

**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,

Petition for a Declaratory Ruling.

REPLY COMMENTS TO JOINT  
UTILITIES COMMENTS AND  
STAFF REPORT ON PETITION FOR  
DECLARATORY RULING

**I. INTRODUCTION**

Pursuant to OAR 860-001-0430(2) the Renewable Energy Coalition (the “Coalition”), the Community Renewable Energy Association (“CREA”), and the Oregon Solar + Storage Industries Association (“OSSIA”) (collectively the “Interconnection Trade Associations”) hereby submit these reply comments to the Oregon Public Utility Commission (the “Commission”) on the Staff Report and the PacifiCorp dba Pacific Power (“PacifiCorp”), Portland General Electric Company (“PGE”), and Idaho Power Company (“Idaho Power”) (collectively the “Joint Utilities”) comments on the Interconnection Trade Associations’ Petition for Declaratory Ruling (“Petition”).

Staff recommends that the Commission decline to substantively consider the Petition, but Staff also provides an alternative approach to address the concerns raised in the Petition noting that it believes there may be higher impact interconnection issues presented in the general interconnection investigation in Docket No. UM 2111, and that

the Commission could open a rulemaking or direct Staff to engage in a collaborative working group process to develop narrow scope of interconnection data issues, if the Commission finds it is appropriate to examine all or a subset of the issues presented by the Petition on a more expedited manner. The Interconnection Trade Associations believe that it is proper to substantively consider the Petition but would support this approach as a reasonable alternative. Specifically, the Interconnection Trade Associations would support addressing a narrow subset of interconnection issues now (either outside of UM 2111 or be considered first in UM 2111). However, UM 2111 should ultimately consider the broad set of interconnection issues.

Interconnection related issues, including the lack of an ability to review and vet utility interconnection studies, are a, if not the, major impediment to the development of small scale renewable energy projects in Oregon. The passage of HB 2021 requires a rapid acceleration of the state's decarbonization and emissions reductions, and without interconnection changes, economic small scale renewable resources will be unable to help meet the state's goals. There are a limited number of high priority interconnection issues that could resolve and address the majority of the state's interconnection issues, especially regarding Portland General Electric Company.

The Interconnection Trade Associations do not have a preference regarding whether the Commission considers the issues raised in the Petition through a declaratory ruling, a rulemaking, or as a more narrow subset of issues in a general investigation. The Interconnection Trade Associations would prefer that the Commission place a high priority on resolving all issues in the interconnection investigation in UM 2111, but

recognize that there are legitimate constraints on its ability to move more expeditiously. The reason the Interconnection Trade Associations filed this Petition was to defer to Staff's decision to have the Commission issue an order addressing all interconnection issues sometime after 2022,<sup>1</sup> but to highlight at least one very important issue that could be resolved expeditiously and that would have a meaningful impact on the interconnection process. Therefore, Staff's suggestion for a rulemaking or to address a narrow subset of issues in an investigation would effectively provide the same relief as requested in this Petition.

Staff recommends the Commission declines to substantively consider the Petition.<sup>2</sup> Staff makes five main arguments: 1) the Petition would have no binding affect because the Interconnection Trade Associations will not seek to interconnect a generation facility; 2) the Commission does not have the ability to bind the utilities in the manner requested in the Petition; 3) a ruling on the Petition would not provide clarity; 4) the Petition should not be used to circumvent ongoing litigation in other proceedings; and 5) the Commission's resources would be better used to determine a utility's obligations regarding the issues in another proceeding.<sup>3</sup>

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<sup>1</sup> The Interconnection Trade Associations understand that UM 2111 will start sometime in 2022, but that Commission orders resolving at least some of the issues should not be expected until 2023 and all the issues might not be resolved until later.

<sup>2</sup> Staff Report at 9 (Nov. 24, 2021).

<sup>3</sup> Staff Report at 5-6.

The Joint Utilities recommend the Commission decline to substantively consider the Petition.<sup>4</sup> The Joint Utilities make five main arguments: 1) the Petition is circumventing pending complaints and the Commission’s generic interconnection investigation in UM 2111; 2) the factual disputes in the Petition would render a ruling meaningless; 3) the Petition seeks to impose new obligations on the utilities; 4) a ruling on the Petition would only apply to the Interconnection Trade Associations; and 5) addressing the Petition would be overly burdensome and contrary to administrative efficiency.<sup>5</sup>

The Interconnection Trade Associations disagree.

