS Rule

The iSIS Rule provides an opportunity for the Interconnection Customer to independently review and provide the utility with information on whether any particular set of upgrades are reasonable, non-discriminatory, or necessary to safely interconnect

²⁴ See generally OAR 860-082-0010(2); Compare, e.g., OAR 860-082-0060(7) (“[T]he public utility must provide the applicant with an executable system impact study agreement within five business days of completing the feasibility study or from the date of the scoping meeting, whichever is applicable”), with, e.g., OAR 860-082-0060(7)(d) (“The public utility must make reasonable, good-faith efforts to follow the schedule set forth in the system impact study agreement for completion of the study.”).

²⁵ OAR 860-082-0060(9); see also Docket No. AR 521, Order No. 09-196 at 4 (discussing this issue); see also, e.g., Docket No. AR 521, Oregon Dep’t of Energy’s Comments on Proposed Rules at 1 (June 11, 2008) (recommending the language specifically to ensure a utility either “provide[s] adequate staff resources or are expected to contract third-party consultants”); Docket No. AR 521, Energy Trust of Oregon’s Comments at 1 (Nov. 9, 2007) (proposing “that the [Rules require a] utility provide adequate staff resources or subcontract out the work to a third party”).

²⁶ OAR 860-082-0060(8)(f).

and mitigate the existence of actual adverse system impacts that are “caused by” the Interconnection Customer’s interconnection. The iSIS Rule states that “[i]f an applicant provides an independent system impact study to the public utility, then the public utility must evaluate and address any alternative findings from that study.”²⁷ In other words, Interconnection Customers may hire an independent consultant to conduct an iSIS that is separate and additional to the utility’s SIS, and the utility is obligated by law to “evaluate and address any alternative findings.”²⁸ Thus, Interconnection Customers may hire an expert to essentially double-check the utility’s work in the SIS and, when the results diverge, the utility has to substantively consider whether the Interconnection Customer is correct.

Paying the utility to conduct a SIS and paying for an iSIS is more expensive than only paying the utility or a third-party consultant to complete the SIS instead of the utility. However, despite the additional costs associated with obtaining a second interconnection study, the iSIS Rule can be an important tool for Interconnection Customers.

²⁷ OAR 860-082-0060(7)(h).

²⁸ OAR 860-082-0060(7)(h).

C. The Interconnection Process in Oregon Has Been Contentious

Since the Commission’s Interconnection Rules took effect in the fall of 2009, there have been, and currently are, a number of contested cases involving interconnection.²⁹

For example, in June 2019, the Commission interpreted OAR 860-082-0060(8)(f) as part of a contested case proceeding.³⁰ That rule states that “[a] public utility and an applicant may agree in writing to allow the applicant to hire a third-party consultant to

²⁹ See, e.g., *Pac. Nw. Solar, LLC (Amity Project) v. PGE*, Docket No. UM 1902, Complaint at 1-3 (Oct. 9, 2017); *Butler Solar, LLC v. PGE*, Docket No. UM 1903, Complaint at 1-3 (Oct. 9, 2017); *Pac. Nw. Solar, LLC (Duus Project) v. PGE*, Docket No. UM 1904, Complaint at 1-3 (Oct. 9, 2017); *Pac. Nw. Solar, LLC (Stringtown Project) v. PGE*, Docket No. UM 1907, Complaint at 1-3 (Oct. 9, 2017); *Pac. Nw. Solar, LLC (Starlight Project) v. PGE*, Docket No. UM 1906, Complaint at 1-3 (Oct. 9, 2017); *Dunn Rd. Solar v. PGE*, Docket No. UM 1963, Complaint at 1-3 (July 26, 2018); *Sandy River Solar, LLC v. PGE*, Docket No. UM 1967, Complaint at 1-5 (Aug. 24, 2018); *Madras PVI, LLC v. PGE*, Docket No. UM 2009, Complaint at 1-3 (Apr. 22, 2019) and Madras Solar’s Response to PGE’s Motion to Strike at 6 (Nov. 26, 2019); *Waconda Solar, LLC v. PGE*, Docket No. UM 1971, First Amended Complaint at 1-4 (July 31, 2019); *St. Louis Solar, LLC v. PGE*, Docket No. UM 2057, Complaint at 1-4 (Feb. 3, 2020); *Zena Solar, LLC v. PGE*, Docket No. UM 2074, Complaint at 1-5 (Mar. 27, 2020); *Sunthurst Energy, LLC v. PacifiCorp*, Docket No. UM 2118, Complaint at 1 (Sept. 29, 2020); *Dalreed Solar LLC v. PacifiCorp*, Docket No. UM 2125, Complaint at 1-8 (Nov. 3, 2020); *Zena Solar, LLC v. PGE*, Docket No. UM 2164, Complaint at 1-15 (May 24, 2021). There have also been at least two requests by Interconnection Customers for waivers of the interconnection rules in order to avoid or mitigate prohibitively expensive interconnection costs. *In Re Carnes Creek Solar, LLC, Petition for Waiver of OAR 860-082-0025(1)(c)*, Docket No. UM 1631, Petition for Waiver for Carnes Creek Solar, LLC at 1-2 (Apr. 23, 2020); *In Re Marquam Creek Solar, LLC, Petition for Waiver of OAR 860-082-0025(1)(c)*, Docket No. UM 1631, Marquam Creek Solar, LLC, Petition for Waiver of OAR 860-082-0025(1)(c) at 1-2 (Jan. 25, 2021).

³⁰ *Sandy River Solar, LLC v. PGE*, Docket No. UM 1967, Order No. 19-218 at 1 (June 24, 2019).

complete the interconnection facilities and system upgrades, subject to public utility oversight and approval.”³¹ The Commission concluded that “OAR 860-082-0060(8)(f) as written does not include a reasonableness standard.”³² In other words, the Commission held that utilities may act unreasonably in making decisions under OAR 860-082-0060(8)(f).

The above conclusion has raised questions about whether utilities need to act “reasonably” under other Interconnection Rules, including the iSIS Rule. PGE has publicly posted its iSIS Policy to OASIS.³³ However, PGE has taken the position that it does not need to “evaluate and address any alternative findings” under a reasonableness standard.³⁴ It is unclear whether PacifiCorp and Idaho Power hold similar positions.

The practical result is that Interconnection Customers cannot make commercially reasonable business decisions about whether or not to pay for an iSIS, because they do not know whether paying for an iSIS could provide actual cost savings or not. At this time, at least PGE’s position appears to be that it can unreasonably, discriminatorily, and in bad faith review an iSIS, and not provide any meaningful assurances to the contrary,

³¹ OAR 860-082-0060(8)(f).

³² Docket No. UM 1967, Order No. 19-218 at 26.

³³ See PGE iSIS Policy, available at http://www.oasis.oati.com/woa/docs/PGE/PGEdocs/PGE_Independent_System_Impact_Study_Process_07.21.2021.pdf (July 2021) [hereinafter PGE iSIS Policy].

