

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1971

In the Matter of

WACONDA SOLAR, LLC,
Complainant,

v.

PORTLAND GENERAL ELECTRIC
COMPANY,

Defendant.

MOTION TO STAY OR, IN THE
ALTERNATIVE, TO EXTEND THE
FILING DEADLINE OF WACONDA
SOLAR’S RESPONSE TO
PORTLAND GENERAL
ELECTRIC’S MODIFIED SECOND
MOTION FOR SUMMARY
JUDGMENT

EXPEDITED CONSIDERATION
REQUESTED

I. INTRODUCTION

Pursuant to OAR 860-001-0420, Waconda Solar, LLC (“Waconda Solar” or “Waconda”) respectfully files this Motion to Stay or, in the Alternative, to Extend the Filing Deadline of Waconda Solar’s Response (“Motion to Stay”) to Portland General Electric Company’s (“PGE’s”) Modified Second Motion for Summary Judgment (“Waconda Solar’s Response”). Specifically, Waconda Solar requests that the due date for Waconda Solar’s Response be due three weeks after the Oregon Public Utility Commission (“Commission”) makes a decision on the Petition for Declaratory Ruling recently filed by the Renewable Energy Coalition, Community Renewable Energy Association, and Oregon Solar + Storage Industries Association (collectively the “Interconnection Trade Associations”) in Docket No. DR 57.

Good cause exists to grant Waconda Solar’s request for a stay because the Interconnection Trade Associations’ Petition for Declaratory Ruling addresses the same

legal issue regarding an Interconnection Customer’s right to an independent system impact study (“iSIS”) and what information a utility must provide. Second, staying this proceeding would serve judicial economy by avoiding duplicative proceedings and conserving resources of the parties, the Commission, and ALJ. Third, all interested parties could provide input in the declaratory ruling docket, while only two parties are arguing their positions in this docket. And finally, neither party is unduly prejudiced by staying this proceeding because the docket has been stayed multiple times and it is in both parties’ best interest to address this issue in only one docket.

Good cause also exists to at a minimum extend the deadline for Waconda Solar’s Response until three weeks after the ALJ’s ruling on the Motion to Stay because Waconda Solar should not be required to draft a pleading which may not need to be filed. Regardless of whether the Motion to Stay is granted, Waconda Solar’s Response should be moved at least three weeks until after the Commission decides if it will stay the proceeding.

Waconda Solar has conferred with PGE, which opposes the Motion to Stay. The Motion to Stay is a substantive motion, in which PGE will ordinarily be provided fifteen days to respond, and Waconda Solar will be provided seven days to reply. This means that briefing on the motion will not be complete until October 27, 2021. However, under the current schedule, Waconda Solar’s Response is due on October 19, 2021.¹ If the

¹ Joint Motion to Modify Procedural Schedule Granted at 1 (Aug. 4, 2021).

Motion to Stay is denied, then Waconda Solar should be provided three weeks to prepare its response from the date that the stay is denied.

Waconda Solar conferred with PGE regarding the Motion to Stay, and PGE has stated that it opposes staying the proceeding until the Commission issues an order regarding the Interconnection Trade Associations' Petition for Declaratory Ruling. PGE also opposes moving the date for Waconda Solar's response until three weeks after the Commission decides on whether it will stay the proceeding.

Waconda Solar requests expedited consideration because the Waconda Solar Response is due on October 19, 2021.² Waconda Solar requests that the ALJ require PGE to file its response, if any, by Friday, October 8, 2021, in which case Waconda Solar will file its reply by Tuesday, October 12, 2021.

II. BACKGROUND

On September 28, 2018, Waconda Solar brought this complaint against PGE, and the case has been delayed for three years primarily because of the parties mutual agreement to stays. Waconda Solar's complaint raised several claims, including that PGE unreasonably withheld its consent to allow Waconda Solar to complete an iSIS pursuant to OAR 860-082-0060(7)(h).³ PGE answered the complaint and denied the allegations.⁴ In July 2019, Waconda Solar filed a Motion for Leave to File an Amended

² Expedited consideration should be completely unnecessary in a case that was filed years ago; however, given PGE's position on need for Waconda Solar to file its Response, expedited ruling is now necessary.