- First, this docket is appropriate to decide these issues because PGE’s position is that the pending complaints cannot address the legal issues raised in this Petition and the final order resolving of all the issues in UM 2111 is not expected for years even though this is an issue that needs to be addressed now. (Response to Staff and Joint Utilities)
- Second, the facts are plain and simple, and the Joint Utilities do not actually identify any specific fact in dispute. (Response to Joint Utilities)
- Third, the Joint Utilities are assuming their interpretation of the issues is correct even though the Interconnection Trade Associations interpret the law and rules differently. (Response to Joint Utilities)
- Fourth, there have been declaratory rulings that have bound utilities even though the utility did not itself petition for the declaratory ruling, and a ruling on the Petition would provide a declaration of an interconnection customer’s rights under the law that could be used to ensure utilities follow that obligation. (Response to Staff and Joint Utilities)
- Finally, the issues in the Petition are not overly broad and complicated because the issues boil down to: whether an interconnection customer has

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<sup>4</sup> Joint Utilities’ Comments at 1 (Nov. 19, 2021).

<sup>5</sup> Joint Utilities’ Comments at 1-2.

a right to conduct an independent System Impact Study (“iSIS”); whether the interconnection customer has a right to access information to conduct the iSIS; and under what standard of review must a utility evaluate and address the iSIS. (Response to Joint Utilities) Answers to these questions would provide much needed clarity that it appears the Joint Utilities are trying to ensure interconnection customers do not have. (Response to Staff)

The failure to take any action will allow the Joint Utilities to abuse the interconnection process by hindering an interconnection customer’s ability to conduct an iSIS. Issues surrounding the ability to conduct an iSIS have been raised for several years now, but there has still not been resolution of these issues. Failing to take action would result in maintaining the status quo in which interconnection customer do not know their legal rights, hinder interconnection customer’s ability to conduct an iSIS, and maintain uncertainty regarding the legal standard that applies when a utility reviews an iSIS. This Petition would provide clarity regarding the iSIS process. Thus, the Interconnection Trade Associations recommend the Commission substantively consider the Petition, open a rulemaking, or consider a subset of the issues from UM 2111 now (and address the broader set of UM 2111 issues later).

## II. DISCUSSION

### A. **The Issues Raised in the Petition are Important for Interconnection Customers and Are Appropriate for Resolution in this Docket**

The Joint Utilities and Staff argue the Commission should decline to issue a declaratory ruling because there are two pending complaints that raise similar issues, and the issues are better suited for UM 2111.<sup>6</sup> The Interconnection Trade Associations

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<sup>6</sup> Joint Utilities’ Comments at 3-4; Staff Report at 5, 8.

realize that there is overlap on the issues in this docket and the complaints, but the Petition addresses a broader set of issues than those raised in the complaints. Just because there is overlap on the issues, does not mean a declaratory ruling docket is inappropriate to resolve the issues. To the contrary, the Petition addresses broader issues and can better resolve the uncertainty.

The declaratory ruling docket is better suited to resolve these disputes than the complaint proceedings because in the complaints, PGE is arguing the issues do not need to be addressed. In *Waconda Solar, LLC v. PGE*, PGE is claiming all of Waconda Solar's claims are moot and the complaint should be dismissed because Waconda Solar's interconnection application is deemed withdrawn.<sup>7</sup> Thus, PGE is arguing the Commission does not need to address the issues regarding an iSIS. Further, in *Zena Solar, LLC v. PGE*, PGE is arguing the rules regarding an iSIS do not apply because the parties agreed to a standard under a settlement agreement.<sup>8</sup> It is not credible to ask the Commission to defer the iSIS issues for other dockets while simultaneously arguing against having the iSIS issues addressed in those other dockets. Indeed, it appears that PGE does not want these issues promptly addressed by the Commission at all.

The Joint Utilities and Staff's claim that the issues are better addressed in the complaints is inappropriate because if the Commission rules in favor of PGE, then the issues will not be resolved in the complaints. There is no reason why the issues cannot be

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<sup>7</sup> *Waconda Solar, LLC v. PGE*, Docket No. UM 1971, PGE's Modified Second Motion for Summary Judgment at 64 (Sept. 15, 2021).

