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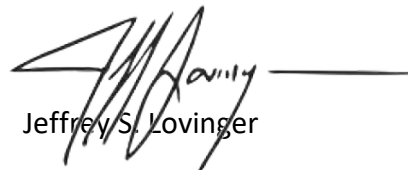
**Re: UM 1967 - Sandy River Solar, LLC v. Portland General Electric
Company**

Attention Filing Center:

Attached for filing today in the above-named docket is Portland General Electric Company's Response to Complainant's Second Motion to Compel.

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
RESPONSE TO
COMPLAINANT'S SECOND
MOTION TO COMPEL**

Pursuant to OAR 860-001-0420(4), Portland General Electric Company ("PGE") respectfully submits this response opposing complainant Sandy River Solar, LLC's ("Sandy River") February 28, 2019 motion to compel.

I. INTRODUCTION

The Administrative Law Judge ("ALJ") should deny Sandy River's motion to compel because Sandy River's Data Request No. 80 seeks information that is irrelevant to the legal issues in this case, and the Commission's decision on PGE's motion for summary judgment will obviate the need for any of the requested information. Producing the requested information would also be unreasonably burdensome to PGE. And even if PGE produced the requested documents, they would make little sense without also providing considerable additional context to explain variations between the requested studies. Neither the Commission, the ALJ, nor Sandy River need the requested information to resolve this case.

II. BACKGROUND

This is Sandy River's second motion to compel and it overlaps considerably with Sandy River's first motion to compel. Sandy River's first motion sought, among other things, an order compelling the production of detailed information regarding each interconnection application PGE

received from solar generator facilities three megawatts or smaller since January 2015.¹ The first motion to compel also sought copies of original and revised interconnection studies (including feasibility, system impact, and facilities studies) for the same time period, along with explanations as to why any of those studies had been revised.² And it sought copies of interconnection agreements for the same time period, along with explanations as to why the construction schedules in any of those agreements were modified.³

The ALJ denied Sandy River's motion to compel those documents.⁴ The ALJ correctly found that it was "too burdensome" for PGE to "review, address, and prepare documentation for the 183 projects" at issue, "particularly when the facts...that Sandy River seeks to prove [were] unclear," and when it was "difficult to evaluate the relevancy of the information."⁵ After denying Sandy River's motion to compel, the ALJ noted that Sandy River may request the underlying interconnection studies and agreements in a new data request.⁶

Now, in its fifth set of data requests, Sandy River has done so. It asks for the original and revised Interconnection Agreements, feasibility studies, system impact studies, and facilities studies, for each solar interconnection application PGE received since January 2015, regardless of

¹ Complainant's First Mot. to Compel, Attachment A at Data Request No. 15 (Dec. 31, 2018) ("For each interconnection application for solar facilities that are less than 3 MW submitted since January 2015, please provide: a. The nameplate capacity of the solar facility; b. The requirements for that interconnection; c. The length of time PGE required to complete each study; d. The cost estimates in each study; e. The timeline estimates to design, procure, and construct detailed in each study including all milestones; f. The actual cost and time to design, procure, and construct each project (if complete) including all milestones.").

² *Id.* at Data Request No. 32 ("For all interconnection applications submitted since January 2015, please indicate whether PGE issued any revised interconnection studies and the reason for the revisions, and provide copies of the original and revised interconnection studies.").

³ *Id.* at Data Request No. 33 ("For all interconnection agreements executed since January 2015, please indicate whether the schedule in each interconnection agreement has been modified, amended or updated following the execution of the agreement and the reason for the revision, and provide copies of the original and revised interconnection agreements.").

⁴ Docket No. UM 1967, ALJ Ruling at 7 ("I deny Sandy River's motion to compel PGE to provide responses to Data Request Nos. 15, 32, and 33.").

⁵ *Id.*

⁶ *Id.*

size.⁷ This means that Sandy River has increased the scope of its prior data requests and is casting a wider net and seeking more documents than it sought under the first motion to compel. PGE has conducted studies for approximately 226 solar interconnection applications of all sizes since January 2015.⁸ This information continues to be irrelevant to the primary legal issue before the Commission, and it continues to be unnecessarily burdensome for PGE to produce. The ALJ should deny Sandy River's second motion to compel.

