

**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.

ORDER

DISPOSITION: STAFF'S RECOMMENDATION ADOPTED

At its public meeting on November 30, 2021, the Public Utility Commission of Oregon adopted Staff's recommendation in this matter. The Staff Report with the recommendation is attached as Appendix A.



BY THE COMMISSION:

A handwritten signature in blue ink, appearing to read "Nolan Moser".

Nolan Moser
Chief Administrative Law Judge

A party may request rehearing or reconsideration of this order under ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Circuit Court for Marion County in compliance with ORS 183.484.

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: November 30, 2021**

REGULAR X CONSENT _____ EFFECTIVE DATE _____ N/A _____

DATE: November 19, 2021

TO: Public Utility Commission

FROM: Caroline Moore

THROUGH: Bryan Conway **SIGNED**

SUBJECT: OREGON PUBLIC UTILITY COMMISSION STAFF:
(Docket No. DR 57)

In the matter of the petition for declaratory ruling regarding a utility's obligations towards a small generation interconnection customer that wishes to pursue, or has pursued, an independent system impact study.

STAFF RECOMMENDATION:

Staff recommends that the Public Utility Commission of Oregon (Commission or OPUC) decline to substantively consider this petition for Declaratory Ruling (Petition).

DISCUSSION:

Issue

Whether the Commission should substantively consider a petition filed by associations of generation developers (Petitioners) for a declaratory ruling regarding the obligations of public utilities with respect to independent system impact studies provided by interconnection applicants to the public utilities and the right of a developer to provide an independent system impact study.

Applicable Law

Oregon Revised Statute (ORS) 756.450 provides that:

on petition of any interested person, the Public Utility Commission may issue a declaratory ruling with respect to the applicability to any person, property, or state of any facts of any or rule or statute enforceable by the

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commission. A declaratory ruling is binding between the commissioner and the petitioner on the state of facts alleged, unless it is modified, remanded or set aside by a court.

A petition for declaratory ruling must meet the filing requirements provided in Oregon Administrative Rule (OAR) 860-001-0430(1), which specifies that a petition contain the following six elements:

- (a) The rule or statute that may apply to the person, property or facts;
- (b) A detailed statement of the relevant or assumed facts, including sufficient facts to show the petitioner's interest;
- (c) All propositions of law or argument asserted by petitioner;
- (d) The questions presented;
- (e) The specific relief requested; and
- (f) The name and contact information, including telephone number, physical address, and electronic mail address of petitioner and of any other person known by petitioner to have legal rights, duties, or privileges that will be affected by the request.

The Commission must determine whether it will substantively consider the petition within 60 days after the petition is properly filed. The Commission makes this determination at a public meeting, providing opportunity for public comment.¹ The OPUC has complete discretion to give or refuse to give a declaratory ruling.²

The petitioners filed the Petition on October 5, 2021. The 60-day period in which the Commission must decide whether to substantively consider the Petition ends on December 6, 2021.³

Analysis

Background

The Petition concerns a particular component of the system impact study (SIS) process within the small generator interconnection application process set forth under OAR chapter 860, division 089. When it is called for under these rules relating to interconnection, the public utility must conduct an SIS to identify and detail the impacts

¹ OAR 860-001-0430(2).

² See e.g., *In re Oregon Energy Co., LLC*; Order No. 96-137 (Docket No. DR 14).

³ The 60th day following the date Petitioners filed the Petition is December 4, 2021. Because December 4, 2021, falls on a Saturday, the sixty-day period ends on the next business day following December 4, 2021, which is December 6, 2021. See OAR 860-001-0150(1).