³ Complaint at 16 (Sept. 28, 2018).

⁴ PGE's Answer at 20-22 (Nov. 1, 2018).

Complaint,⁵ which the ALJ granted⁶ over PGE’s objection.⁷ During this time PGE also filed a Motion for Summary Judgment.⁸ After Waconda Solar’s Motion to Amend Complaint was granted, PGE filed a Second Motion for Summary Judgment⁹ and an Answer to the Amended Complaint.¹⁰

With regards to iSISs, PGE claims it did not fail to meet any duty “by failing to provide Waconda with information so that Waconda’s consultant can conduct an independent system impact study.”¹¹ PGE argues OAR 860-082-0060(7)(h) does not require that “the utility must provide any specified information to the application or do so under any specified schedule.”¹² PGE claims that even if utilities are required to provide information for an interconnection customer to conduct an iSIS pursuant to OAR 860-82-0060(7)(h), “Waconda’s August 24, 2018 request that PGE provide its ‘system configuration’ was too vague and ambiguous to have triggered any such requirement.”¹³ Regarding how a utility must evaluate the iSIS, PGE stated “PGE will ‘evaluate and address’ the study as provided in the rules, but PGE will not necessarily be bound by any ‘alternative findings’ in that study.”¹⁴

⁵ See generally Waconda Solar’s Motion for Leave to File First Amended Complaint (July 8, 2019).

⁶ See generally Motion to Amend Complaint Granted (July 31, 2019).

⁷ See generally PGE’s Response in Opposition to Complainant’s Motion for Leave to File First Amended Complaint (July 23, 2019).

⁸ See generally PGE’s Motion for Summary Judgment (July 23, 2019).

⁹ See generally PGE’s Second Motion for Summary Judgment (Aug. 20, 2019).

¹⁰ See generally PGE’s Answer to First Amended Complaint (Aug. 20, 2019).

¹¹ PGE’s Second Motion for Summary Judgment at 28 (Aug. 20, 2019).

¹² PGE’s Second Motion for Summary Judgment at 28 (Aug. 20, 2019).

¹³ PGE’s Second Motion for Summary Judgment at 29 (Aug. 20, 2019).

¹⁴ PGE’s Second Motion for Summary Judgment at 31 (Aug. 20, 2019).

After the ALJ granted Waconda Solar's Motion to Hold Response to PGE's Second Motion for Summary Judgment in Abeyance for two weeks¹⁵, several extensions of time in the procedural schedule¹⁶, and the Parties' Joint Motion to Modify the Procedural Schedule¹⁷, PGE filed the Modified Second Motion for Summary Judgment.¹⁸ Waconda Solar recognizes it agreed to the current modified schedule, but Waconda Solar believes a stay in the proceedings is appropriate.

Since the complaint was initially filed, the proceeding has been postponed 28 times.¹⁹ There have been several motions for extension of time²⁰, motions to cancel the prehearing conference²¹, motions to modify the procedural schedule²², and motions to hold in abeyance.²³

Further, there are several more stages of the proceeding. Now that PGE has made its legal positions clear, Waconda Solar intends to file its own Motion for Summary Judgment after the briefing on PGE's Motion for Summary Judgment has completed. There may also be oral arguments for the summary judgment motion, and then any

¹⁵ Motion Granted in Part and Denied in Part at 1 (Sept. 3, 2019).

¹⁶ *See, e.g.*, Joint Motion to Extend Time Granted (June 23, 2021).

¹⁷ Joint Motion to Modify Procedural Schedule Granted at 1 (Aug. 4, 2021).

¹⁸ *See generally* PGE's Modified Second Motion for Summary Judgment (Sept. 15, 2021).

¹⁹ This count includes any time the procedural schedule was delayed or modified by either the parties or the Commission.

²⁰ *See, e.g.*, Parties' Joint Motion to Extend Time (June 22, 2021).

²¹ *See, e.g.*, PGE's Request to Cancel 3/7/19 Prehearing Conference at 1 (Mar. 5, 2019).