³⁴ *Waconda Solar, LLC v. PGE*, Docket No. UM 1971, PGE’s Modified Second Motion for Summary Judgment at 13-14 (indicating Waconda Solar asked PGE if it would evaluate an iSIS “in a reasonable manner consistent with Good Utility Practice as required by Oregon law, rules, and policies” but PGE views this standard as “not found in the Commission’s rules”).

and the Interconnection Customer would have no legal recourse. Essentially, a utility could draft a cursory response and otherwise disregard the iSIS. An Interconnection Customer will be less likely to take the time and pay for the expense of an iSIS, if the utility can essentially ignore the results.

The Interconnection Trade Associations are aware of at least two contested case proceedings currently before the Commission regarding this issue.³⁵ In both proceedings, PGE is attempting to use procedural arguments to avoid the Commission addressing the substantive question of what is the appropriate legal standard for review of an iSIS. It is the hope of the Interconnection Trade Associations that the Commission can resolve this Petition for Declaratory Ruling and thereby reduce the need for interconnection disputes.³⁶ If the Commission does not issue a declaratory ruling in this proceeding, then the way for the Interconnection Trade Associations to provide their positions and arguments would be to comment or intervene in those separate proceedings.

The Interconnection Trade Associations recognize that the Commission has opened generic proceedings to address live issues in the interconnection process.³⁷ The

³⁵ See generally *Waconda Solar, LLC*, Docket No. UM 1971, First Amended Complaint (July 31, 2019); *Zena Solar, LLC v. PGE*, Docket No. UM 2164, Complaint (May 24, 2021).

³⁶ In the *Waconda Solar* proceeding, Docket No. UM 1971, the Complainant (*Waconda Solar*) has requested that the ALJ stay that proceeding pending an outcome of this Petition. In the *Zena Solar* proceeding, Docket No. UM 2164, the Commission has set December 10 as the date upon which it will enter an order. To the extent that the Commission resolves issues related to the iSIS Rule in that proceeding, it may moot some or all of the need to issue a declaratory ruling.

³⁷ One of these dockets is Docket No. UM 2111, which Staff has described as “an umbrella docket to organize, track, and monitor existing and future efforts to

Interconnection Trade Associations understand those proceedings to address a change in the current process. For instance, the Commission acknowledged in UM 1967 that it has “the authority to amend our rules or adopt new rules that expand our oversight over interconnection issues, including imposing new limitations on utility discretion to refuse third party involvement, in a specific rule through future rulemakings.”³⁸ It referenced the generic proceedings as an option for further considering the need for a rulemaking.³⁹

By contrast, this Petition for Declaratory Ruling seeks clarity regarding the *existing* process. Absent clarification, the Commission will be required to address these issues in complaints before it now or in other future interconnection litigation.

The Interconnection Trade Associations believe this Petition provides a more efficient forum for resolution than any contested case. Rather than face the issues in a complex, factual, and utility-specific proceeding, the Interconnection Trade Associations seek a pure legal answer that will guide all three utilities in their implementation of the Commission’s Interconnection Rules. This Petition will also provide all three utilities (rather than only PGE), the broad representatives of the interconnection customers, and any other interested stakeholder the opportunity to comment and participate.

address the range of interconnection issues that may be facing Oregon generators.” *See Investigation into Interconnection Process and Policies*, Docket No. UM 2111, Staff Report at 1 (June 22, 2020).

³⁸ Docket No. UM 1967, Order No. 19-218 at 25-26.

³⁹ Docket No. UM 1967, Order No. 19-218 at 25-26.

IV. RELEVANT ASSUMED FACTS

1. The Coalition was established in 2009 and is an unincorporated nonprofit organization comprised of over 35 members who own and operate small renewable energy facilities in Oregon, Idaho, Montana, Utah, Washington, and Wyoming. There are various types of entities that are members of the Coalition such as irrigation districts, water districts, waste management districts, electric cooperatives, corporations, and individuals. Members engage in various projects such as small hydroelectric, biomass, geothermal, solid waste, and solar energy. Interconnection is a very important issue for the Coalition's members. Interconnection issues can be a significant impediment to the construction of new generation facilities as well as the continued operation of existing facilities.
2. OSSIA is an Oregon-based trade association founded in 1981 to promote clean, renewable, solar technologies. OSSIA members include businesses, non-profit groups, and other solar industry stakeholders. OSSIA provides a unified and respected voice of the solar industry and focuses exclusively on the solar value chain; from workforce development to permitting, advocacy, policy, and regulation for residential, commercial, community, and utility scale solar projects on the local, state, and regional level. Interconnection is a very important issue for OSSIA members, which include Interconnection Customers. Interconnection issues can be a significant impediment to the construction of new generation facilities as well as the continued operation of existing facilities.

3. CREA was established in 2007 and is an intergovernmental association.
Members include counties, irrigation districts, councils of government, project developers, for-profit businesses, and non-profit organizations. CREA works with local communities, counties, state and federal agencies, Congress, the Commission, and the Legislature to advocate for improved policies that support development of more community renewable energy in Oregon. CREA members and staff help educate policy-makers and interested communities on steps toward progress for renewable energy development. CREA also works with parties to make projects happen, providing technical expertise for developers, landowners, and counties where projects are under consideration. Interconnection issues can be a significant concern for the construction of community renewable energy projects in Oregon. CREA's members include Interconnection Customers.
4. The Commission adopted its Interconnection Rules in 2009.
5. The Commission has not amended its Interconnection Rules since 2009.
6. The Oregon State Legislature has not enacted legislation that would have the effect of abrogating the Commission's Interconnection Rules.
7. The U.S. Congress has not enacted legislation that would have the effect of abrogating the Commission's Interconnection Rules.
8. The Commission's Interconnection Rules are still effective as adopted in 2009.
9. OAR 860-082-0060(7)(h) states "[i]f an applicant provides an independent system impact study to the public utility, then the public utility must evaluate and address any alternative findings from that study."