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on the public utility's transmission or distribution system or on an affected system that would result from the interconnection of an interconnection applicant's facility if no modifications to the small generator facility or system upgrades were made.⁴ The public utility must provide the interconnection applicant a SIS Report within five days of completing the study.⁵

If a public utility determines in an SIS that interconnection facilities or system upgrades are necessary to safely interconnect a small generator facility, then the public utility must perform a facilities study.⁶ The facilities study must identify the interconnection facilities and system upgrades required to safely interconnect the small generator facility and determine the costs for the facilities and upgrades, including equipment, engineering, procurement, and construction costs.⁷ Design for any required interconnection facilities or system upgrades must be performed under the facilities study agreement.⁸ The public utility must also identify the electrical switching configuration of the equipment, including transformer, switchgear, meters, and other station equipment.⁹

The rule at issue in the Petition is OAR 860-082-0060(7)(h), which specifies that "if an [interconnection] 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." The Petition seeks the OPUC's resolution of "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)."¹⁰

Specifically, Petitioners seek a ruling that:

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 provided such that the Interconnection Customer may exercise its unilateral right to conduct an iSIS under OAR 860-082-0060(7)(h).

⁴ OAR 860-082-0060(7)(e).

⁵ OAR 860-082-0060(7)(g).

⁶ OAR 860-082-0060(7)(i).

⁷ OAR 860-082-0060(8)(e).

⁸ Id.

⁹ Id.

¹⁰ Petition for Declaratory Ruling of Renewable Energy Coalition, Community Renewable Energy Association, and Oregon Solar + Storage Industries Association ("Petition"), p. 1.

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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 asking 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 used 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 dealing.¹¹

Petitioners seek a ruling that would apply generally to all three public utilities with respect to every interconnection application request for which an SIS is required, including those that are already filed.

Joint Utility Comments

PacifiCorp dba Pacific Power, Portland General Electric Company, and Idaho Power Company (together, the Joint Utilities) filed Comments on the Petition for Declaratory Ruling on November 19, 2022. The Joint Utilities recommend the Commission deny the Petition, arguing that (1) Petitioners seek to improperly use the declaratory ruling process to circumvent pending complaint dockets and the Commission's generic interconnection investigation, Docket No. UM 2111; (2) the presence of factual disputes underlying the issues presented in the Petition are likely to render a declaratory ruling meaningless; (3) the declaratory ruling process should not be used to impose new obligations on non-petitioning parties or adopt a new process for implementing OAR 860-082-0060(7)(h), which is what the Petition seeks to do; 4) the declaratory ruling statute specifies that only petitioning parties are bound by a declaratory ruling and therefore Petitioners' request for a ruling that binds public utilities is improper; and 5) addressing the Petition would be overly burdensome, particularly given the substantive deficiencies in the Petition and the fact that the Commission already has many pending dockets to implement the Public Utility Regulatory Policies Act of 1978 (PURPA). The Joint Utilities disagree that the declaratory ruling process will be more efficient than the existing complaints and future UM 2111 investigation processes.

¹¹ Petition, pp. 3-4.

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Staff Conclusions

Staff recommends that the Commission deny the Petition for several reasons. First, a declaratory ruling would have no real effect. A declaratory ruling is binding between the petitioner and the Commission with respect to the facts alleged in the petition. The Petitioners in this matter are associations of energy facility developers. The associations will not be interconnection customers. Accordingly, any declaratory ruling will have no binding effect because the associations will never seek to interconnect a generation facility and never have occasion to provide a public utility an iSIS.

Second, even if it is assumed for the sake of argument that the associations can represent their members for the purpose of obtaining a ruling that binds the association members and the Commission it is not what Petitioners seek to do. With the exception of the requested ruling relating to the interconnection applicant's right to produce an iSIS, the declaratory rulings asked for by the Petitioners do not address the rights or obligations of the associations' members. Instead, the Petition seeks a Commission order that clarifies or imposes obligations of public utilities, i.e., obligations to provide information, access to the utilities' systems and to review the iSIS subject to a particular standard of review. The declaratory ruling statute does not authorize the Commission to issue a declaratory ruling that binds a non-petitioning entity.