<sup>8</sup> *Zena Solar, LLC v. PGE*, Docket No. UM 2164, PGE's Answer, Affirmative Defenses, and Counterclaims at 50-51, ¶¶ 308-323 (July 2, 2021).

addressed in both the complaints and this declaratory ruling docket. Alternatively, the Commission could delay the start of the declaratory ruling proceeding to determine what issues remain after resolution of the complaints. Because the complaints frame the issues more narrowly, there will be at least some iSIS issues remaining even if the complaints are litigated to final rulings. The Interconnection Trade Associations seek clarity regarding the iSIS process and the standards of review that apply when a utility reviews an iSIS, but it appears that the Joint Utilities are attempting to ensure ambiguity remains. The declaratory ruling docket is an appropriate venue to resolve these issues.

The declaratory ruling docket is a better proceeding to resolve these discrete issues because the Interconnection Trade Associations seek resolution of this important issue now, and it is unlikely the UM 2111 will resolve the issue quickly. These issues regarding interconnection customers completing studies were first raised in UM 2000 in 2019.<sup>9</sup> It has been three years since these issues were first raised, but there still has not been any resolution. Additionally, a conclusion in UM 2111 is not expected to be reached on these issues until 2022, 2023, or even later.<sup>10</sup> Thus, interconnection customers will have been waiting for a resolution on these issues for possibly six years.

The Interconnection Trade Associations have not asked the Commission to expedite the process in UM 2111 because the Interconnection Trade Associations understand it is a lengthy process that involves resolution of many issues. However, the

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<sup>9</sup> *In re Commission Investigation into Public Utility Regulatory Policies Act Implementation*, Docket No. UM 2000, Order No. 19-254 at 1, Appendix A at 19, 23-24, 28.

<sup>10</sup> No schedule has been adopted or even proposed in UM 2111.

Interconnection Trade Associations have identified an important issue for the Commission to address now. This issue will continue to be a point of dispute between interconnection customers and the utilities, but interconnection customers need a resolution sooner than up to three years from now. The declaratory ruling docket is a more appropriate proceeding to address this one discrete issue than UM 2111. Thus, the Commission should substantively consider the Petition.

**B. The Facts Assumed in the Petition Are Appropriate and Would Not Undermine a Declaratory Ruling**

The Joint Utilities also argue a declaratory ruling is inappropriate because there are disputed facts that would undermine a declaratory ruling and note there are 24 assumed facts that span five pages.<sup>11</sup> First, the Joint Utilities do not actually identify any specific fact in dispute. They simply claim “[i]t is likely that many of the facts will be disputed by one or more of the Joint Utilities.”<sup>12</sup>

The Joint Utilities claim disputed facts will undermine a declaratory ruling, but they fail to identify and address those facts and why they are disputed. Again, the Joint Utilities appear to have a desire to maintain the status quo and ensure there is ambiguity in the iSIS process. Even a cursory review of the identified facts indicates that they are very basic and should be uncontested or lack controversy.<sup>13</sup> The Commission should

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<sup>11</sup> Joint Utilities’ Comments at 4-5.

<sup>12</sup> Joint Utilities’ Comments at 5.

<sup>13</sup> *See, e.g.*, [t]he Commission adopted its Interconnection Rules in 2009 (fact 4), [t]he Commission has not amended its Interconnection Rules since 2009 (fact 5), [t]he Oregon State Legislature has not enacted legislation that would have the effect of abrogating the Commission’s Interconnection Rules (fact 6), [t]he U.S. Congress has not enacted legislation that would have the effect of abrogating the



substantively consider the Petition so that interconnection customers can gain clarity regarding the iSIS process.

The Joint Utilities also note that the Petition states 24 assumed facts that span five pages. However, it is not uncommon for a petition for declaratory ruling to include that many assumed facts.<sup>14</sup> It should not be prohibitive for the Commission to review the Petition just because there are 24 assumed facts. Thus, the Commission should substantively consider the Petition because the Joint Utilities fail to specify any disputed facts and the facts in the Petition will not undermine a Commission ruling on the Petition.

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Commission's Interconnection Rules (fact 7), [t]he Commission's Interconnection Rules are still effective as adopted in 2009 (fact 8), 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" (fact 9), 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 (fact 12), 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 (fact 14), PGE's iSIS Policy does not state what standard PGE will use to evaluate the iSIS (fact 15), PGE could take down or change its iSIS Policy without Commission approval (fact 21).