²² *See, e.g.*, Joint Motion to Modify Procedural Schedule at 1 (Aug. 4, 2021).

²³ *See, e.g.*, Waconda Solar's Motion to Hold Response to PGE's Motion for Summary Judgment in Abeyance at 1 (July 31, 2019).

briefing or oral arguments for issues not addressed by an order on the Modified Second Motion for Summary Judgment.

The changes PGE made to its Modified Second Motion for Summary Judgment were minimal. Most of the changes PGE made were to update facts that occurred since PGE filed its Second Motion for Summary Judgment as over two years had passed.²⁴ For example, PGE offered to cooperate with Waconda Solar and provide information about its system if Waconda Solar signed a non-disclosure agreement in order for Waconda to conduct the iSIS pursuant to OAR 860-082-0060(7)(h).²⁵

Waconda Solar responded reiterating its desire to conduct an iSIS, but sought clarification on how PGE would review the iSIS and whether PGE would review the iSIS in a reasonable manner consistent with Good Utility Practice.²⁶ PGE refused to answer what standard of review it would use when “evaluat[ing] and address[ing]” the iSIS.²⁷ Another change to the Modified Second Motion for Summary Judgment is that PGE no longer claimed Waconda Solar never requested to conduct an iSIS under OAR 860-082-

²⁴ PGE’s Modified Second Motion for Summary Judgment at 11-17 (Sept. 15, 2021). Note that PGE’s Second Motion for Summary Judgment was filed Aug. 20, 2019 and PGE’s Modified Second Motion for Summary Judgment was filed Sept. 15, 2021.

²⁵ PGE’s Declaration of Rebecca Dodd in Support of PGE’s Modified Second Motion for Summary Judgment, Exhibit 1 at 1-2 (Sept. 15, 2021).

²⁶ PGE’s Declaration of Rebecca Dodd in Support of PGE’s Modified Second Motion for Summary Judgment, Exhibit 2 at 1 (Sept. 15, 2021).

²⁷ PGE’s Declaration of Rebecca Dodd in Support of PGE’s Modified Second Motion for Summary Judgment, Exhibit 7 at 2-3 (Sept. 15, 2021).

0060(7)(h).²⁸ The remaining changes in the Modified Second Motion for Summary Judgment were to address the passage of time.

When Waconda Solar agreed to the modified procedural schedule, PGE had not made its legal position on what standard of review should apply when “evaluat[ing] and address[ing]” an iSIS. In July 2021, Waconda Solar inquired if PGE would review the iSIS results “in a reasonable manner consistent with Good Utility Practice consistent with Oregon law, rules and policies.”²⁹ After several letters back and forth, on September 14, 2021, PGE finally stated that several standards of review Waconda Solar argued applied such as reasonableness, good faith, and Good Utility Practice, were not stated or defined by the Commission’s rules “as standards applicable to evaluation of an independent system impact study.”³⁰ The parties agreed to the modified procedural schedule on August 4, 2021.³¹

It has become clearer that the substantive legal issue is actually a question of the appropriate legal standard under which a utility must review an iSIS pursuant to OAR 860-082-0060(7)(h). In PGE’s letter it stated “PGE is not willing to agree to be bound by

²⁸ PGE’s Modified Second Motion for Summary Judgment at 9 (Sept. 15, 2021) (stating that a letter Waconda Solar sent to PGE stated Waconda Solar intended “to seek an independent System Impact Study under OAR 860-082-006(7)(h)” and asked PGE to “please provide Waconda Solar with the system configuration so that [Waconda’s] independent consultant can complete the study.”).

²⁹ Waconda Solar’s Response to PGE iSIS Demand Letter at 1 (July 8, 2021).

³⁰ PGE’s Declaration of Rebecca Dodd in Support of PGE’s Modified Second Motion for Summary Judgment, Exhibit 7 at 2-3 (Sept. 15, 2021).

