

**BEFORE THE
PUBLIC UTILITY COMMISSION OF OREGON**

SANDY RIVER SOLAR, LLC)	CASE NO. UM 1967
Complainant,)	
)	
vs.)	RENEWABLE ENERGY
)	COALITION’S REPLY
)	TO PGE’S OBJECTION TO
PORTLAND GENERAL ELECTRIC)	RENEWABLE ENERGY
COMPANY)	COALITION’S PETITION TO
Defendant.)	INTERVENE
_____)	

I. INTRODUCTION

Pursuant to OAR 860-001-0300(5), the Renewable Energy Coalition (“REC”) files this reply to the objection of Portland General Electric Company (“PGE”) to REC’s request to intervene and appear with full party status in this proceeding. The Administrative Law Judge should grant REC’s intervention because REC has demonstrated a substantial interest in the relevant issues, and its participation will not broaden, burden, or delay the proceeding. REC is the one group in the state of Oregon that has the largest interest in this proceeding, and its participation will be invaluable to the resolution of the disputed issues.

A. Renewable Energy Coalition’s Membership and Interests

REC is comprised of about forty members that are small qualifying facilities¹ (“QFs”) who own and operate about fifty renewable energy generation facilities in

¹ Qualifying facilities have rights to sell power to public utilities under the Public
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Oregon, Idaho, Washington, Utah, and Wyoming. REC's membership includes several types of entities, such as irrigation districts, water districts, corporations, and individuals. REC's membership includes small hydroelectric projects, biomass facilities, solar generators, geothermal energy producers, and waste energy projects.

Most of REC's members operate existing projects that have been operating and selling to Oregon utilities for numerous years, but many of the members are developing or planning to develop new projects. REC's members already have or are attempting to obtain both power purchase agreements ("PPAs") and interconnections with Oregon investor-owned electric utilities. In addition, REC's members purchase back up, station service, and other electrical needs from utilities.

REC seeks to intervene in this proceeding because it involves claims, and PGE's response to those claims, that impact its members. Indeed, REC's petition to intervene expressly so states: "This proceeding could impact the interconnection costs and options available to REC's members. Without participation, REC would not have the ability to participate in the proceeding, which could result in material harm to its members." Petition to Intervene at 2, ¶ 6. Additionally, REC is uniquely positioned to provide evidence on issues in this case and to assist the Commission in its review of the questions it must resolve.

B. PGE's Objections to REC's Intervention

PGE objects to REC's intervention for multiple reasons. First, PGE argues that REC's petition to intervene failed to establish that REC has an interest in this proceeding.

Utility Regulatory Policy Act of 1978 ("PURPA") and the Federal Energy Regulatory Commission's rules at the utilities' established avoided cost rates. *See* 18 CFR 292.303.

Second, PGE argues that REC's petition failed to state the issues that REC intends to raise. Third, PGE objects by asserting that REC's participation would unreasonably broaden the issues in the case, burden the record, and result in unreasonable delays.

PGE then asserts that if the Commission were to grant REC's petition to intervene, then it should limit REC's participation in substantial ways. PGE seeks to prohibit REC from filing dispositive motions, from seeking any change in the Commission's policy or rules regarding the interconnection process for qualifying facilities, and from having discovery rights until PGE obtains a decision on a motion for summary judgment.

Finally, PGE asks that the Commission modify the procedural schedule to provide PGE with more time to respond to motions or responses from multiple parties, and that the Commission set another procedural conference in the case.

For the reasons described below, PGE's objections should be disregarded, and REC's petition to intervene should be granted. PGE's objections ignore the substance of this case, inappropriately devalue REC's interest in the issues that will be addressed in this case, and are generally not well-founded.

II. LEGAL STANDARD

Intervention in Commission proceedings is not intended to be a particularly difficult standard for an interested stakeholder to satisfy. ORS 756.525 governs petitions to intervene before the Commission and has two important components—neither of which is very stringent. First, it permits the Commission to allow “any person to become a party that might, on the institution of the proceeding, have been such a party, if application therefor is made before the final taking of evidence in the proceeding.” ORS

756.525(1). Second, it directs the Commission to first “determine the interest of the applicant in the proceeding” and then grant the intervention “if the commission determines that such appearance and participation will not unreasonably broaden the issues or burden the record.” ORS 756.525(2). ORS 756.525 provides that where these two criteria are met, the Commission “*shall grant*” a petition to intervene. *Id.* (emphasis added).