10. An Interconnection Customer could decide to conduct an iSIS for a number of reasons. For example, the Interconnection Customer may decide to conduct an iSIS to ensure the estimated interconnection costs provided by the utility are reasonable and not discriminatory, to ensure the study properly considers all possible engineering configurations for the interconnection, or to ensure that the upgrades are properly limited to those necessary to mitigate adverse system impacts as a direct result of the Interconnection Customer's interconnection.
11. One or more members of the Interconnection Trade Associations could seek to conduct an iSIS per OAR 860-082-0060(7)(h).
12. OAR 860-082-0060(7)(h) does not set forth specific standards of review that should apply when a utility "evaluate[s] and address[es]" an Interconnection Customer's iSIS. Further, the rule does not provide a specific process the utility and Interconnection Customer must participate in for the iSIS.
13. This lack of specificity has led to several disputes before the Commission regarding iSISs and will likely lead to future disputes. For example, Waconda Solar, LLC ("Waconda Solar") filed a complaint against PGE alleging PGE unreasonably withheld its consent to allow Waconda Solar to hire a third-party consultant to complete the iSIS.⁴⁰ Similarly, Zena Solar, LLC ("Zena Solar")

⁴⁰ *Waconda Solar, LLC v. PGE*, Docket No. UM 1971, First Amended Complaint at 21 (July 31, 2019).

filed a complaint against PGE alleging PGE failed to adequately review and consider existing utility protection capabilities for Zena Solar's iSIS.⁴¹

14. PGE has publicly posted PGE's iSIS Policy regarding its iSIS process under OAR 860-082-0060(7)(h) that includes details on when and where a notice of intent to conduct an iSIS must be sent, the iSIS timelines, what information it will supply to an Interconnection Customer conducting an iSIS, what happens if there are delays in the process, who is responsible for the costs of the iSIS, site access, and other various provisions.⁴² A copy of this policy is attached to this Petition as Attachment A.
15. PGE's iSIS Policy does not state what standard PGE will use to evaluate the iSIS.
16. PGE's iSIS Policy does not state that PGE's review of the iSIS will be reasonable.
17. PGE's iSIS Policy does not state that PGE's review of the iSIS will be consistent with Good Utility Practice.
18. PGE's iSIS Policy does not state that PGE's review of iSIS will be non-discriminatory.
19. PGE's iSIS Policy does not state that PGE's review will be consistent with the duty of good faith and fair dealing.
20. PGE's iSIS does not state that PGE's review will be to determine whether the interconnection facilities or system upgrades are necessary to safely interconnect

⁴¹ *Zena Solar, LLC v. PGE*, Docket No. UM 2164, Complaint at 10 (May 24, 2021).

⁴² *See* PGE iSIS Policy.

and mitigate the existence of actual adverse system impacts that are caused by the Interconnection Customer’s interconnection.

21. PGE could take down or change its iSIS Policy without Commission approval.
22. PGE has indicated that its position is that it does not need to evaluate an iSIS under a reasonableness standard consistent with Good Utility Practice.⁴³
23. PacifiCorp has acknowledged that it is subject to OAR 860-082-0060(7)(h) as it stated “PacifiCorp has not requested a waiver of that provision of the small generator interconnection rule and it will continue to apply[,]”⁴⁴ but PacifiCorp has provided no guidance on how Interconnection Customers may exercise their rights.
24. PacifiCorp has not explained how an Interconnection Customer could conduct and have PacifiCorp review an iSIS under its Commission-approved cluster study process.

V. APPLICABLE STATUTES AND ADMINISTRATIVE RULES

A. Public Utility Regulatory Policies Act (“PURPA”)

The federal and Oregon state PURPA provide at least a subset of Interconnection Customers with federal and state-level rights to sell their net output to electric utilities at the utility’s avoided cost prices.⁴⁵ To effectuate these purchases, Interconnection

⁴³ Docket No. UM 1971, PGE’s Modified Second Motion for Summary Judgment at 13-14.

⁴⁴ Docket No. UM 2108, PacifiCorp’s Reply Comments at 27 (July 24, 2020).

⁴⁵ ORS 758.525(2); 18 USC 824a-3(b).

Customers also have rights to interconnect to a utility’s system.⁴⁶ Pursuant to these rights, Interconnection Customers must pay the “interconnection costs”⁴⁷ that a utility “reasonably ... incurred” and that a utility charges “on a non-discriminatory basis with respect to other customers with similar load or other cost-related characteristics.”⁴⁸

B. ORS 757.325

Under Oregon statute, a public utility cannot give undue or unreasonable preference or advantage to anyone, including the utility itself. ORS 757.325 states “[n]o public utility shall make or give undue or unreasonable preference or advantage to any particular person or locality, or shall subject any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect.”⁴⁹ If the utility violates this prohibition, it is guilty of unjust discrimination.⁵⁰

C. ORS 756.040

ORS 756.040 discusses the general powers and duties of the Commission. This statute states:

(1) In addition to the powers and duties now or hereafter transferred to or vested in the Public Utility Commission, the commission *shall represent the customers of any public utility or telecommunications utility and the*

⁴⁶ 18 CFR 292.303(c); OAR 860-029-0030.

⁴⁷ The Commission defines this term as follows: “the reasonable costs of connection, switching, dispatching, metering, transmission, distribution, equipment necessary for system protection, safety provisions, and administrative costs incurred by an electric utility directly related to installing and maintaining the physical facilities necessary to permit purchases from a qualifying facility.” OAR 860-029-0010(9).

⁴⁸ OAR 860-029-0060(1).

⁴⁹ ORS 757.325(1).

⁵⁰ ORS 757.325(2).

public generally in all controversies respecting rates, valuations, service and all matters of which the commission has jurisdiction. In respect thereof the commission shall make use of the jurisdiction and powers of the office *to protect such customers, and the public generally, from unjust and unreasonable exactions and practices and to obtain for them adequate service at fair and reasonable rates.* The commission shall balance the interests of the utility investor and the consumer in establishing fair and reasonable rates. Rates are fair and reasonable for the purposes of this subsection if the rates provide adequate revenue both for operating expenses of the public utility or telecommunications utility and for capital costs of the utility, with a return to the equity holder that is:

- (a) Commensurate with the return on investments in other enterprises having corresponding risks; and
- (b) Sufficient to ensure confidence in the financial integrity of the utility, allowing the utility to maintain its credit and attract capital.

(2) The commission is vested with power and jurisdiction to supervise and regulate every public utility and telecommunications utility in this state, and to do all things necessary and convenient in the exercise of such power and jurisdiction.

(3) The commission may participate in any proceeding before any public officer, commission or body of the United States or any state for the purpose of representing the public generally and the customers of the services of any public utility or telecommunications utility operating or providing service to or within this state.

(4) The commission may make joint investigations, hold joint hearings within or without this state and issue concurrent orders in conjunction or concurrence with any official, board, commission or agency of any state or of the United States.⁵¹

Overall, this requires the Commission to represent, protect and ensure that

Interconnection Customers are not subject to any unjust or unreasonable rates, services, exactions, or practices.

⁵¹ ORS 756.040 (emphasis added).

D. ORS 757.020

This statute states “[e]very public utility is required to furnish adequate and safe service, equipment and facilities, and the charges made by any public utility for any service rendered or to be rendered in connection therewith shall be reasonable and just, and every unjust or unreasonable charge for such service is prohibited.”⁵² This imposes a duty on utilities to provide adequate and safe services, equipment, and facilities. Further, the charges for those cannot be unreasonable or unjust. This provides protections for Interconnection Customers to ensure the charges paid for their services are reasonable and just.