<sup>14</sup> See, e.g., *in re Georgia-Pacific Consumer Products (Camas), LLC and Clatskanie People's Utility District Petition for Declaratory Ruling*, Docket No. DR 49, Petition at 3-5 (April 10, 2015) (11 assumed facts spanning 3 pages); see, e.g., *in re Troutdale Energy Center, LLC Petition for Declaratory Ruling*, Docket No. DR 46, Petition at 9-14 (May 31, 2013) (34 assumed facts spanning 5 pages); see, e.g., *in re Honeywell International, Inc., Honeywell Global Finance, LLC, and PacifiCorp Petition for Declaratory Ruling*, Docket No. DR 40, Petition at 1-5 (June 6, 2008) (20 assumed facts spanning 5 pages).

**C. The Petition Seeks to Clarify Commission’s Rules Not Ask the Commission to Change Rules**

The Joint Utilities also assert the Commission should decline to substantively consider the Petition because it seeks to revise the Commission’s rules and create a compliance mechanism that does not already exist.<sup>15</sup> This is incorrect. The Interconnection Trade Associations are simply seeking clarification regarding the Commission’s interpretation of its own rules. Specifically, clarification on the Commission’s interpretation regarding the rights an interconnection customer has during the iSIS and what standard of review applies when a utility evaluates and addresses the iSIS.

It appears the Joint Utilities’ argument assumes their interpretation of the Commission’s rules is correct. However, that ignores that there is an obvious disagreement regarding the interpretation of the Commission’s rules on an iSIS. The Interconnection Trade Associations are simply seeking clarification from the Commission on its interpretation of its rules. The Interconnection Trade Associations have presented their interpretation of the Commission rules, but the Interconnection Trade Associations are not asking the Commission to revise the rules, create a new compliance mechanism, or insert new substantive requirements as the Joint Utilities claim. Thus, the Commission should substantively consider the Petition because there is disagreement between the Interconnection Trade Associations and the Joint Utilities regarding interpretation of Commission rules on an interconnection customer’s rights to

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<sup>15</sup> Joint Utilities’ Comments at 5-6.

an iSIS and the standards of review under which a utility must evaluate and address the iSIS.

**D. The Petition Seeks Appropriate Relief that Would Have the Effect of Binding Utilities**

The Joint Utilities and Staff argue the Commission should decline to substantively consider the Petition because a ruling would not bind the Joint Utilities.<sup>16</sup> However, as with any order issued by the Commission, a declaratory ruling in this proceeding would have precedential effect that parties could reasonably expect the Commission to apply in future disputes and proceedings unless such precedent were subsequently changed by the Commission. A ruling on this Petition would therefore have the practical effect of binding, and impacting the conduct of, the Joint Utilities as the ruling would declare an interconnection customer’s rights that it can use to support claims against a utility. Further, there have been instances in other declaratory ruling dockets where a Commission ruling binds non-parties or Staff recommended substantive consideration of a petition because it would reduce ambiguity.

In DR 54, Commission Staff recommended the Commission substantively consider the City of Portland’s petition for declaratory ruling regarding pro rata charges even though the petition would not bind utilities because a ruling on the issue would “reduce ambiguity and risk for stakeholders in a context in which they are currently negotiating.”<sup>17</sup> The Commission ultimately decided not to consider the petition for a

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<sup>16</sup> Joint Utilities’ Comments at 6-8; Staff Report at 5.

<sup>17</sup> *In re City of Portland Petition for Declaratory Ruling*, Docket No. DR 54, Order No. 19-187, Appendix A at 4, 7.

different reason (because it did not have the authority under rules or statutes to decide the underlying question). However, the Commission did not have any concerns that the ruling would not bind the utilities.<sup>18</sup> A ruling on the Petition would also reduce ambiguity and provide clarity to all stakeholders involved.

In DR 47, PacifiCorp filed a petition for declaratory ruling requesting the Commission interpret a statute to allow PacifiCorp to use the Oregon-allocated share of market value to determine what type of filing is required under that statute.<sup>19</sup> Staff recommended the Commission consider the issue in part because the petition presented “an important legal issue for the Commission to determine,” “Staff’s practice in applying this statute has not been consistent,” and “[t]he proper application of ORS 757.480...determines the circumstances under which PacifiCorp, *and other utilities*, make the appropriate property sales filings.”<sup>20</sup> The Commission ultimately decided to substantively consider the petition ruling that “the statute is intended to apply to the full value of a utility’s property[.]”<sup>21</sup> There the Commission issued a ruling that would, in effect, bind all regulated utilities, not just PacifiCorp that filed the petition.