The Commission has promulgated additional rules to implement ORS 756.525, which state that petitioners must have “sufficient interest” in a proceeding. OAR 860-001-0300(6). Similar to ORS 756.525, the Commission’s rules also provide a mandate that petitions to intervene be granted when a would-be party has a sufficient interest and its participation will not unreasonably burden a proceeding. *See* OAR 860-001-0300(6) (stating that “[i]f the Commission or ALJ finds the petitioner has sufficient interest in the proceeding and the petitioner’s appearance and participation will not unreasonably broaden the issues, burden the record, or delay the proceedings, then the Commission or ALJ *must* grant the petition”) (emphasis added).

III. REPLY

A. REC Has A Substantial Interest in the Case

This case falls squarely within the zone of interests REC exists to protect. The dispute involves a complaint by Sandy River Solar, seeking a right to have a third-party assist it with its interconnection to PGE’s system. Sandy River alleges that PGE’s approach to interconnections has made it difficult for Sandy River to get through the interconnection process, and have the work done in a timely manner. *See generally* Sandy River Solar LLC Complaint at 1-5. Sandy River asserts that some of its challenges

stem from PGE’s overall approach to interconnections, and staffing and other issues within the applicable PGE business departments. *See* Sandy River/100, Snyder/13 (describing resource constraints encountered at PGE). Sandy River also raises concerns that PGE is using the interconnection process to stifle the ability of qualifying facilities to construct their projects. Sandy River/100, Snyder/14. Although the complaint in this case was brought by Sandy River, an individual QF, the case relates not only to Sandy River’s difficulties in seeking an interconnection with PGE, but also PGE’s actions with respect to other QFs, and PGE’s general administration of the interconnection process.

As described above, the Commission’s rules state that petitioners must have “sufficient interest” in a proceeding in order to intervene, meaning that the party has “some stake in the outcome” of the case. Order No. 11-179 at 2. Not only does REC have a stake in the outcome, but it has a significant and substantial interest in the case.

REC’s petition to intervene alone establishes a sufficient interest in the proceeding. As noted above, that petition states that REC members are qualifying facilities in Oregon, and this proceeding could impact “interconnection costs and options available to REC’s members.” Petition to Intervene at 2, ¶ 6. The petition further explains that REC has participated in prior proceedings to protect its interest in QF interconnection policy. *Id.* at 2-3, ¶¶ 7-8. That alone establishes a sufficient interest to participate in this proceeding.

The record evidence now also substantiates the allegations of interest alleged in REC’s petition to intervene. As described in REC’s Opening Testimony in this proceeding, John Lowe explains that interconnection issues “were the genesis of the Coalition, [and] are core to the Coalition’s purpose and membership.” REC/100, Lowe/4.

REC's website further explains how core interconnection issues are to the organization.² As stated in Mr. Lowe's testimony and on the website: "[t]he Coalition's roots began in 2007 with representation of Sorenson Engineering in the Oregon Public Utility Commission's interconnection docket AR 521." AR 521 is the proceeding in which the interconnection rules at issue in this proceeding were adopted. REC's website further explains its interest in this proceeding in that: "Utility practices and policies associated with interconnection historically have been a significant factor and often a deterrent in the development of renewable resources." Finally, REC's website explains that it "has been the most active non-utility party in recent dockets in Oregon that involve interconnection issues" and that it "is planning to continue its long-standing pro-active involvement in interconnection related matters for all our member states and their projects."

REC's members have all faced the challenges associated with interconnecting their facilities to utilities such as, and including, PGE. Additionally, many of them may seek to connect projects to utilities, including PGE, in the future. The experience of REC's members not only allows REC to serve a unique role in this proceeding, by sharing its members' experiences with the process with which Sandy River alleges there are deficiencies, but REC's members also have an interest in seeing that the deficiencies alleged by Sandy River are identified and explored, and that the Commission takes appropriate actions to resolve them.

In asserting that REC's members do not have a sufficient interest in this proceeding, PGE mischaracterizes the interest that they have. PGE asserts that "REC's

² <http://www.recoalition.com/qf-interconnection>

members have existing interconnections and are not having problems with construction of interconnection facilities.” PGE’s Objection at 6-7. PGE observes that REC’s members “are already interconnected and delivering energy” and thus asserts that they are not affected by the outcome of Sandy River’s dispute. *Id.* at 7.

In arriving at its conclusions, PGE overlooks that interconnections and the associated agreements occur not only upon the development of a new project, but also after a qualifying facility’s current interconnection agreement expires. REC members’ currently operating facilities will need to enter into new interconnection agreements once their current agreements expire, if they wish to continue to operate. Because of technological changes and the passage of time, existing projects can have significant interconnection-related costs when their 20-year or longer interconnection agreements expire. Obviously, any REC member developing a new project will need to become interconnected before it is able to sell any of its net output to an Oregon utility.