Third, a declaratory ruling is not appropriate because it would not in fact provide clarity. A declaratory ruling is intended to remove uncertainty surrounding legal issues.¹² The first finding requested by Petitioners, that "Interconnection Customers have a unilateral right to conduct an iSIS under OAR 860-082-0060(7)(h)," does not provide clarity because the rule already makes clear an interconnection applicant can provide the public utility with an iSIS. Merely restating the rule in a declaratory ruling is not necessary to remove uncertainty surrounding legal issues.

The second, third, and fourth requested findings would serve only to change the nature of any uncertainty regarding the utilities' obligations with respect to an iSIS rather than eliminate it. With the second and third requested rulings, petitioner seek to establish that the utilities must provide "sufficient information" and "sufficient" access to the public utility's system to allow an interconnection customer to prepare an iSIS. Such a ruling would only beg the question, and invite litigation, as to what is sufficient information and sufficient access. Similarly, Petitioner's fourth requested ruling, that a public utility must evaluate an iSIS "reasonably," would only invite litigation over what is "reasonable."

Fourth, Staff disagrees with Petitioners' suggestion that the declaratory ruling process should be used to circumvent pending litigation. Petitioners state this Petition for

¹² See *In the Matter of Portland General Electric Company*, Order No. 93-1117, p. 6 (DR 10/UM 545).

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Declaratory Ruling seeks clarity regarding the existing process and that “[a]bsent clarification, the *Commission will be required to address these issues in complaints before it now* or in other future interconnection litigation.”¹³ Staff disagrees that it is appropriate for Petitioners to use the declaratory ruling to avoid the need for litigation already in progress.

Fifth, to the extent the Commission believes further clarity regarding the utility’s obligations is warranted, Staff believes the Commission’s resources would be better used to determine, on a going-forward basis, what a public utility’s obligations are with respect to an iSIS. Staff believes it would be a difficult endeavor to attempt to parse the language of OAR 860-082-0060(7)(h) and other rules to determine whether OAR 860-082-0060(7)(h) implicitly creates obligations on public utilities, and if so, what those obligations are.

There is no other administrative rule related to the independent SIS (iSIS) requirement in division 089. For example, there is no rule that specifies when an interconnection customer may submit an iSIS (i.e., by the time the utility completes its own SIS, or within a certain number of days of the SIS Report); whether the utility must provide the interconnection customer information or access to the utility’s system to aid in the preparation of the iSIS, and if so, what information and what access; or whether the utility is subject to any particular standard of review with respect to the iSIS.

As noted above, if there is in fact an implicit obligation to provide information and access in OAR 860-082-0060(7)(h), issuing a Declaratory Ruling that public utilities must provide “sufficient” information and access would not provide clarity. While a declaratory ruling specifying what information the utility must provide, etc., would be helpful, Staff questions whether the Commission should use the declaratory ruling to create such requirements when none are included in the rule. Perhaps more importantly, Staff believes no one is well served if the determination of appropriate informational requirements, etc., for the iSIS is limited to arguments about what the Commission intended when it adopted OAR 860-082-0060(7)(h).

Review of FERC’s rules related to interconnection show that determining informational and other requirements related to iSIS is not necessarily a simple exercise. The Federal Energy Regulatory Commission (FERC)’s Small Generator Interconnection Procedures do not include an express requirement that Transmission Providers provide Base Case information to the interconnection application. In addition, FERC’s SGIP do not include the unilateral right for interconnection applicants to provide an independent SIS.

¹³ Petition, p. 17.

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FERC's Large Generator Interconnection Procedures (LGIP) are very specific as to what information Transmission Providers must make available relating to interconnection applications for large generators.¹⁴ In 2003, when FERC first adopted its pro forma Large Generator Interconnection Procedures (LGIP), FERC included the following informational requirement:

Transmission Provider shall provide base power flow, short circuit and stability databases, including all underlying assumptions, and contingency list upon request subject to confidentiality provisions. Such databases and lists, hereinafter referred to as Base Cases, shall include all (1) generation projects and (ii) transmission projects, including merchant transmission projects that are proposed for the Transmission System for which a transmission expansion plan has been submitted and approved by the applicable authority.