E. OAR 860-082-0060(7)(h)

OAR 860-082 outlines the rules related to small generator interconnection. At issue here is OAR 860-082-0060(7)(h), which states “[i]f an applicant provides an independent system impact study to the public utility, then the public utility must evaluate and address any alternative findings from that study.”⁵³ This means an Interconnection Customer has the right to conduct an iSIS, and the utility must evaluate and address any alternative findings in that study compared to the utility’s own findings.

F. OAR 860-082-035(2)

This rule ensures an Interconnection Customer only pays the reasonable costs of the interconnection facilities required to interconnect to a utility’s transmission or

⁵² ORS 757.020.

⁵³ OAR 860-082-0060(7)(h).

distribution system. The rule states “[f]or interconnection review under Tier 4, a public utility must identify the interconnection facilities necessary to safely interconnect the small generator facility with the public utility’s transmission or distribution system. The applicant must pay the reasonable costs of the interconnection facilities. The public utility constructs, owns, operates, and maintains the interconnection facilities.”⁵⁴

G. OAR 860-082-0035(4)

OAR 860-082-0035(4) outlines the system upgrade costs an Interconnection Customer must pay when it wants to interconnect to a utility’s transmission or distribution system. This rule states:

A public utility must design, procure, construct, install, and own any system upgrades to the public utility’s transmission or distribution system necessitated by the interconnection of a small generator facility. A public utility must identify any adverse system impacts on an affected system caused by the interconnection of a small generator facility to the public utility’s transmission or distribution system. The public utility must determine what actions or upgrades are required to mitigate these impacts. Such mitigation measures are considered system upgrades as defined in these rules. The applicant must pay the reasonable costs of any system upgrades.⁵⁵

VI. QUESTIONS PRESENTED

1. Whether an Interconnection Customer has a unilateral right to have an iSIS conducted pursuant to OAR 860-082-0060(7)(h)?
2. Whether a utility must provide an Interconnection Customer with sufficient information to conduct an iSIS and provide the Interconnection Customer access

⁵⁴ OAR 860-082-0035(2).

⁵⁵ OAR 860-082-0035(4).

to its systems sufficient to complete the iSIS pursuant to OAR 860-082-0060(7)(h)?

3. Whether a utility must “evaluate and address” an Interconnection Customer’s iSIS in accordance with OAR 860-082-0060(7)(h) under specific standards of review?
 - a. Whether a utility must reasonably evaluate and address an Interconnection Customer’s iSIS under OAR 860-082-0060(7)(h)?
 - b. Whether “Good Utility Practice” is a minimum standard of review to apply when determining if the utility reasonably evaluated and addressed an Interconnection Customer’s iSIS under OAR 860-082-0060(7)(h)?
 - c. Whether the utility must evaluate and address the Interconnection Customer’s iSIS under OAR 860-082-0060(7)(h) in a non-discriminatory manner as outlined under ORS 757.325?
 - d. Whether a standard of review is that the utility must review the iSIS to determine if system upgrades are required to mitigate any adverse system impacts cause by the interconnection of the small generator’s facility as outlined under OAR 860-082-0035 when evaluating and addressing an Interconnection Customer’s iSIS under OAR 860-082-0060(7)(h)?
 - e. Whether a utility must evaluate and address an Interconnection Customer’s iSIS under OAR 860-082-0060(7)(h) in a contractual good faith and fair dealing manner?

VII. PROPOSITIONS OF LAW AND/OR LEGAL ARGUMENTS

A. An Interconnection Customer Is Entitled To Conduct An Independent System Impact Study As A Matter Of Right

An Interconnection Customer is entitled to conduct an iSIS, if desired, as indicated by Commission rules. OAR 860-082-0060(7)(h) states “[i]f an applicant provides an independent system impact study to the public utility, then the public utility must evaluate and address any alternative findings from that study.”⁵⁶ The rule indicates an Interconnection Customer has the right to conduct an iSIS because if the Interconnection Customer provides the iSIS to the utility, then the utility must evaluate and address the study.

PGE and PacifiCorp have at times suggested they agree an Interconnection Customer has the right to conduct an iSIS. For example, PGE has acknowledged an Interconnection Customer’s right to conduct an iSIS because in its iSIS Policy PGE stated “an interconnection applicant (Applicant) may provide PGE with an Applicant-performed independent system impact study.”⁵⁷ The rest of that document outlines the process for an Interconnection Customer to conduct an iSIS under OAR 860-082-0060(7)(h).⁵⁸ The Interconnection Trade Associations are unfamiliar with any similar policy for PacifiCorp or Idaho Power, although PacifiCorp has acknowledged that it is subject to the rule.⁵⁹

⁵⁶ OAR 860-082-0060(7)(h).

⁵⁷ See PGE iSIS Policy at 1.

⁵⁸ See PGE iSIS Policy at 1-4.

⁵⁹ Docket No. UM 2108, PacifiCorp’s Reply Comments at 27 (July 24, 2020).

However, PGE has not fully enabled Interconnection Customers to use their right to an iSIS. PGE has stated that if an Interconnection Customer provides PGE with an iSIS, then “PGE will evaluate and address any alternative findings from that study as required by OAR 860-082-0060(7)(h).”⁶⁰ However, PGE has also stated that “[a]t most, the rule impliedly bars a utility from preventing the interconnection applicant from performing an independent system impact study.”⁶¹ Therefore, PGE agrees that if an Interconnection Customer can somehow provide PGE with an interconnection study, then it will review the study; however, PGE does not agree that it will cooperate with the customer or provide them with sufficient information to conduct the study.

PGE has previously disputed an Interconnection Customer’s right to conduct an iSIS, and it is possible that PGE or another Oregon utility may take the position in the future that an Interconnection Customer does not have the right to conduct an iSIS. Similarly, absent clarification from the Commission, an Oregon utility may exploit perceived ambiguities in the Commission’s rules to frustrate Interconnection Customers’ ability to use the right to conduct an iSIS – making the right a dead letter. Thus, the Commission should formally recognize and clarify an Interconnection Customer’s right to conduct an iSIS under OAR 860-082-0060(7)(h).

⁶⁰ Docket No. UM 1971, PGE’s Answer to the Complaint at 3 (Nov. 1, 2018).

⁶¹ Docket No. UM 1971, PGE’s Modified Second Motion for Summary Judgment at 37 (Sept. 15, 2021).

B. A Utility Must Provide an Interconnection Customer With Sufficient Information To Conduct The iSIS, Engage In The Information Gathering, And Provide Access To Its Systems Sufficient To Complete The Study

The Commission should rule that the utility must provide an Interconnection Customer with sufficient information to conduct the iSIS and provide access to its system to sufficiently enable the Interconnection Customer to complete the study. Currently, OAR 860-082-0060(7)(h) is silent on the process of conducting the iSIS. This had led to various disputes such as *Waconda Solar* and *Zena Solar* as referenced above. For example, in *Waconda Solar*, PGE has stated it “denies that there is a requirement under the applicable rules for a utility to provide information and access to facilitate an independent system impact study.”⁶² PGE has since reversed on this statement,⁶³ but it demonstrates the potential roadblocks an Interconnection Customer may face when it wishes to conduct an iSIS.