³¹ PGE and Waconda Solar’s Joint Motion to Modify Procedural Schedule at 1 (Aug. 4, 2021).

specific standards of review, or definitions, not stated in the Commission’s rules[.]”³²

Further, PGE stated “[a]s with any requirement of a Commission rule that is not subject to an explicit standard, the Commission will need to decide what standard it will apply if the Commission is required to determine whether PGE has complied with the requirements of OAR 860-082-0060(7)(h).”³³ Waconda Solar believes a utility is required to “evaluate and address” an iSIS in a reasonable and non-discriminatory manner that at a minimum is consistent with Good Utility Practice and under a contractual duty of good faith and fair dealing.³⁴

This core legal issue is the same issue being raised in the Petition for Declaratory Ruling, and is what prompted the Interconnection Trade Association’s Petition for Declaratory Ruling. Interconnection Trade Association’s wish to take a position on this core legal issue, and can do so either by intervening in this proceeding or having the Commission separately address the issue. They elected to file their Petition for Declaratory Ruling.

At the time the current procedural schedule was set on August 4, 2021, Waconda Solar was not aware that the Interconnection Trade Association would file their Petition for Declaratory Ruling. Waconda Solar learned that the Interconnection Trade

³² PGE’s Declaration of Rebecca Dodd in Support of PGE’s Modified Second Motion for Summary Judgement, Exhibit 7 at 3 (Sept. 15, 2021).

³³ PGE’s Declaration of Rebecca Dodd in Support of PGE’s Modified Second Motion for Summary Judgement, Exhibit 7 at 3 (Sept. 15, 2021).

³⁴ PGE’s Declaration of Rebecca Dodd in Support of PGE’s Modified Second Motion for Summary Judgement, Exhibit 2 at 3 (Sept. 15, 2021).

Associations intended to file their Petition for Declaratory Ruling on September 14, 2021, and informed PGE on that same day.

III. LEGAL STANDARD

The Commission has adopted rules governing practice and procedure before it.³⁵ The Commission “liberally construe[s] [its] rules to ensure just, speedy, and inexpensive resolution of the issues presented.”³⁶ The Commission’s rules note that “[t]he 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.”³⁷ The Commission has delegated authority to ALJs to “[r]egulate the course of ... contested case proceedings” and “[c]hange filing deadlines,” among other things.³⁸ Thus, ALJs have discretion to adopt procedural schedules and regulate the course of proceedings to facilitate “just, speedy, and inexpensive” resolutions.

In considering Waconda Solar’s request for a stay, the ALJ should consider the legal standard applied by the Commission in at least two orders regarding a request for a docket-wide stay. In UM 1987, the Commission identified the following factors: 1) whether another proceeding addresses the same core legal issue; 2) whether judicial economy supports staying the proceeding; and 3) whether the issue can be addressed in

³⁵ OAR 860-001-0000(1).
³⁶ OAR 860-001-0000(1).
³⁷ OAR 860-001-0000(1).
³⁸ OAR 860-001-0090(1)(a), (h).

another proceeding with all interested parties.³⁹ In UM 1546, the Commission also considered a fourth factor of whether either party will be unduly prejudiced by the stay.⁴⁰ It is the Interconnection Trade Associations’ position that a balancing of the equities and harms to the parties should be a factor to determine if a party is “unduly prejudiced.”

As an alternative to granting a stay until three weeks after the Commission issues a final order on the Petition for Declaratory Ruling, Waconda Solar requests an extension of time to file its Response. The Commission’s rules set forth filing deadlines for responsive filings, such as Waconda Solar’s Response.⁴¹ The Commission’s rules also recognize that the Commission has authority to waive its rules for “good cause shown.”⁴² The Commission has delegated this authority to ALJs.⁴³ The Commission has explained that good cause exists to warrant a rule waiver when there is “a sufficient reason” that is “in the public interest.”⁴⁴ The ALJ has the authority to decide procedural matters, and change filing deadlines without a finding of good cause as long as the proceedings are conducted in a fair and impartial manner that maintains order.⁴⁵

³⁹ *In re PGE Request to Update Schedule 201 and Standard PPAs*, Docket No. UM 1987, Ruling at 1, 3 (Dec. 23, 2019).

⁴⁰ *Three Mile Canyon Windfarm, LLC v. PacifiCorp*, Docket No. UM 1546, Order No. 12-475 at 3 (Dec. 10, 2012).

