

February 27, 2019

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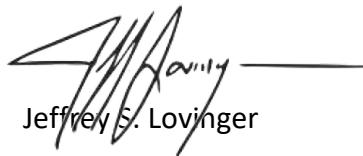
**Re: UM 1967 - Sandy River Solar, LLC v. Portland General Electric
Company**

Attention Filing Center:

Enclosed for filing today in the above-named docket is Portland General Electric Company's Motion to Stay Discovery and Procedural Schedule. **Please note that expedited consideration has been requested.**

Thank you for your assistance.

Very truly yours,


Jeffrey S. Lovinger

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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
UM 1967**

SANDY RIVER SOLAR, LLC,

Complainant,

vs.

PORTLAND GENERAL ELECTRIC
COMPANY,

Defendant.

**PORTLAND GENERAL
ELECTRIC COMPANY'S
MOTION TO STAY
DISCOVERY AND
PROCEDURAL SCHEDULE**

Expedited Consideration Requested

I. MOTION

Pursuant to OAR 860-001-0420, Portland General Electric Company (“PGE”) moves to stay discovery and the existing procedural schedule in this proceeding pending resolution of PGE’s motion for partial summary judgment filed February 27, 2019.

II. INTRODUCTION

As Administrative Law Judge (“ALJ”) Kirkpatrick has previously recognized, this proceeding involves a complaint by Sandy River Solar, LLC (“Sandy River”) “that seeks a Commission order directing [PGE] to allow Sandy River Solar to hire a third-party consultant to construct the interconnection facilities and system upgrades that are required on PGE’s system, and that PGE will own and operate.”¹ Sandy River asserts this right under the second claim for relief in its First Amended Complaint.² The complaint seeks additional relief, but this second claim for relief is the core issue in the case. And the question of whether an interconnection customer has a right to hire a third-party consultant to construct the needed facilities and upgrades, even over the utility’s objection that it will construct the facilities or upgrades itself, is a threshold

¹ Docket No. 1967, ALJ Ruling at 1 (Feb. 20, 2019) (granting Renewable Energy Coalition’s petition to intervene).

² Docket No. 1967, First Am. Compl. ¶¶ 117-32 (Oct. 8, 2018).

question underlying the parties' ongoing dispute regarding the relevance and reasonableness of many of Sandy River's 80 data requests. Since the initial pre-hearing conference in this matter, PGE has informed Sandy River and ALJ Kirkpatrick that PGE was reserving its right to file a motion for summary judgment. PGE has now done so. That motion has the potential to resolve the core legal issue in this case and to greatly simplify the resolution of any remaining claims and any remaining discovery disputes. PGE respectfully requests that ALJ Kirkpatrick exercise her discretion and stay further discovery and the current procedural schedule regarding the filing of testimony and pre-hearing briefs until PGE's motion for partial summary judgment is resolved.

III. REQUEST FOR EXPEDITED CONSIDERATION

PGE requests expedited consideration of this motion for stay. Counsel for PGE and counsel for Sandy River have consulted regarding PGE's objections to Sandy River's fifth set of data requests and it is clear the parties continue to have a dispute regarding the relevance and appropriateness of Sandy River's data requests. PGE believes that resolution of PGE's motion for partial summary judgment has the potential to resolve the parties' discovery disputes. PGE also believes that resolution of the pending motion for partial summary judgment and dismissal of Sandy River's second claim for relief will greatly simplify, and perhaps completely resolve, this case. Finally, if PGE's motion for partial summary judgment is granted, it may not be necessary to proceed with further testimony or a hearing.

PGE believes this motion for stay is a procedural motion subject to a seven-day response period and that no reply is allowed unless permitted by the ALJ.³ Rapid resolution of the motion for stay is important because of upcoming deadlines that will apply in the absence of a stay. Specifically, PGE's response testimony is currently due on March 21, 2019. In addition, PGE

³ OAR 860-001-0420(4) and (5).

anticipates that Sandy River may file a motion to compel regarding PGE's response to Sandy River's fifth set of data requests. PGE seeks expedited resolution of this motion for stay so that there is certainty regarding the procedural schedule in this matter and so that the parties can focus on briefing and resolving PGE's motion for partial summary judgment.

As required by OAR 860-001-0420(6), PGE certifies it has contacted the other parties to this proceeding and that both complainant and intervenor Renewable Energy Coalition ("REC") oppose this motion for stay. PGE requests the following briefing schedule and deadlines for the expedited resolution of this motion for stay: (1) that responses to the motion for stay be due March 6, 2019 (the regular seven day deadline for a response to a procedural motion); (2) that PGE be allowed to file a reply by March 8, 2019; and (3) that the ALJ issue a ruling on this motion for stay by March 13, 2019 (or alternatively, that the ALJ hold a pre-hearing conference on or before March 13, 2019, to resolve the question of the procedural schedule pending resolution of PGE's motion for partial summary judgment). Granting leave to file a reply is warranted in this instance so that the ALJ will have the benefit of PGE's position on any arguments that complainant Sandy River or intervenor REC may raise in response to PGE's motion for stay. This is particularly true where one of the parties—intervenor REC—is new and it is not clear what positions the intervenor plans to take regarding the procedural schedule.