Another potential roadblock if a utility does not have to engage with the Interconnection Customer is that much of the information that an Interconnection Customer needs to conduct the iSIS is not publicly available information. PGE has acknowledged that it has certain information in its possession that would be required to

⁶² Docket No. UM 1971, PGE Answer at P. 106.

⁶³ Docket No. UM 1971, PGE’s Modified Second Motion for Summary Judgment at 37 (Sept. 15, 2021) (PGE explaining that if *Waconda Solar* requests specific information it needs to conduct the iSIS, then PGE would be willing to provide that information).

perform an iSIS, and that required information is not publicly available.⁶⁴ Thus, it would be nearly impossible for an Interconnection Customer to conduct an accurate iSIS to compare to the utility's system impact study without the utility's cooperation.

If a utility has no duty to provide information or cooperate at all with an Interconnection Customer doing an iSIS, then the Interconnection Customer will be unable to conduct the iSIS. Thus, OAR 860-082-0060(7)(h) would essentially present a null rule by giving Interconnection Customers an enforcement right against a utility that can be taken away at the utility's discretion. If a utility must evaluate and address any alternative findings from that study, then a utility should be required to cooperate with the Interconnection Customer to conduct the iSIS.

The Interconnection Trade Associations ask the Commission to clarify that utilities have a duty to provide an Interconnection Customer with sufficient information to conduct an iSIS. Further, the utilities must engage with the Interconnection Customer in the information gathering process and provide access to its system so that the Interconnection Customer can conduct the iSIS it has a right to.

PGE has adopted a process for providing information to the interconnection customer, engaging in information gathering with the interconnection customer, and providing access to its system to conduct the iSIS.⁶⁵ The Interconnection Trade

⁶⁴ PGE iSIS Policy at 1 (discussing the need for a non-disclosure agreement to protect PGE's confidential system information when an Interconnection Customer wishes to conduct an iSIS).

⁶⁵ *See generally* PGE iSIS Policy.

Associations are not aware of any customers that have used the process in PGE's iSIS Policy. PGE, however, has retained the discretion to revise its iSIS Policy without Commission approval, and the Interconnection Trade Associations are not aware of PacifiCorp and Idaho Power having a similar iSIS process.

C. Utilities Should Be Required To Evaluate And Address An Interconnection Customer's iSIS Pursuant to Substantive Standards of Review

An Interconnection Customer needs a way to ensure the utility's proposed charges for interconnection are reasonable, including that the charges and upgrades are not discriminatory and are to mitigate only the adverse system impacts on an affected system caused by their interconnection. The iSIS is a tool for the customer to use to verify the utility's engineering assumptions and conclusions which ultimately inform the utility's cost estimates. This can be a valuable tool for Interconnection Customers and the Commission to have more transparency and accountability into whether the utility's interconnection costs estimates are reasonable or not. If a utility can "address and evaluate" the iSIS without regard to any standard of review, then this tool becomes useless. There must be standards of review in place to ensure the utility substantively "evaluate[s] and address[es]" the iSIS.

The Interconnection Trade Associations ask the Commission to issue a declaratory ruling that clarifies the current rule and states the utilities must address and evaluate the iSIS under reasonableness, Good Utility Practice, non-discrimination, whether upgrades are necessary to mitigate any adverse system impacts, and contractual good faith standards of review. These are the specific standards found in the

Commission’s statute and rules or are general contractual obligations. The Interconnection Trade Associations are asking that the Commission confirm these general interconnection obligations also apply to the utility’s review of an iSIS.

i. The Commission Should Rule that Utilities Must Address and Evaluate Independent System Impact Studies Under a Reasonableness Standard of Review

The Interconnection Trade Associations ask the Commission rule that when utilities “evaluate and address” an Interconnection Customer’s iSIS under OAR 860-082-0060(7)(h), that review must be reasonable. The Commission has a broad mandate to ensure the monopoly utilities it regulates behave in a manner that is reasonable toward their customers. This authority and duty is reflected in several different statutes, including, ORS 756.040, which addresses the Commission’s general powers, and states that in addition to any duties otherwise vested in the Commission, the Commission shall “protect [] customers, and the public generally, from unjust and unreasonable exactions and practices [by the utilities].” This makes it clear that the Commission *shall* ensure that no customers are treated unreasonably by regulated utilities. ORS 756.040 also makes it clear that the Commission is to “represent the customers of any public utility . . . in all controversies respecting rates, valuations, service and all matters of which the commission has jurisdiction.” If the Commission is to represent customers’ interests, it certainly has the duty and authority to disallow unreasonable practices by the utilities it regulates.

Further, utilities are required to furnish adequate and safe service to customers at reasonable and just charges.⁶⁶ Specifically, the statute states “[e]very public utility is required to furnish adequate and safe service, equipment and facilities, and the charges made by any public utility for any service rendered or to be rendered in connection therewith shall be reasonable and just, and every unjust or unreasonable charge for such service is prohibited.”⁶⁷ Thus, any charge for a service the utility provides must be reasonable.

In interconnection situations, the utility is providing a service to Interconnection Customers through interconnection to the utility’s transmission grid. Thus, the costs the utility charges to the Interconnection Customer must be reasonable and just. Unreasonable and unjust charges are prohibited. If a utility can “address and evaluate” the Interconnection Customer’s iSIS without any standard of review, then there is no avenue for the Interconnection Customer to ensure it is being charged reasonable and just interconnection costs in relation to its interconnection service by the utility. The utility needs to be required to review the iSIS in a reasonable manner.

A utility’s duty to act reasonably is also reflected in the Commission’s rules on interconnection that customers are only required to pay the reasonable costs of interconnection to the utility. OAR 860-082-035(2), (4) states that the interconnection customers “must pay the *reasonable* costs of the interconnection facilities” and

⁶⁶ ORS 757.020.

⁶⁷ ORS 757.020.

“reasonable costs of any system upgrades.”⁶⁸ This was a concern for parties in the rulemaking docket for these rules.⁶⁹ Thus, under the Commission’s rules, an Interconnection Customer must be entitled to some process to ensure that the costs that it is required to pay are reasonable, and a utility is clearly subject to an obligation to charge no more than that amount.

If an interconnection customer therefore has reason to believe that a utility is proposing to charge unreasonable costs of interconnection and completes an iSIS, then a utility should be obligated to reasonably address and evaluate that iSIS, and the Commission should find a refusal to do so unreasonable. Several Commission rules or statutes already impose a general reasonableness standard on utility actions or charges for services. Thus, the Interconnection Trade Associations ask the Commission extend those reasonableness requirements so that a utility must evaluate and address an Interconnection Customer’s iSIS under OAR 860-082-0060(7)(h) in a reasonable manner.