This means that REC’s members have much more than a mere curiosity about this case—they have been and *will be* engaged in the same process as Sandy River, and many have faced similar challenges. Additionally, many of REC’s members are interested in pursuing additional projects in the future, and thus will go through the interconnection process again for new projects. A review of REC’s website shows a diversity of members, including small Oregon and Pacific Northwest renewable energy developers who are planning on building new projects (and thus needing interconnection).

Finally, John Lowe, REC’s witness in this case, was involved in the Commission’s rulemaking where it was established that a third-party may be allowed to assist a qualifying facility with its interconnection to the utility. REC/100, Lowe/3. Mr.

Lowe's testimony, and continued participation in this case can allow for insights into the intent of the current rules, the process through which they were created, and how they are being implemented by other utilities. REC/100, Lowe/6. These insights go to one of the core issues in this case. For this reason, REC brings valuable insights to the proceeding that are otherwise not available to the Commission.

Overall, PGE's objection to REC's intervention seeks to characterize the dispute in this case as solely between it and Sandy River, and that no other party's interests are at stake. *See* PGE's Objection at 8 (describing PGE's view that REC's concerns are not related to this "specific interconnection dispute between PGE and Sandy River"). In making this assertion, PGE ignores the broad interest that QFs have in their ability to interconnect with PGE. Additionally, PGE's objection seems calculated to try to prevent a single QF (in this case Sandy River) from being able to demonstrate to the Commission a holistic view of the broader interests at stake, and even more importantly, PGE's history and approach to the important topic of QF interconnection. In that respect, PGE's attempt to prevent REC's participation in this case seems calculated so that the Commission "can't see the forest for the trees," by making it appear that Sandy River's issues are Sandy River's issues alone when, in reality, REC's membership has experiences like that of Sandy River's that would benefit the Commission in its review of the claims in this case. Indeed, in its case, Sandy River even specifically alleges that PGE's failings in the interconnection process are demonstrable by reference to PGE's actions on other projects. *See* Sandy River/100, Snyder/3 ("The problems faced by Sandy River reflect a larger problem with PGE's interconnection department. PGE's time

estimates, cost estimates, and statements regarding what interconnection facilities are required have been unreliable for many projects.”).

It is rare that the Commission denies intervention in a proceeding. Such denials occur almost exclusively when a petition to intervene is filed out of time, or where the petitioner is not a customer, or where the petitioner has no connection with the case, or where the petitioner has no connection with Oregon regulation. *See, e.g., In Re Fish Mills Lodges Water System Application for an Order Authorizing Abandonment of Water Service*, Docket No. UM 1489, Order No. 11-179 at 2 (May 31, 2011) (declining to permit intervention when the entity represented neither the utility nor its customers and asserted no clear interest in the outcome of the case).

That PGE would assert that REC has no sufficient interest in this case, when it represents a large and diverse group of qualifying facility projects that all deal with and have a direct stake in interconnection issues, is remarkable. This is especially true when REC’s petition to intervene itself spelled out REC’s interest in detail. *See, e.g., REC’s Petition to Intervene* at 2 (“Sandy River Solar’s filing could have a substantial impact on REC’s members. Sandy River Solar is seeking two forms of relief from the Commission and asks that the Commission require PGE to: 1) provide complete interconnection studies that would allow Sandy River Solar or a third-party consultant to understand and properly evaluate the need, types and cost of any required interconnection upgrades; and 2) allow Sandy River Solar, subject to PGE’s reasonable oversight, to hire qualified and experienced third-party consultants to properly and safely construct the required interconnection upgrades.”).

B. REC Clearly Stated the Issues It Intends to Raise

In addition to asserting that REC does not have a sufficient interest in this proceeding, PGE urges the Commission to deny REC's participation because REC "fails to state the issues REC intends to raise." PGE's Objection at 7. PGE implies that REC's statement that it will align itself with Sandy River is insufficient for purposes of a petition to intervene.

This claim is unfounded, and easily refuted through reference to the petition to intervene. Not only did REC explain that it would align itself with Sandy River, which may be more clarity than the Commission demands in most interventions, but REC also explained, in detail, its interests in the case and the evidence it could provide. REC's Petition explains:

REC's members generally have the option to hire qualified and experienced third-party consultants to properly and safely construct the required interconnection upgrades in Oregon and other states. REC also participated in the Oregon rulemaking (AR 521) and generic investigation (UM 1401) that provides Oregon generators the right to hire third-party consultants. REC is surprised that PGE is refusing to allow Sandy River Solar to retain qualified consultants, and intends to align itself with Sandy River Solar.

REC's Petition to Intervene at 2-3.