IV. DISCUSSION

The ALJ should exercise her discretion to stay discovery and the rest of the procedural schedule pending resolution of PGE's motion for partial summary judgment of Sandy River's second claim for relief.⁴ Sandy River's second claim is the core issue in this case and has driven nearly all of the data requests giving rise to objections by PGE. If the Commission grants PGE's

⁴ See e.g., *Bottlenose Solar LLC v. Portland General Electric Co.*, Docket No. UM 1877, Prehearing Conference Report (Feb. 13, 2018) (staying discovery pending resolution of summary judgment motion) (ALJ Allan J. Arlow).

motion for partial summary judgment, the issues in this case will narrow significantly, the threshold question underlying the relevance of the disputed data requests may be resolved, and the parties may be able to resolve any remaining areas of disagreement without the need for a hearing. A stay therefore promotes judicial economy, administrative efficiency, and minimizes cost to the parties.

Sandy River's second claim for relief in this case turns on an issue of statutory interpretation: whether OAR 860-082-0060 allows a small generator qualifying facility ("QF") to demand that the utility agree to allow the QF to use a third-party contractor to construct interconnection facilities and system upgrades on the utility's distribution system. Sandy River asked PGE to let Sandy River use a third-party contractor to construct the facilities and upgrades for Sandy River's interconnection. PGE refused, pursuant to its clear discretion and authority under OAR 860-082-0060. Sandy River then filed this complaint.

Sandy River has served 80 data requests on PGE so far (many of these requests involve multiple subparts). PGE has objected to a number of the data requests; most of the objectionable requests arise out of Sandy River's second claim for relief. The parties have already gone through one round of discovery motions, and PGE anticipates further discovery disputes. Sandy River's opening testimony also demonstrates that its case rests on its second claim for relief:

Sandy River's testimony explains why it is reasonable for Sandy River to hire a third-party consultant to complete the interconnection facilities and system upgrades, subject to public utility oversight and approval.⁵

Further, intervenor REC acknowledges that: "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."⁶

⁵ Sandy River/100, Snyder/2:15-17 (Opening Testimony of Sandy River Witness Troy Snyder) (Feb. 7, 2019).

⁶ UM 1967, REC's Reply to PGE's Objection to REC's Pet. to Intervene at 4 (Feb. 15, 2019).

PGE's motion for partial summary judgment will resolve this core issue of the case. In the event the Commission grants PGE's motion, neither party will need to expend resources serving and responding to discovery requests relating to the use of third-party contractors in the interconnection process. It makes sense to stay further discovery and the resolution of any pending discovery disputes until the scope of this dispute is appropriately determined through a decision on PGE's motion for partial summary judgment. In addition, the opening testimony of both Sandy River and REC is focused, almost exclusively, on the question of whether, under the Commission's regulations, an interconnection customer can require a utility to allow it to hire a third-party consultant to construct the required interconnection facilities and system upgrades. It is PGE's position that this issue can and should be resolved as a matter of law through resolution of PGE's pending motion for partial summary judgment. Once PGE's motion for partial summary judgment is resolved, it may not be necessary to file any further testimony or to have a hearing, and if it is necessary to continue this proceeding to resolve any remaining issues, the scope of the proceeding would be significantly narrowed.

V. CONCLUSION

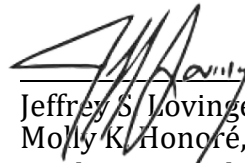
For the reasons discussed above, PGE respectfully requests that ALJ Kirkpatrick issue a stay of discovery and the existing procedural schedule pending resolution of PGE's motion for partial summary judgment.

DATED this 27th day of February, 2019.

Respectfully submitted,

/s/ Donald Light

Donald Light, OSB #025415
Assistant General Counsel
Portland General Electric Company
121 SW Salmon Street, 1WTC1301
Portland, Oregon 97204
Tel: (503) 464-8315
Fax: (503) 464-2200
donald.light@pgn.com



Jeffrey S. Lovinger, OSB #960147
Molly K. Honore, OSB #125250
Markowitz Herbold PC
1211 SW Fifth Avenue, Suite 3000
Portland, OR 97204-3730
Tel: (503) 295-3085
Fax: (503) 323-9105
JeffreyLovinger@MarkowitzHerbold.com
MollyHonore@MarkowitzHerbold.com

SANDPO\840521