⁶⁸ OAR 860-082-035(2), (4).

⁶⁹ See Docket No. AR 521, Order No. 09-196 at 4-5 (Commission explaining that ICNU was concerned small generator facilities would pay for the entire cost of system upgrades and reassuring that the rules “strictly limit a public utility’s ability to require one small generator facility to pay for the cost of system upgrades that primarily benefit the utility or other small generator facilities, or that the public utility planned to make regardless of the small generator interconnection.”).

ii. The Commission Should Rule that Utilities Must, at Minimum, Adhere to Good Utility Practice When Reasonably Addressing and Evaluating Independent System Impact Studies

The Commission should rule that utilities must, at minimum, adhere to “Good Utility Practice” when reasonably addressing and evaluating an Interconnection Customer’s iSIS. Thus, reasonableness, at minimum, requires a utility to act in a manner that is consistent with Good Utility Practices. Good Utility Practice is a set of acceptable practices, methods, or acts generally accepted in a region, but it does not mean a utility is limited to those practices, methods, or acts because a utility could go above and beyond. PacifiCorp’s, PGE’s, and Idaho Power’s Commission-approved Small Generator Interconnection Agreements each list and define Good Utility Practice. They also define Good Utility Practice in their Open Access Transmission Tariffs (“OATT”) as:

Any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region, including those practices required by Federal Power Act section 215(a)(4).⁷⁰

⁷⁰ PGE, *Pro Forma Open Access Transmission Tariff* at 19-20 (2021) available at: https://www.oasis.oati.com/PGE/PGEdocs/PGE_OATT_12122017.pdf; PacifiCorp, *Open Access Transmission Tariff – FERC Electric Tariff* at 8 (July 6, 2021) available at: https://www.oasis.oati.com/woa/docs/PPW/PPWdocs/20210706_OATTMaster.pdf; Idaho Power Co., *Idaho Power Company Open Access Transmission Tariff – FERC Electric Tariff* at Section 1.1, p. 5 (Aug. 5, 2010) available at:

At a minimum, utilities should be subject to the Good Utility Practice when reasonably addressing and evaluating an Interconnection Customer’s iSIS. All three investor-owned utilities in Oregon already follow this practice with regards to interconnections processes in their OATTs. This standard ensures substantively evaluating and addressing an Interconnection Customer’s iSIS is within the Good Utility Practice and a process all utilities will undergo. Furthermore, even the existing study agreements for utility-performed feasibility studies, system impact studies, and facility studies obligate the utilities to act consistent with Good Utility Practice if the utility requests additional information from the Interconnection Customer that it believes is necessary to complete the study. This standard ought to apply to both parties. Therefore, the Interconnection Trade Associations ask the Commission require utilities, at a minimum, adhere to Good Utility Practice when reasonably evaluating and addressing an Interconnection Customer’s iSIS.

iii. The Commission Should Rule that Utilities Must Address and Evaluate Independent System Impact Studies in a Non-Discriminatory Manner

The Commission should rule that utilities “must address and evaluate any alternative findings from that study” in a non-discriminatory manner. ORS 757.325 requires that utilities not act unreasonably in giving preference or advantage to any person.⁷¹ Specifically, ORS 757.325 states “(1) [n]o public utility shall make or give

https://www.oasis.oati.com/woa/docs/PCO/PCOdocs/IPC_OATT_Issued_2021-05-28.pdf.

⁷¹ ORS 757.325.

undue or unreasonable preference or advantage to any particular person or locality, or shall subject any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect. (2) Any public utility violating this section is guilty of unjust discrimination.”⁷² Any particular person or locality would include the utility itself.

If a utility refuses to substantively address and evaluate an Interconnection Customer’s iSIS, the utility would be discriminating against that Interconnection Customer in violation of ORS 757.325. A utility will substantively address and evaluate its own system impact study when conducting the facilities study. Therefore, it should be required to do the same for an Interconnection Customer’s study. Otherwise, the utility would be giving itself undue and unreasonable preference or advantage. Thus, the Interconnection Trade Associations ask the Commission rule that utilities must evaluate and address an Interconnection Customer’s iSIS in a non-discriminatory manner as required in ORS 757.325.

iv. The Commission Should Rule that Utilities Must Address and Evaluate Independent System Impact Studies Under a Mitigation of Any Adverse System Impacts Standard of Review

The Commission should rule that the utility must evaluate and address the Interconnection Customer’s iSIS to determine if the system upgrades are required to mitigate any adverse system impacts caused by the interconnection of the small generator’s facility as outlined under OAR 860-082-0035(4), which states:

A public utility must design, procure, construct, install, and own any system upgrades to the public utility’s transmission or distribution system

⁷² ORS 757.325.

necessitated by the interconnection of a small generator facility. A public utility must identify any adverse system impacts on an affected system caused by the interconnection of a small generator facility to the public utility's transmission or distribution system. The public utility must determine what actions or upgrades are required to mitigate these impacts. Such mitigation measures are considered system upgrades as defined in these rules. The applicant must pay the reasonable costs of any system upgrades.⁷³

If system upgrades are not required to mitigate any adverse system impacts caused by interconnection, the Interconnection Customer should not be responsible for those costs. The Interconnection Customer should only be responsible for costs if there is an adverse system impact. Thus, the utility should evaluate and address the iSIS with this rule in mind and only have the Interconnection Customer pay for interconnections costs that will have an adverse system impact. Therefore, the Interconnection Trade Associations ask the Commission require utilities to evaluate and address an Interconnection Customer's iSIS to determine if the system upgrades are required to mitigate any adverse system impacts caused by interconnection as outlined under OAR 860-082-0035(4).

v. The Commission Should Rule that Utilities Must Address and Evaluate Independent System Impact Studies Under a Contractual Duty of Good Faith and Fair Dealing

The Commission should clarify that utilities are obligated to “address and evaluate any alternative findings from that study” under a contractual duty of good faith and fair dealing. Under basic contract principles, parties to a contract owe each other a duty of good faith and fair dealing in the performance of their contract and are prohibited

⁷³ OAR 860-082-0035(4).

from taking actions that would frustrate the ability of the other party to gain the benefit of the contract.

With regard to this duty of good faith and fair dealing, the Court of Appeals has explained:

In general, every contract has an obligation of good faith in its performance and enforcement under the common law. . . . The purpose of that duty is to prohibit improper behavior in the performance and enforcement of contracts, and to ensure that the parties will refrain from any act that would have the effect of destroying or injuring the right of the other party to receive the fruits of the contract. . . .