III. ARGUMENT

A. STANDARD FOR RESOLVING A MOTION TO COMPEL.

Parties in a proceeding before the Commission must conduct discovery pursuant to the Commission's rules and the Oregon Rules of Civil Procedure, which the Commission follows except where the Commission's rules differ.⁹ When assessing the merits of a motion to compel filed pursuant to OAR 860-001-0500(7), the Commission evaluates, first, whether the data request seeks relevant information. If the information is not relevant, it is not discoverable.¹⁰ Relevant evidence is evidence "tending to make the existence of any fact at issue in the proceedings more or less probable than it would be without the evidence" and "is admissible if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs."¹¹

⁷ Complainant's Second Mot. to Compel, Appendix A at Data Request No. 80 (Feb. 28, 2019).

⁸ *See id.* (PGE's response to Sandy River Data Request No. 80 indicated that since January 2015, PGE has received approximately 218 requests to interconnect solar qualifying facilities of all sizes and approximately eight requests to interconnect solar projects under PGE's Federal Energy Regulatory Commission approved Open Access Transmission Tariff, for a total of 226 applications; PGE also noted that it has received approximately 5,516 requests to interconnect solar net metering facilities, but Sandy River has clarified it does not seek information regarding net metering interconnections).

⁹ *In the Matter of the Application of PGE for Approval of the Customer Choice Plan*, Docket No. UE 102, Order No. 98-294 at 3 (July 16, 1998); OAR 860-001-0000(1).

¹⁰ ORCP 36 B(1); *see also In re Pacific Power & Light, dba PacifiCorp, Filing of Tariffs Establishing Automatic Adjustment Clauses Under the Terms of SB 408*, Docket No. UE 177, Order No. 08-003 at 2-3 (Jan. 4, 2008).

¹¹ OAR 860-001-0450(1).

Even if the information requested is arguably relevant, the ALJ must next assess whether the data request is unreasonably cumulative, duplicative, burdensome, or overly broad.¹² Reasonableness is determined by the needs of the case, the resources available to the parties, and the importance of the issues to which the discovery relates.¹³ Finally, relevant evidence “may be excluded if the probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or undue delay.”¹⁴

The ALJ should therefore deny the motion to compel if the information requested is not relevant to the claims or defenses at issue, if the data request is unreasonable, as determined by the considerations in OAR 0860-001-0500(1), or if the probative value of the information requested is outweighed by the risk of prejudice or confusion.

B. THE DOCUMENTS SANDY RIVER SEEKS ARE NOT RELEVANT TO THE LEGAL DISPUTE BEFORE THE COMMISSION.

As explained in PGE’s motion to stay, if the Commission grants PGE’s motion for summary judgment, that will effectively dispose of all the prayers in Sandy River’s complaint.¹⁵ PGE incorporates by reference its arguments on this topic from its motion to stay discovery and its reply in support of the motion to stay.¹⁶

To reiterate briefly, one group of prayers ask the Commission to find that PGE did not provide Sandy River with adequate system impact or facilities studies and ask the Commission to order PGE to re-issue those studies in more complete form (Prayers 1, 2, 5 and 6).¹⁷ The documents Sandy River seeks under Data Request 80 are irrelevant to these prayers.

¹² OAR 860-001-0500(2); *see also* ORCP 36 C.

¹³ OAR 860-001-0500(1).

¹⁴ OAR 860-001-0450(1)(c).

¹⁵ PGE’s Mot. to Stay Discovery and Procedural Schedule at 2-5 (Feb. 27, 2019).

¹⁶ *Id.*; PGE’s Reply in Support of Mot. to Stay Discovery and Procedural Schedule at 2-12 (Mar. 8, 2019).

¹⁷ *Id.* at 3-4; *see* Am. Compl. at 25-26 (Sept. 27, 2018).

Interconnection studies and interconnection agreements for 226 prior, unrelated interconnection projects have no bearing on the completeness of the system impact and facilities studies PGE issued for the Sandy River project.

The second group of prayers (Prayers 3 and 7) ask the Commission to decide that Sandy River may show whether it is reasonable for Sandy River to hire a consultant to construct the required upgrades.¹⁸ This is the question to be decided under PGE's motion for summary judgment. These prayers will be obviated if the Commission grants PGE's motion for summary judgment and decides that PGE has the authority under OAR 860-082-0035(2), OAR 860-082-0035(4), and OAR 860-082-0060(8)(f) to determine whether it will agree to allow an applicant to hire a third-party to perform the construction.