⁴¹ OAR 860-001-0420(4).

⁴² OAR 860-001-0000(2).

⁴³ OAR 860-001-0090(1)(a), (h).

⁴⁴ *In Re Rulemaking to Update Waiver Provisions in the Commission’s Administrative Rules*, Docket No. AR 554, Order No. 11-346 at 1, 4-5 (Sept. 8, 2011) (clarifying the good cause standard in OAR 860-001).

⁴⁵ OAR 860-001-0090(1)(g), (h) & (2).

IV. ARGUMENT

A. Waconda Solar’s Request for a Stay Should be Granted Because Waconda Solar Meets all Four Factors of the Commission’s Legal Standard for a Stay

1. Waconda Solar’s Request for a Stay Satisfies the First Factor of the Commission’s Legal Standard Because This Proceeding and the Declaratory Ruling Proceeding Both Address the Same Core Legal Issues Regarding Independent System Impact Studies

Waconda Solar’s request for a stay satisfies the first factor of the Commission’s legal standard because this proceeding and the declaratory ruling proceeding both address the same core legal issues regarding iSISs. Pursuant to OAR 860-82-0060(7)(h), “[i]f an [Interconnection Customer] provides an independent system impact study to the public utility, then the public utility must evaluate and address any alternative findings from that study.”⁴⁶ This rule does not specify what standards of review a utility must use to “evaluate and address” the iSIS. Additionally, the rule does not specify the process for conducting an iSIS. Central to both this proceeding and the declaratory ruling docket is whether an interconnection customer has a right to an iSIS, what information a utility must provide to an interconnection customer for the customer to conduct the iSIS, and what standards of review should apply when a utility “evaluat[es] and address[es]” the iSIS pursuant to OAR 860-082-0060(7)(h).

This situation is similar to issues the Commission addressed in prior Docket Nos. UM 1546 and UM 1987. In Docket No. UM 1546, an individual utility, PacifiCorp, and a qualifying facility (“QF”) disputed the proper allocation of costs to transmit the QF’s

⁴⁶ OAR 860-82-0060(7)(h).

power out of a load pocket, but the Commission also intended to address the policy question of how to allocate such third-party transmission costs for all three utilities in Docket No. UM 1610.⁴⁷ In Docket No. UM 1987, PGE is proposing extensive changes to its Schedule 201 and standard PPA while the Commission is also undergoing rulemaking in Docket No. AR 631 to address the procedures, terms, and conditions associated with QFs for standard contracts for all utilities.⁴⁸ In both Commission orders in UM 1987 and UM 1546, the dockets were stayed because issues central to those dockets was being addressed in another proceeding. Thus, the iSIS issue being addressed in two dockets supports this Motion to Stay Waconda Solar's Response.

2. Waconda Solar's Request for a Stay Satisfies the Second Factor of the Commission's Legal Standard Because Granting Waconda Solar's Requested Stay Will Serve Judicial Economy by Avoiding Duplicative Litigation and Conserving Resources

Waconda Solar's request for a stay satisfies the second factor of the Commission's legal standard because granting the stay best serves judicial economy. Generally, judicial economy means "reducing the number of cases brought," "simplifying those that are filed," and "reducing the costs and burdens of litigation."⁴⁹ Granting the stay will avoid duplicative proceedings, simplify this proceeding, and conserve the resources and time of the parties, the Commission, and ALJ. If this docket is not stayed, the Commission will have to make decisions on the same core issues in at least two

⁴⁷ Docket No. UM 1546, Order No. 12-475 at 1-2.

⁴⁸ Docket No. UM 1987, Ruling at 1.

⁴⁹ *Judicial Economy*, THE WOLTERS KLUWER BOUVIER LAW DICTIONARY (Desk ed. 2012).

different dockets. It is reasonable to expect that a Commission order in the declaratory ruling docket on iSIS will negate the need to litigate some claims in this proceeding, which will simplify this proceeding. Additionally, the time and resources of all parties involved as well as the Commission, Staff, and ALJ is best served by issuing a stay in the proceeding while the issue is decided in the declaratory ruling docket instead of litigating in both dockets.