Moreover, PGE cannot claim that REC has not been clear about its position because REC has (in order to maintain the current schedule of the case) already filed its opening testimony. PGE had this testimony before filing its objection to REC's petition to intervene. PGE's attempt, therefore, to deny REC intervention out of a lack of clarity as to its position is contrived.

C. REC’s Participation Will Not Broaden the Issues, Burden the Record, or Delay the Proceedings

PGE also argues that REC’s participation would unreasonably broaden the issues, burden the record, and unreasonably delay the proceeding. PGE’s Objection at 7. PGE argues that “[i]f REC is allowed to intervene and argue about its members’ experiences in other, unrelated interconnections with PGE or other utilities, it will inevitably broaden the scope of this proceeding.” *Id.*

PGE’s statement that REC’s participation will “broaden the scope” of the proceeding is not persuasive. As alleged in Sandy River’s complaint, and further developed through its opening testimony, the scope of this case involves allegations about PGE’s resourcing of, and approach to interconnections generally. It is that context in which Sandy River seeks to have a third-party assist it with its interconnection. REC’s participation sheds light on these issues, and therefore does not broaden the scope—it helps the Commission explore the full scope of the case.

PGE’s assertion that REC’s participation will delay the proceeding or burden the record is also unsubstantiated. This claim ignores REC’s recognition of the existing schedule, and its commitments in its petition to intervene. In its Petition, REC stated:

REC understands that a procedural schedule has been adopted and discovery is ongoing. REC will accept the procedural schedule as is, and participate according to its terms. As REC aligns itself with Sandy River Solar, REC intends to submit testimony on February 7, 2019.

REC Petition to Intervene at 3. REC therefore not only committed to abide by the existing procedural schedule, but has in fact already filed its testimony in accordance with it. Moreover, a review of that testimony, constituting 18 pages of REC’s experience in the interconnection process, is hardly an unreasonable broadening of the issues, and in

no way burdens the record. To the contrary, it helps flesh out the issues raised in Sandy River's complaint by providing a broader perspective on the issues alleged by Sandy River.

D. Restrictions on REC's Ability to Participate Are Unwarranted

Finally, PGE asks that if REC is allowed to participate, that its participation be limited by:

- Prohibiting REC from filing a dispositive motion;
- Prohibiting REC from moving for or otherwise seeking a change in Commission policy, rule or order regarding the interconnection process;
- Prohibiting REC from engaging in any discovery before PGE has filed an obtained a decision on its motion for summary judgement; and
- Modifying the procedural schedule to provide PGE with more time to respond to motions or responses from multiple parties.

PGE's Objection at 8-10.

PGE's objections to REC's petition to intervene lack merit in the first instance. Thus, to the extent PGE seeks to make these limitations appear to be a "reasonable alternative" to denying REC's intervention, the Commission should reject such a strategy. Such restrictions would, in effect, deny REC's statutory rights to participate in this proceeding as a party. PGE offers no compelling reason why REC should be, from the start, saddled with restrictions on its participation in this case. If REC is granted rights to participate as a party to this proceeding, it should have the normal rights afforded parties under the Commission's rules.

PGE's proposed restrictions on REC's ability to conduct discovery is particularly troubling. Such a provision would put REC in a position of being unable to gather evidence to make its case, or to test PGE's assertions and characterizations. Especially in

light of PGE's stated intent to file a motion for summary judgement, REC's inability to review information related to PGE's claims would be extremely unfair and calculated to protect the utility from scrutiny.

Finally, PGE asks the Commission to at least "modify the procedural schedule to account for the addition of a new intervenor-party and for the fact that PGE intends to file a motion for summary judgment." PGE's Objection at 10. PGE asks that "[a]t the very least, the schedule should be structured to provide PGE with additional time to respond to motions or other briefing from multiple parties. PGE recommends that the ALJ hold a second pre-hearing conference to address such scheduling concerns." *Id.*

REC opposes PGE's request to modify the schedule, but notes that such a request can be made at any time, and that it is normally done after consultation with the parties. To the extent PGE seeks a procedural change to the schedule, it should do so through the normal means of doing so, and it need not file an objection to a party's intervention in order to make such a request. PGE's request is also vague, because it proposes no new schedule for the parties to consider.

REC notes that PGE has already received its testimony, in accordance with the case schedule already established. Additionally, REC's testimony, at 18 pages, does not seem to warrant substantial delays in PGE's ability to present its case. Nevertheless, REC is willing and open to discussing the schedule in the case, pursuant to the standard approach for doing so.

IV. CONCLUSION

REC respectfully requests that the Commission grant its petition to intervene with full party status in this proceeding, and that it disregard PGE's objection, for the reasons described above.

Dated this 15th day of February, 2019.

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