. . . The common-law implied duty of good faith and fair dealing serves to effectuate the objectively reasonable expectations of the parties.⁷⁴

The duty of good faith is traditionally applied by courts in situations where one party has the duty to execute a substantive term of the agreement. It requires that “when one party has the authority to exercise discretion to determine an essential term of the contract, . . . the covenant of good faith and fair dealing requires the discretion to be reasonable.”⁷⁵

With regards to Interconnection Customers and utilities, the parties sign various interconnection agreements such as Feasibility Study Agreement, System Impact Study Agreement, Facility Study Agreement, and eventually an Interconnection Agreement. In these interconnection agreements, the utility has substantial “authority to exercise

⁷⁴ *Klamath Off-Project Water Users, Inc. v. PacifiCorp*, 237 Or App 434, 445 (2010) (internal citations omitted).

⁷⁵ *Orff v. U.S.*, No. CV-F-93-5327 OWW SMS, 1999 WL 33945647, at *2 (E.D. Cal., Sept. 27, 1999).

discretion” over the course of each study regarding what information to apply to the study and what assumptions it makes. Similarly, for an iSIS, the utility has access to the information the Interconnection Customer needs to conduct the iSIS with the proper technical assumptions so that the iSIS can legitimately reach accurate and valid conclusions, but also the utility is the main party that determines the interconnection costs the Interconnection Customer must pay to interconnect. Thus, because a utility contracts with an Interconnection Customer, the utility has a duty to facilitate an iSIS if the Interconnection Customer desires because otherwise that would “have the effect of destroying or injuring the right of the other party to receive the fruits of the contract.”⁷⁶ Therefore, the Interconnection Trade Associations ask the Commission to clarify that the utilities must “evaluate and address” an Interconnection Customer’s iSIS under a contractual duty of good faith and fair dealing.

VIII. RELIEF REQUESTED

The Interconnection Trade Associations respectfully request that the Commission issue a declaratory ruling containing the following findings:

1. Interconnection Customers have a unilateral right to conduct an iSIS under OAR 860-082-0060(7)(h).

⁷⁶ *Klamath Off-Project Water Users, Inc.*, 237 Or App at 445 (internal citations omitted).

2. A utility must provide the Interconnection Customer with sufficient information for an iSIS to be conducted to satisfy the Interconnection Customer's unilateral right to conduct an iSIS under OAR 860-082-0060(7)(h).
3. A utility must engage with the Interconnection Customer in information gathering pursuant to OAR 860-082-0060(7)(h).
4. A utility must provide the Interconnection Customer conducting the iSIS access to its systems sufficient to conduct the iSIS pursuant to OAR 860-082-0060(7)(h).
5. A utility must review an Interconnection Customer's iSIS under reasonableness, Good Utility Practice, non-discrimination, whether upgrades are necessary to mitigate any adverse system impacts, and contractual good faith standards of review.

IX. CONCLUSION

For the reasons set forth above, the Interconnection Trade Associations respectfully request that the Commission grant this petition for declaratory ruling.

Dated this 5th day of October 2021.

Respectfully submitted,

Sanger Law, PC



Irion A. Sanger
Joni Sliger
Sanger Law, PC
4031 SE Hawthorne Blvd.
Portland, Oregon 97214
Telephone: 503-756-7533
Fax: 503-334-2235
irion@sanger-law.com

Of Attorneys for Renewable Energy
Coalition and Oregon Solar + Storage
Industries Association

Richardson Adams, PLLC



Gregory M. Adams
515 N. 27th Street
Boise, ID 83702
(208) 938-2236 (tel)
(208) 938-7904 (fax)
greg@richardsonadams.com

Of Attorney for the Community Renewable
Energy Association

Attachment A

PGE's Independent System Impact Study Process

**PGE - Independent System Impact Study Process
under OAR 860-082-0060(7)(h)**

1. Applicability. The process established in this document will apply to any small generator interconnection application that is received by PGE or that is pending for approval by PGE on or after August 1, 2021.
2. OAR 860-082-0060(7)(h). Under Commission small generator interconnection rule OAR 860-082-0060(7)(h), an interconnection applicant (Applicant) may provide PGE with an Applicant-performed independent system impact study (independent SIS). Under OAR 860-082-0060(7)(h), if an Applicant provides PGE with an independent SIS, then PGE must evaluate the independent SIS and must address any alternative findings from the independent SIS.
3. Notice of intent to conduct an Applicant-performed independent SIS. In order to provide PGE with an independent SIS under OAR 860-082-0060(7)(h), an Applicant first must provide PGE with a timely written notice of intent to conduct an independent SIS (Notice of Intent).
 - A. Where to send the Notice of Intent. Notice of Intent must be provided by the Applicant to PGE either by email to Small.PowerProduction@pgn.com or by regular U.S. Mail to Portland General Electric Company, Attn: Interconnection Services, 121 SW Salmon Street, Portland, OR 97204. PGE may from time to time update these addresses by posting a modified version of this document on its website.
 - B. When to send the Notice of Intent. An Applicant must provide PGE with written Notice of Intent on or between: (i) the date PGE provides the Applicant with an executable system impact study agreement as required by OAR 860-082-0060(7); and (ii) the deadline for the Applicant to execute a facilities study agreement as established by OAR 860-082-0060(8)(c). Notice of Intent shall be effective when the email is received by PGE or when postmarked if Notice of Intent is sent by regular U.S. Mail. In the event PGE determines that a re-study of the primary SIS is required, Applicant shall have a new opportunity to provide Notice of Intent, and this Section shall be understood to refer to the new study agreements and not to the original study agreements.
 - C. Waiver of opportunity to conduct an Applicant-performed independent SIS. If an Applicant does not provide written Notice of Intent to PGE within the time period established by Section 3(B) above, then the Applicant will be deemed to have waived the opportunity to conduct an independent SIS of the type provided for in OAR 860-082-0060(7)(h). The only exception to such waiver is detailed in Section 4(H) below.
4. Independent SIS process and timelines. If an Applicant provides PGE with a timely, written Notice of Intent, the following process and timelines will apply:
 - A. Non-disclosure agreement. Within five business days of receipt of an Applicant's Notice of Intent, PGE will provide the Applicant with an executable non-disclosure agreement (NDA) addressing confidential treatment of system information to be provided to the Applicant by PGE to facilitate the Applicant-performed independent SIS. Within five business days of receipt of the NDA from PGE, the Applicant must execute the NDA and return it to PGE.
 - B. System Information. Within 10 business days of PGE receiving the executed NDA from the Applicant, PGE will: counter-sign the NDA, provide the Applicant with a copy of the fully executed NDA and provide the Applicant with the

system information detailed in Section 4(B)(i)-(v) (the Standard System Information).

Standard System Information is:

(i) The information PGE provides or would ordinarily be provided to PGE's own consultants to allow PGE's consultants to conduct PGE's primary system impact study (primary SIS).

(ii) CYME data files containing PGE's light and heavy loading distribution models for: the distribution feeder to which the Applicant proposes to interconnect; the substation serving that feeder; and any other distribution feeders directly interconnected to that substation. PGE uses CYME software to perform the power flow and fault studies required by the Commission's small generator interconnection rules. PGE will not provide the Applicant with a license to use the CYME software or with a copy of the CYME software. The Applicant or the Applicant's Consultants will need to secure a license for, and a copy of, the CYME software (or any other software) needed to use the CYME files provided by PGE.