Judicial economy also supports staying this proceeding because the iSIS issue may not be able to be resolved in this proceeding. In PGE’s Modified Second Motion for Summary Judgment, PGE argues all of Waconda Solar’s claims are moot and the entire complaint should be dismissed because “all claims for relief relate to, or arise out of, Waconda’s small generation interconnection application, and that application is deemed withdrawn by operation of OAR 860-082-0060(8)(c).”⁵⁰ If this docket might not be able to resolve the iSIS issue, then it is better to stay this proceeding until a ruling is issued in the declaratory ruling docket. It would be a waste of time and resources of all parties, the Commission, and the ALJ to litigate in this proceeding when the iSIS issue could be resolved in a more generic docket. Overall, judicial economy is best served by staying this proceeding.

In UM 1564 and UM 1987, the Commission also stayed proceedings because it wanted to avoid duplicative litigation and serve judicial economy.⁵¹ In docket nos. UM 1564 and UE 235, they addressed the same issue of whether a utility could charge

⁵⁰ PGE’s Modified Second Motion for Summary Judgment at 6 (Sept. 15, 2021).

⁵¹ Docket No. UM 1546, Order No. 12-475 at 3; Docket No. UM 1987, Ruling at 1.

qualifying facilities for third-party transmission costs.⁵² Ultimately, the Commission’s decision to stay UM 1546 in fact served to avoid duplicative litigation.⁵³ In UM 1987, the issue regarding an update to PGE’s standard Power Purchase Agreement (“PPA”) terms and conditions was already being addressed in AR 631 for all utilities.⁵⁴ The Commission concluded “judicial economy is best served by focusing parties on efficient resolution of our rulemaking proceedings in docket AR 631” rather than proceeding in UM 1987.⁵⁵ The Commission explained that “[i]ntroducing a possible myriad of unknown issues within the newly-proposed PGE Schedule 201 and PPAs would not best achieve our goal of uniformity for standard contracts across utilities as promptly as possible through docket AR 631.”⁵⁶

If this proceeding is not stayed, then the Interconnection Trade Associations could seek to intervene in this proceeding, and either file their own motions or responding to those of PGE and/or Waconda Solar. They have expressed an interest in addressing the substantive legal issues, and prefer to do so in a generic docket that only addresses the core legal issues and not the unique particular facts of Waconda Solar’s complaint.

⁵² Docket No. UM 1546, Order No. 12-475 at 1.

⁵³ After issuance of the Commission’s Phase I Order No. 14-058 in Docket No. UM 1610, the individual QF and PacifiCorp were able to resolve their dispute without the need for expenditure of the Commission’s resources. *See* Docket No. UM 1546, Order No. 14-492 (Aug. 18, 2014) (noting parties requested the case be dismissed after reaching settlement).

⁵⁴ Docket No. UM 1987, Ruling at 3.

⁵⁵ Docket No. UM 1987, Ruling at 1.

⁵⁶ Docket No. UM 1987, Ruling at 3.

In summary, judicial economy is also served by staying the proceeding because it avoids duplicative proceedings, conserves resources of all parties involved, and supports this Motion to Stay Waconda Solar's Response.

3. Waconda Solar's Request for a Stay Satisfies the Third Factor of the Commission's Legal Standard Because the iSIS Issue Can Be Addressed in Another Proceeding with All Interested Parties

Waconda Solar's request for a stay satisfies the third factor of the Commission's legal standard because the iSIS issue can be addressed in another proceeding with all interested parties. In this proceeding only two parties are involved, PGE and Waconda Solar. However, the core legal issue of a utility's obligations regarding an interconnection customer's iSIS under OAR 860-082-0060(7)(h) affects other utilities and interconnection customers.

In UM 1987, the Commission decided to stay the one-utility docket and instead proceed in AR 631, because the Commission determined that it was the appropriate venue to address standard PPA conditions and terms because it would provide standard contract language for all utilities and "enable all interested parties to focus their efforts toward developing uniform and unambiguous standard contract terms."⁵⁷ Similarly, in UM 1546, the Commission stayed the proceeding because the issue was being addressed in another "proceeding involving all affected parties[.]"⁵⁸ The Commission explained

⁵⁷ Docket No. UM 1987, Ruling at 3.