Additionally, PacifiCorp has argued a ruling should bind it even though it was not a petitioner in a declaratory ruling. In DR 49, Georgia-Pacific Consumer Products (Camas) LLC (“GP”) and Clatskanie People’s Utility District (“Clatskanie”) filed a

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<sup>18</sup> Docket No. DR 54, order No. 19-187 at 1.

<sup>19</sup> *In re PacifiCorp Petition for Declaratory Ruling Regarding ORS 757.480*, Docket No. DR 47, Order No. 14-254 at 1.

<sup>20</sup> Docket No. DR 47, Staff Report at 2 (Feb. 12, 2014).

<sup>21</sup> Docket No. DR 47, Order No. 14-254 at 6.

petition regarding the legality of Clatskanie’s proposed electric service to GP’s Camas Mill that had long been served by PacifiCorp.<sup>22</sup> PacifiCorp intervened in the declaratory ruling docket recommending the Commission “conclude that PacifiCorp retains the rights to serve the Camas Mill.”<sup>23</sup> PacifiCorp’s argument there recognized the practical reality that – while PacifiCorp was not itself a petitioner – the Commission’s determination of the issue in the petition would be determinative of the rights of other parties affected by the issue. Just as PacifiCorp argued in that declaratory ruling docket that a ruling should be binding upon it even though it was not a petitioner in the docket, a ruling in this docket would likewise be binding on the Joint Utilities even though they are not petitioners.

Staff also recommends the Commission decline to substantively consider the Petition because the Interconnection Trade Associations would not seek to interconnect a generation facility.<sup>24</sup> However, a ruling on the Petition would provide the Commission’s interpretation of its rules, which would provide guidance for all interconnection customers – including members of petitioners – that seek to conduct an iSIS. The ruling would ensure an interconnection customer is aware of its rights. Thus, the Commission should substantively consider the Petition because a ruling would reduce ambiguity and provide clarity to all stakeholders.

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<sup>22</sup> Docket No. DR 49, Order 15-299 at 1.

<sup>23</sup> Docket No. DR 49, Order 15-299 at 8.

<sup>24</sup> Staff Report at 5.

In any event, if the Commission is concerned that there needs to be individual interconnection customers join the Petition, then the Interconnection Trade Associations can amend the Petition to join one or more individual member companies. However, it is hard to understand what benefit to the process would be obtained by doing so or why it should be necessary.

**E. Considering this Petition Serves Judicial Efficiency Because the Issues are Straightforward and a Ruling on the Petition Would Provide Clarity**

Finally, the Joint Utilities assert the Commission should decline to substantively consider the Petition because it would be administratively inefficient to consider the Petition as “the Petition is overly broad and complex[.]”<sup>25</sup> However, the issues in the Petition are not overly broad or complex. The issues are straightforward. The issues are simply: 1) whether the interconnection customer has a right to conduct an iSIS; 2) whether the interconnection customer has a right to access information to conduct the iSIS; and 3) what are the legal standards of review that apply when a utility evaluates and addresses an iSIS. Further, it serves administrative efficiency to consider these issues in this declaratory ruling instead of piece meal and in part in numerous complaints that have been brought or will be brought before the Commission were to address the issues in UM 2111.

Staff also recommends the Commission should decline to substantively consider the Petition because a ruling would not provide clarity on the issues.<sup>26</sup> This is incorrect.

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<sup>25</sup> Joint Utilities’ Comments at 8.

<sup>26</sup> Staff Report at 5.

Currently, interconnection customers face ambiguity regarding their rights for an iSIS and how the utility will review the iSIS. A ruling from the Commission would provide clarity to all parties involved. Thus, the Commission should substantively consider this Petition because administrative efficiency is served by addressing these straightforward issues in this docket and it would provide clarity for all parties involved.

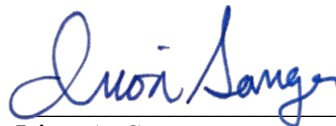
### III. CONCLUSION

For the reasons set forth above, the Interconnection Trade Associations respectfully request that the Commission grant the Petition for declaratory ruling, or in the alternative adopt Staff's alternative recommendation to open a rulemaking or direct Staff to engage in a collaborative working group process to develop narrow scope of interconnection data issues.

Dated this 29th day of November 2021.

Respectfully submitted,

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