The third group of prayers ask the Commission to find that PGE discriminated against Sandy River (Prayers 4 and 8).¹⁹ It appears this is primarily an assertion that PGE discriminated against Sandy River by refusing to allow Sandy River to hire a third-party consultant to construct the required interconnection facilities and system upgrades.²⁰ This issue will be resolved by PGE's summary judgement motion because there can be no discrimination if Sandy River has no right to insist on hiring a consultant (*i.e.*, if the Commission agrees with PGE's interpretation of OAR 860-082-0060(8)(f)).²¹

¹⁸ Am. Compl. at 25-26; *see* Complainant's Reply in Support of Mot. to Compel at 3 (Jan. 14, 2019).

¹⁹ Am. Compl. at 26.

²⁰ *See* Complainant's Resp. to PGE's Mot. to Stay at 22 (Mar. 6, 2019) (arguing that one of the legal issues in the case is whether a utility unlawfully discriminates against an interconnection applicant if it refuses to agree to allow the applicant to hire a third-party consultant to construct interconnection facilities and system upgrades.); Complainant's Second Mot. to Compel at 9 (Feb. 28, 2019).

²¹ PGE's Reply in Support of Mot. to Stay at 4-5. Sandy River has also suggested that PGE discriminated against it by estimating a longer construction schedule for this project than for other projects. Complainant's Second Mot. to Compel at 9 (Feb. 28, 2019). But the documents Sandy River seeks under Data Request No. 80 are irrelevant to this allegation. PGE has informed Sandy River that the construction of the required interconnection facilities and system upgrades will require approximately three weeks and that an approximately 18-month construction schedule is needed to provide time for the completion of higher-queued work on the feeder and at the substation. *See* Compl., Attachment C at 6 (Revised Facilities Study at 6) (Aug. 24, 2018); *see also* Declaration of Jeff Lovinger in Support of PGE's

The final group of prayers (Prayers 9, 10, and 11)²² consists of generic remedies that the Commission will necessarily deny if the Commission agrees with PGE's interpretation of OAR 860-082-0060(8)(f), and Sandy River has no right to insist on hiring a consultant to construct PGE's facilities and upgrades.²³ For these reasons, and as further discussed below, Data Request No. 80 seeks no information that would be relevant to any of Sandy River's prayers for relief.

Sandy River's request for information regarding past studies ignores the proper construction of the governing regulations, and is irrelevant to Sandy River's request that it be permitted to hire a third-party to *construct* the system upgrades.

The Commission's small generator interconnection rules provide that the public utility will conduct the interconnection studies²⁴ and will construct the interconnection facilities or system upgrades required as a result of the interconnection studies.²⁵ However, under OAR 860-082-0060(9), a utility may hire its own consultant to conduct the study process.²⁶ And under OAR 860-082-0060(8)(f), a utility may hire its own consultant to construct the interconnection facilities and system upgrades required by the study results.²⁷ The rules do not require that the utility obtain the applicant's agreement before the utility may use a third-party consultant to perform studies or

Reply in Support of Mot. to Stay, Ex. 1 at 2 (February 28, 2019 Letter to Irion Sanger from Jeff Lovinger at 2) (Mar. 8, 2019). The 226 sets of interconnection studies sought in Data Request No. 80 are for distant, electrically unrelated interconnection requests and are irrelevant to the question of whether the Sandy River interconnection needs to wait for completion of higher-queued work on the Dunns Corner-13 feeder. PGE has provided Sandy River with all relevant study results and interconnection agreements for all higher-queued projects associated with the Dunns Corner feeder and the Dunns Corner substation.

²² Am. Compl. at 26-27.

²³ PGE's Reply in Support of Mot. to Stay at 5.

²⁴ See OAR 860-082-0060(6), (7), and (8) providing for the utility to conduct each of the three stages of interconnection study.

²⁵ OAR 860-082-0035(2) ("The public utility constructs, owns, operates, and maintains the interconnection facilities."); OAR 860-082-0035(4) ("A public utility must design, procure, construct, install, and own any system upgrades to the public utility's transmission or distribution system necessitated by the interconnection of the small generator facility.").

²⁶ OAR 860-082-0060(9) ("The public utility may contract with a third-party consultant to complete a feasibility study, system impact study, or facilities study.").