⁵⁸ Docket No. UM 1546, Order No. 12-475 at 3.

that it would make little sense to address an issue solely with respect to one utility while adjudicating it in a generic fashion with respect to all three utilities.⁵⁹

That is also the case here. The issue would be better addressed in the declaratory ruling docket where all interested parties can provide input and all utilities would be bound by a Commission order. The iSIS issue will affect any interconnection customer in Oregon. The Interconnection Trade Associations are filing the Petition for Declaratory Ruling on behalf of the entire industry of developers and interconnection customers. Additionally, other utilities besides PGE will be affected by a ruling on the iSIS issues. PacifiCorp and Idaho Power must also comply with OAR 860-082-0060(7)(h), so a ruling on it will affect them as well. Resolving the issue in the declaratory ruling docket would “enable all interested parties to focus their efforts” into clarifying the iSIS rules and process. Thus, this issue is better served in a generic docket such as the declaratory ruling docket where more parties can be involved and present their input and the order would apply to all utilities, which supports the Motion to Stay.

4. Waconda Solar’s Request for a Stay Satisfies the Fourth Factor of the Commission’s Legal Standard Because Neither Party Will Be Unduly Prejudiced if Waconda Solar’s Requested Stay Is Granted, But Both Parties Could Be Harmed If Waconda Solar’s Requested Stay is Denied

Waconda Solar’s request for a stay satisfies the final factor of the Commission’s legal standard because neither party will be unduly prejudiced if Waconda Solar’s requested stay is granted.

⁵⁹ Docket No. UM 1546, Order No. 12-475 at 3.

In UM 1546, the Commission explained the QF was not “unduly prejudiced” or harmed by the stay because PacifiCorp had agreed to perform under the parties’ PPA during the pendency of the parties’ dispute.⁶⁰ Waconda Solar recommends viewing the “unduly prejudiced” factor within the context of a balancing test of the equities and harms. Here, the parties will not be harmed because the procedural schedule has already been amended or motions for extensions of time have been granted over 20 times.⁶¹ The parties are only in start (or at best) the middle of proceedings instead of the final stages, but the parties will be harmed if the proceeding is not stayed.

Waconda Solar agreed to the current procedural schedule,⁶² but Waconda Solar wants to stay the proceeding and believes neither party would be harmed from a further delay. This complaint was initially filed back in September 2018.⁶³ Since then, the proceeding has been postponed 28 times.⁶⁴ Further, it is not likely the case will be resolved immediately because there are several more stages of the proceeding, including a Waconda Solar Motion for Summary Judgment, oral argument on the summary judgment motion, and, if fully summary judgment is not granted, discovery, testimony, hearing, briefing and additional oral argument. Because the case has been delayed numerous times since September 2018 and there are still significant issues in the proceeding left to be resolved, further delay will not cause harm to the parties.

⁶⁰ Docket No. UM 1546, Order No. 12-475 at 3.

⁶¹ *See, e.g.*, Joint Motion to Extend Time Granted at 2 (June 23, 2021).

⁶² Joint Motion to Modify Procedural Schedule at 1 (Aug. 4, 2021).

⁶³ Complaint at 23 (Sept. 28, 2018).

⁶⁴ This count includes any time the procedural schedule was delayed or modified by either the parties or the Commission.

Further, the parties will not be harmed because the changes PGE made to its Modified Second Motion for Summary Judgment were minimal. Most of the changes PGE made were to update facts that occurred since PGE filed its Second Motion for Summary Judgment as over two years had passed.⁶⁵ Another change to the Modified Second Motion for Summary Judgment is that PGE no longer claimed Waconda Solar never requested to conduct an iSIS under OAR 860-082-0060(7)(h).⁶⁶ Thus, most of the changes in the Modified Second Motion for Summary Judgment were to address the passage of time, so a stay in the proceedings is appropriate as an additional stay will not harm the parties.