(iii) A substation operating one-line diagram and the substation relay models.

(iv) If available, the information provided by PGE will be for the 12-month period immediately preceding the date on which PGE received the Notice of Intent from the Applicant. PGE reserves the right to provide system information for a longer period of time if PGE determines that the immediately preceding 12-month period is anomalous or unrepresentative of system conditions.

(v) PGE will not provide the Applicant with a license to use IEEE 1547, any other IEEE product, or any other copyrighted product or material. The Applicant or Applicant's Consultants will need to obtain their own license(s) to use IEEE 1547, any other IEEE product, or any other copyrighted product or material that Applicant intends to use as part of its Applicant-performed independent SIS.

C. Site Access. To facilitate the Applicant-prepared independent SIS, PGE will provide the Applicant and Applicant's Consultants (who are subject to confidentiality obligations) with limited access to PGE's facilities as reasonably necessary to perform the independent SIS. PGE notes that site access is frequently unnecessary to conduct a system impact study. If site access is reasonably necessary to perform an independent SIS, then the Applicant and any Applicant Consultant that will participate in the site visit must sign a PGE site visit release and agree to follow all PGE safety procedures before PGE will grant access to PGE facilities. PGE may require that any access to PGE facilities be conducted with a PGE escort. If site access is reasonably necessary, site access will be limited to a single visit unless additional visits are reasonable and necessary to conduct work or investigation that could not have been performed during the initial site visit.

D. Deadline to provide PGE with an Applicant-performed independent SIS. Applicant must provide PGE with a copy of the Applicant-performed independent SIS by the following deadline. If the Applicant fails to do so, the Applicant will be deemed to have waived its opportunity to conduct an Applicant-performed independent SIS. PGE and the Applicant may agree in writing to modify the deadline but neither PGE nor the Applicant is required to agree to a modified deadline.

(i) If the Applicant provided PGE with Notice of Intent before PGE has provided the Applicant with PGE's primary SIS, then the Applicant must

provide PGE with a copy of the Applicant-performed independent SIS by no later than 15 business days before the due date for PGE to provide the Applicant with PGE's primary SIS (the due date is established in the system impact study agreement between PGE and that Applicant). In the event PGE finds it cannot meet the due date, PGE shall provide Applicant notice and an estimated alternative deadline pursuant to OAR 860-082-0025(7)(g), and Applicant's deadline shall be extended accordingly. \

(ii) If the Applicant provided PGE with Notice of Intent after PGE provided the Applicant with PGE's primary SIS but before PGE has provided Applicant with PGE's facilities study results, then the Applicant must provide PGE with a copy of the Applicant-performed independent SIS by no later than 15 business days before the due date for PGE to provide the Applicant with a facilities study (the due date is established in the facilities study agreement between PGE and that Applicant). In the event PGE finds it cannot meet the due date, PGE shall provide Applicant notice and an estimated alternative deadline pursuant to OAR 860-082-0025(7)(g), and Applicant's deadline shall be extended accordingly.

E. Independent SIS before PGE's primary SIS. If the Applicant provides Notice of Intent before PGE issues its primary SIS, then PGE will continue forward with the primary SIS process and PGE will address the Applicant's independent SIS as part of PGE's primary SIS results. The Applicant must sign a system impact study agreement within the time prescribed by OAR 860-082-0060(7)(c). To the extent possible, the system impact study agreement will include a schedule that provides sufficient time for the Applicant to provide PGE with an independent SIS and provides sufficient time for PGE to evaluate and address any alternative finding from the independent SIS; however, the Applicant must provide the independent SIS results to PGE consistent with the deadline provided in Section 4(D)(i) above.

F. Independent SIS after PGE's primary SIS. If the Applicant provides Notice of Intent after PGE issues its primary SIS but before PGE issues its facilities study, then PGE will continue forward with the facilities study process and PGE will address the Applicant's independent SIS as part of PGE's facilities study results. The Applicant must sign a facilities study agreement within the time prescribed by OAR 860-082-0060(8)(c). To the extent possible, the facilities study agreement will include a schedule that provides sufficient time for the Applicant to provide PGE with an independent SIS and provides sufficient time for PGE to evaluate and address any alternative finding from the independent SIS; however, the Applicant must provide the independent SIS results to PGE consistent with the deadline provided in Section 4(D)(ii) above.

G. Delays. If PGE is delayed in providing system information or site access, then the deadline for the Applicant to provide PGE with the independent SIS results established by Section 4(E) above will be extended on a day-for-day basis to address any delay in PGE providing the required system information. If Applicant's deadline to provide PGE with the results of the Applicant-prepared independent SIS is extended pursuant to this Section 4(G), then PGE's due date to provide the Applicant with PGE's primary SIS or with PGE's facilities study results will also be extended by the same number of days.

H. Limited exception to waiver of independent SIS. An Applicant may request to perform an independent SIS outside of the approved Notice window in Section 3(B) above after PGE completes its facilities study in the following limited circumstances: if (1) PGE is conducting a facilities study on Applicant's interconnection request and a higher queued project (on the same feeder as the Applicant's project) withdraws from the queue, (2) the facilities study results vary substantially and materially

from the most recent system impact study provided to the Applicant. For purposes of this Section 4(H), a facilities study shall not be deemed to vary substantially or materially from the most recent system impact study provided to the Applicant merely because the cost estimates in the facilities study and the most recent system impact study differ. Under the limited circumstances described above, the Applicant may request to perform an independent SIS after the PGE facilities study is completed and PGE will evaluate and address the results of the independent SIS in a revised facilities study to be issued within 15 business days of PGE receiving the independent SIS *provided*: (i) the Applicant makes such request by written notice of intent to perform an independent SIS provided to PGE within 15 business days of the Applicant's receipt of the facilities study and (ii) the Applicant provides the independent SIS to PGE within 45 business days of its notice to intent to perform the independent SIS. This Section 4(H) establishes a limited exception to the waiver rule established by Section 3(C) above.

5. Content of Applicant-performed independent SIS. The Applicant-performed independent SIS must specifically and separately identify each alternative finding the Applicant has made (as compared to PGE's study results) so that it is clear what alternative findings PGE must evaluate and address pursuant to OAR 860-082-0060(7)(h).

6. Cost. The Applicant is responsible for its own cost to conduct an Applicant-performed independent SIS (including without limitation the cost of any third-party Applicant Consultants involved in the effort to produce an independent SIS). The Applicant is also responsible to reimburse PGE's reasonable cost to provide system information to facilitate an Applicant-performed independent SIS and PGE's reasonable cost to evaluate and address any alternative findings from the Applicant-performed independent SIS.