²⁷ OAR 860-082-0060(8)(f) ("The public utility may contract with a third-party consultant to complete the interconnection facilities and system upgrades identified in the facilities study.").

to construct facilities or upgrades. In other words, the applicant does not have the right to “veto” the utility’s decision to use its own consultants to conduct interconnection studies or construct interconnection facilities and system upgrades.

In addition to the utility’s right to conduct the interconnection studies itself or to hire its own consultant to conduct the studies, OAR 860-082-0060(9) provides that the utility and the applicant *may* agree that the applicant will hire a consultant to complete the interconnection studies.²⁸ Neither the utility nor the applicant is required to agree that the applicant will hire a consultant to conduct the interconnection studies. Likewise, in addition to the utility’s right to construct any required interconnection facilities or system upgrades on its own system (or to hire its own consultant to do so), OAR 860-082-0060(8)(f) provides that a utility and an applicant *may* agree that the applicant will hire a third-party contractor to construct the required interconnection facilities or system upgrades on the utility’s system. Again, neither the utility nor the applicant is required to agree to this approach.

Sandy River’s theory of the case appears to be that if an interconnection applicant can make a showing that it would be “more reasonable” for the applicant to construct the required interconnection facilities or system upgrades, the utility must agree to allow the applicant to do so and the utility must forego its rights under the small generator interconnection rules to construct the required facilities or upgrades on its own system. PGE’s argument is that the applicant has no such “right to build” under the Commission’s small generator interconnection rules. However, even if Sandy River were correct and the applicant had a “right to build” (it does not), Sandy River Data Request No. 80 would still be irrelevant because it seeks information regarding PGE’s

²⁸ OAR 860-082-0060(9) (“A public utility and an applicant may agree in writing to allow the applicant to hire a third-party consultant to complete a feasibility study, system impact study, or facilities study, subject to public utility oversight and approval.”).

implementation of the interconnection study process rather than evidence regarding PGE's construction of interconnection facilities and system upgrades.

If Sandy River's erroneous construction of the small generator interconnection rules was correct, and if Sandy River had asked PGE for permission to hire a third-party consultant to conduct a study under OAR 860-082-0060(9) (it has not), then, arguably, errors or omissions in past studies of some other interconnect projects *might* be relevant in determining whether it is reasonable to hire a third-party consultant to conduct a study in this case. That is the only way production of all the past studies Sandy River requests could be relevant. But that is not how these regulations work and Sandy River has made no request to hire its own consultant to conduct studies. If the Commission grants PGE's motion for summary judgment and concludes OAR 860-082-0060(8)(f) gives PGE the authority to decide whether or not it will agree to allow an applicant to hire a third-party to **construct** the required improvements to the utility's system, then all of Sandy River's requests for past studies in Data Request No. 80 are irrelevant.²⁹

Moreover, as a practical matter, the information Sandy River requests under Data Request No. 80 is irrelevant because it focuses on interconnection studies for hundreds of interconnections that are remote from, and electrically unrelated to, the Sandy River interconnection. PGE has agreed to provide, and has provided, all study results and interconnection agreements for all small generator interconnection requests on the same feeder as the Sandy River interconnection or on any other feeder directly interconnected to the Dunns Corner substation (the substation that serves the feeder with which Sandy River will interconnect). Thus, PGE has agreed to provide all studies and agreements for interconnections that are electrically relevant to the Sandy River

²⁹ See PGE's Mot. for Partial Summ. J. at 10-18; PGE's Reply in Support of Mot. to Stay at 4.

interconnection. The remaining hundreds of interconnection requests in Data Request No. 80 are factually irrelevant because they do not directly impact the Sandy River interconnection.

The ALJ should thus deny Sandy River's motion to compel Data Request No. 80 because the information sought is irrelevant.³⁰

C. COMPLYING WITH DATA REQUEST NO. 80 WOULD BE UNREASONABLY BURDENSOME AND THE PROBATIVE VALUE OF THE INFORMATION SOUGHT IS OUTWEIGHED BY THE DANGER OF PREJUDICE AND CONFUSION.