Finally, the parties will not be harmed because the declaratory ruling docket is more appropriate to address the legal issue regarding what standard of review applies when a utility “evaluate[s] and address[es]” an iSIS. As explained in the background section of this motion, when Waconda Solar agreed to the modified procedural schedule, PGE had not made its legal position clear on what standard of review should apply and the Interconnection Trade Associations had not decided to file their Petition for Declaratory Ruling. Thus, Waconda Solar was not aware of PGE’s position regarding

⁶⁵ PGE’s Modified Second Motion for Summary Judgment at 11-17 (Sept. 15, 2021). Note that PGE’s Second Motion for Summary Judgment was filed August 20, 2019 and PGE’s Modified Second Motion for Summary Judgment was filed September 15, 2021.

⁶⁶ PGE’s Modified Second Motion for Summary Judgment at 9 (Sept. 15, 2021) (stating that a letter Waconda Solar sent to PGE stated Waconda Solar intended “to seek an independent System Impact Study under OAR 860-082-006(7)(h)” and asked PGE to “please provide Waconda Solar with the system configuration so that [Waconda’s] independent consultant can complete the study.”).

the standard of review applicable to an iSIS or that other parties were interested in addressing the core legal issue until more than a month after the last time the schedule was modified.

The harm to the parties if this proceeding is not stayed is real and certain. Litigating both proceedings that involve similar issues would involve a substantial amount of work. Further, not only would the parties have to expend time and resources, it would waste valuable time and resources of the Commission, Staff, and ALJ to litigate the same issue in two proceedings. Overall, it would be more efficient to litigate the issue in one proceeding that is more broadly applicable such as the declaratory ruling docket. Neither party in this docket would be harmed or unduly prejudiced by a stay because it would involve litigation that would already have occurred in this docket. However, it has the potential to reduce the workload in this docket if issues are resolved in the declaratory ruling and issues no longer need to be litigated here.

Waconda Solar reached out to PGE prior to PGE filing its Modified Second Motion for Summary Judgment and informed PGE that the Interconnection Trade Association's would be filing their Petition for Declaratory Ruling with the purpose of providing PGE an opportunity to not file its motion. Waconda Solar also informed PGE that it would also file this Motion to Stay. Waconda Solar sought to confer with PGE because Waconda Solar did not want to put PGE at a procedural disadvantage.

In sum, the ALJ should grant Waconda Solar's requested stay because all four factors are met: 1) both dockets address the same core legal issue regarding iSISs under OAR 860-082-0060(7)(h); 2) the stay will also serve judicial economy by avoiding

duplicative proceedings and conserving resources and time of all involved in this docket; 3) addressing the issue in a separate docket enables a resolution involving all stakeholders and all utilities; and 4) neither party would be unduly prejudiced by a stay.

B. At the Minimum, Waconda Solar Qualifies for an Extension of Time

Waconda Solar's Response should be postponed to at least three weeks after the Commission issues a decision on the Motion to Stay. Good cause exists to extend the filing deadline, because doing so will enable Waconda Solar to avoid wasting time and resources to prepare a response while the Commission decides whether or not to proceed with potentially duplicative litigation in the declaratory ruling docket. It would also result in a fair and impartial proceeding to allow Waconda Solar to not have to prepare a legal pleading which may not be necessary. This is a sufficient reason and is consistent with the public interest. Thus, Waconda Solar's Response should not be due until three weeks after the Commission decides whether to stay this proceeding.

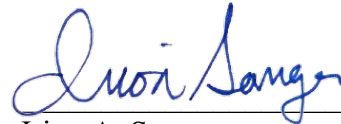
V. CONCLUSION

For all the reasons herein, Waconda Solar requests that the Commission either: 1) stay the filing deadline for Waconda Solar's Response until three weeks after the Commission issues a final order on the Petition for Declaratory Ruling; or, in the alternative, 2) extend the filing deadline for Waconda Solar's Response until three weeks after the date of the ALJ's ruling on this motion.

Dated this 5th day of October 2021.

Respectfully submitted,

Sanger Law, PC



Irion A. Sanger

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