FERC also clarified that a Transmission Provider must include with the information required under Section 2.3, underlying assumptions, data files and documents used to create the Base Case.¹⁵

FERC modified informational requirement in 2018 to address stakeholders' concerns with the transparency of data relied on by Transmission Providers to conduct their interconnection studies. The information requirement adopted in 2018 is as follows:

Base Case Data. Transmission Provider shall maintain base power flow, short circuit and stability databases, including all underlying assumptions, and contingency list on either its OASIS site or a password-protected website, subject to confidentiality provisions in LGIP Section 13.1. In addition, Transmission Provider shall maintain network models and underlying assumptions on either its OASIS site or a password-protected website. Such network models and underlying assumptions should reasonably represent those used during the most recent interconnection study and be representative of current system conditions. If Transmission Provider posts this information on a password-protected website, a link to the information must be provided on Transmission Provider's OASIS site. Transmission Provider is permitted to require that Interconnection Customers, OASIS site users and password-protected website users sign a confidentiality agreement before the release of commercially sensitive information or Critical Energy Infrastructure Information in the Base Case data. Such databases and lists, hereinafter referred to as

¹⁴ Section 2.3 LGIP (2003).

¹⁵ *In the Matter of Standardization of Generator Interconnection Agreements and Procedures*, 104 FERC 61103, ¶¶ 77-79 (July 24, 2003) (2003 WL 21725988, p. 14).

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Base Cases, shall include all (1) generation projects and (2) transmission projects, including merchant transmission projects that are proposed for the Transmission System for which a transmission expansion plan has been submitted and approved by the applicable authority.¹⁶

Notably, FERC declined to adopt commenters' requests to require that a Transmission Provider post (1) shift factors used by region, sub-region, and even utility area; (2) generation dispatch assumptions by fuel-type of resource by region and sub-region for off-peak and peak hours; (3) load power factors; (4) power flows; (5) whether violations of NERC Category A (TPL-001), Category B (TPL-002), and Category C (TPL-003) require network upgrades and contingent facilities in all or some instances; (6) treatment of currently overloaded facilities; (7) the extent to which Network Resource Interconnection Service (NRIS) is hard-coded in the base model; and (8) contingency files; (9) information about other interconnection requests "in the same location by point on the transmission grid," instead of county-level data; and (10) information about lower voltage facilities (e.g., those below 100 kV) and higher voltage facilities.¹⁷

FERC's pro forma SGIP, LGIP, and its 2018 order adopting modifications to the informational requirement in the LGIP are significant for a few reasons. First, the SGIP reflects that FERC does not necessarily believe the iSIS is required for small generator interconnections. FERC's LGIP reflect that determining what information should be required is not necessarily an easy one and that requiring the public utilities to provide "sufficient information" is not a satisfactory standard. Finally, FERC's LGIP do not include a requirement that the Transmission Provider give an interconnection customer physical access to the Transmission Provider's System. This omission calls into question any argument the Commission intended to provide such access for small generator interconnections.

Procedural Alternatives

As noted in the Petition, the Commission has already initiated a general investigation into interconnection issues. The issues raised in this Petition are squarely within the scope of that investigation. Staff believes that there may be higher impact interconnection issues presented in the general interconnection investigation, such as modernizing the utilities' SIS study practices as they relate to all generator types regardless of their ability to produce an iSIS (e.g., screening practices and thresholds for generation to unsafely exceed minimum daytime load). However, if the Commission believes it is appropriate to examine all or a subset of the issues presented by the Petition on a more expedited manner, the Commission could open a rulemaking or

¹⁶ FERC Pro Forma LGIP section 2.3.

¹⁷ Id. 2018 WL 1896449, PP. 58-59.

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direct Staff to engage in a collaborative working group process like that used in Docket No. UM 2001 reach agreement on a narrow scope of interconnection data issues.

Conclusion

The Commission should not substantively consider a declaratory ruling in this case.

PROPOSED COMMISSION MOTION:

Staff recommends that the Commission decline to substantively consider the Petition for Declaratory Ruling.

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