Data Request No. 80 seeks studies and interconnection agreements regarding approximately 226 interconnection applications submitted since January 1, 2015.³¹ Each interconnection application typically generates between two and five documents—two to three studies, each of which may or may not have been revised, and for applicants who complete the process, an interconnection agreement. Assuming an average of three documents per interconnection would mean that Sandy River is asking PGE to review and produce about 678 documents. PGE would need to review each document to make sure it is responsive and does not contain privileged information and is not subject to a Non-Disclosure Agreement. Then PGE would need to redact project-identifying information from each document.³² PGE has estimated this effort would take approximately four weeks.³³ The interconnection studies and agreements

³⁰ ORCP 36 B(1); *see also* Docket No. UE 177, Order No. 08-003 at 4.

³¹ *See* n.8 *supra*.

³² Sandy River has questioned the need for PGE to redact project identifying information from study results and interconnection agreements. *See* Complainant's Second Mot. to Compel at 15. However, it is PGE's practice to redact project identifying information and leave only the reference to the project's queue position in order to protect the identity of the applicant – some developers have express concerns to PGE about their information being disclosed and have indicated that they believe being anonymous provides them with a competitive advantage. PGE's understanding is that PacifiCorp and Idaho Power also withhold the identity of applicants from study results. For these reasons, PGE attempts to preserve applicant anonymity to the extent practicable.

³³ Complainant's Second Mot. to Compel, Appendix A at PGE's Response to Data Request No. 80 ("PGE estimates that it would take about four weeks for PGE to review the 218 QF interconnection applications only."). In its response to Data Request No. 15, which involved an estimated 183 applications, PGE estimated it would need at least two months to conduct the required review, which involved answering a series of questions about each of the estimated 183 applications and providing documents regarding those applications. *See* Complainant's First Mot. to Compel.,

for unrelated projects are irrelevant to the issues in this case, and the burden of gathering the requested documents for these hundreds of unrelated projects outweighs any marginal benefit from their disclosure. Complying with Data Request No. 80 would thus be unnecessarily burdensome.³⁴

Even if the requested information had any relevance, its probative value is outweighed by its potential to cause confusion and prejudice. Sandy River says that it seeks information on other interconnection study processes to support its allegations that PGE changes interconnection requirements or cost or schedule estimates from one study to the next.³⁵ It wants this information to show a pattern of alleged delays in completing the interconnection study process.³⁶ Sandy River states that it simply wants to allow “the documents to speak for themselves.”³⁷

But the study process is iterative by design. It is to be expected that study requirements, cost estimates, and schedule estimates will evolve at each step of the study process. And there are many reasons why the parties may end up taking more time than outlined in the rules to complete various stages of the process (e.g., an applicant may ask PGE to consider a different approach to a particular issue or propose altering a detail of the interconnection proposal while a study is being conducted, and this may add additional time to the study process). To provide clarity as to why one set of studies varied from or took longer to complete than another set, PGE would need to also provide the case-specific context of each interconnection application. That context would be necessary before the Commission could determine whether any particular set of study results or

Attachment A at Data Request No. 15. In contrast, Data Request No. 80 seeks information about more applications (approximately 226 applications) but seeks only documents related to those applications and not the answers to a series of questions about each application; as a result, PGE estimated that it would need less time—approximately four weeks—to review and assemble documents responsive to Data Request No. 80.

³⁴ OAR 860-001-0500(2); *see also* ORCP 36 C.

³⁵ Complainant’s Second Mot. to Compel at 8-12.

³⁶ *Id.*

³⁷ *Id.* at 14 (discussing the hundreds of interconnection requests for which it seeks documents, Sandy River states that it “is only asking that the documents be allowed to speak for themselves.”).

interconnection agreements demonstrated mistakes or delays of the type alleged by Sandy River. And that context could simply demonstrate that the applicant or PGE had good reasons for some stages of the study process to take longer than originally scheduled. Producing the study results and interconnection agreements in isolation (i.e., allowing the “documents to speak for themselves”) would not allow the Commission to make that determination and would risk creating confusion and prejudice.

The ALJ should deny Sandy River’s second motion to compel (a) because the details of approximately 226 interconnection studies are irrelevant to Sandy River’s claims, (b) because providing 226 sets of interconnection studies and any related interconnection agreements would be unduly burdensome, and (c) because providing 226 sets of interconnection studies without significant context about each interconnection request and study process would create a substantial danger of unfair prejudice or confusion.

IV. CONCLUSION

For the above reasons, the ALJ should deny Sandy River’s motion to compel the production of documents in response to Data Request No. 80.

DATED this 22nd day of March, 2019.

Respectfully submitted,

s/ Donald Light
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