

**BEFORE THE
PUBLIC UTILITY COMMISSION OF OREGON**

SANDY RIVER SOLAR, LLC)	CASE NO. UM 1967
Complainant,)	
)	
vs.)	RENEWABLE ENERGY
)	COALITION'S RESPONSE
)	TO PGE'S MOTION TO STAY
PORTLAND GENERAL ELECTRIC)	
COMPANY)	
Defendant.)	
_____)	

INTRODUCTION AND BACKGROUND

The Renewable Energy Coalition (“REC” or “Coalition”) files this Response to Portland General Electric Company’s (“PGE’s”) February 27, 2019 Motion to Stay Discovery and the Procedural Schedule in this case. For the reasons described below, REC requests that the ALJ deny PGE’s motion, and allow this case to proceed under the currently established schedule.

In this proceeding, Sandy River Solar LLC (“Sandy River”) is litigating a complaint it filed against PGE in response to difficulties it has faced in the interconnection process associated with its sale of power to PGE as a qualifying facility. Sandy River alleges that PGE has acted unreasonably in missing deadlines, providing inaccurate and untimely information, and that Sandy River is unable to rely on the information provided by PGE. Sandy River seeks relief from the Commission, including an order allowing it to hire a third-party to assist it with its design and construction of the interconnection facilities. This opportunity for a third-party’s assistance is presented in the Commission’s administrative rules at OAR 860-082-0060(8)(f), which states that “[a]

public utility and an applicant [for interconnection] may agree in writing to allow the applicant to hire a third-party consultant to complete the interconnection facilities and system upgrades, subject to public utility oversight and approval.” Sandy River seeks to obtain such an outcome as a potential solution to some of the difficulties it has faced and continues to face with PGE. Sandy River also alleges that PGE has unlawfully discriminated against it by its actions, and seeks an order addressing PGE’s failures to administer a workable interconnection process for its project.

REC intervened in this proceeding because of its strong interest in utilities’ actions regarding the interconnection of qualifying facilities. REC is committed to ensuring that utilities provide a fair and functional process for qualifying facilities to interconnect to their systems. REC has provided evidence in this proceeding on various topics, including the background and intent of the Commission’s rules on third-party assistance with interconnections in the form of testimony from John Lowe, who was closely and personally involved in the rulemaking proceedings.

On February 27, 2019, PGE filed a Motion for Partial Summary Judgment, and a Motion to Stay Discovery and Procedural Schedule. Through its motion for partial summary judgment, PGE seeks a Commission order resolving a portion of Sandy River’s complaint as a legal matter. PGE asserts that there are no material facts at issue with respect to that portion of Sandy River’s complaint, and that summary judgment is therefore appropriate. In its Motion for Stay, PGE asks the Commission to stay discovery and the current procedural schedule in this case pending resolution of its motion for partial summary judgment because PGE asserts that the resolution of the motion for

partial summary judgment will streamline the case. PGE Motion to Stay Discovery at 2 (Feb. 27, 2019).

The Commission should reject PGE's motion for a stay of the proceedings. PGE's motion for partial summary judgment will not actually resolve key issues in the case, and thus a stay will not serve the streamline the case as PGE asserts. Instead, PGE's motions are founded upon an unreasonable and inaccurate narrow view of the case, and PGE overlooks the numerous factual issues that must be resolved in order to determine the outcome of Sandy River's complaint. PGE's motion for a stay and its motion for partial summary judgment would also not facilitate resolution of discovery disputes, which will need to be addressed in any event, and would inappropriately prevent parties from reviewing the factual issues that are raised even within PGE's motion for partial summary judgment. Finally, PGE's motion for a stay should be rejected because it is counter to the principles of judicial economy and administrative efficiency by increasing the burden on parties and the Commission in this case.

ARGUMENT

I. This Case Involves Much Broader Issues Than the One Question PGE Seeks to Determine Through Its Motion for Partial Summary Judgment, and Thus A Stay of the Case is Not Warranted

In PGE's motion for partial summary judgment, it asserts that the "core" issue in the case is "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." PGE Motion to Stay Discovery at 1. PGE argues that this question can be resolved without reference to the facts, and is determined solely by a review of OAR 860-082-0060(8)(f) itself. *Id.* at 4.

PGE's assessment of the core issue in the case is premature, however, and speculative because the factual record has not been developed in this case, and because PGE seems to misunderstand Sandy River's complaints. What PGE overlooks specifically is that the issues in this case are much broader than the issue PGE asserts is the core of Sandy River's case. Rather than asserting simply that it has a right to use a third-party's assistance with its interconnection pursuant to the Commission's rules, Sandy River's case involves complaints that PGE's actions have been unreasonable in many respects, and that these unreasonable actions include PGE's denial of Sandy River's ability to use a third-party's assistance as a remedy to the challenges it has experienced. Thus, rather than being resolved through a reference to OAR 860-082-0060(8)(f) alone, the Commission must review PGE's actions to determine whether they are reasonable.

REC intervened in this case because it views the "core" issue in the case is that PGE has a pattern and practice of using the interconnection process to delay, providing inaccurate information, charging customers for work it did not actually perform, and imposing other unreasonable barriers on qualifying facilities. REC provides some examples of how these problems can harm interconnection customers.

For example, an interconnection customer cannot decide whether to invest their capital in a project or an interconnection if the cost estimates are wildly inaccurate. If cost estimates double from study to study, then a qualifying facility will have spent money developing a project that it believed was economic which is suddenly no longer economic. Similarly, if cost estimates drop significantly, then the interconnection customer may be pleased, but they would have preferred to know that information up

front. An interconnection customer may not have even elected to move from the early to the later studies if the initial cost estimates are too high.

PGE's failure to abide by its schedules when performing studies and completing work is having a huge impact upon interconnection customers like Sandy River. Qualifying facilities need to meet commercial operation dates in the power purchase agreements or face damages and the loss of financing (investors generally do not want to finance projects that are in default or risk of termination). After years of declining solar costs, there is a risk of cost increases associated with more difficult permitting, the gradual reduction in the investment tax credit, higher cost of lending, higher tariffs, and a tightening labor market. Delays cost real money, and can make the difference between an economic and non-economic project.

REC understands that this is an individual qualifying facility complaint against PGE, and that a broader investigation on interconnection matters is warranted. REC is not seeking to raise all interconnection issues in this case, but believes that PGE's overall interconnection process is directly relevant to the relief that Sandy River is requesting: the Commission's assistance to allow it to timely interconnection in a low cost manner. The reason why Sandy River is seeking particular relief, is relevant to why the Commission should allow Sandy River to take control, subject to PGE's reasonable oversight, of the timing and cost of the interconnection process.

The Commission should be mindful that it is regulating a monopoly utility provider that has an economic interest to making sure that Sandy River is not able to construct its generation facility. REC believes that utilities will always have a strong role in the distribution sector, should always have the ultimate responsibility for the safe

interconnection of electric generation, and that there is some work that interconnection customers should not perform. But, the Commission should be mindful that PGE would not have entered into a power purchase agreement with a small 1.85 megawatt solar project owned by a local Portland small business person except for the Public Utility Regulatory Policies (“PURPA”). Sandy River is exactly the type of company that Congress and the Oregon legislature sought to encourage. The Commission has a responsibility to protect Sandy River from under both PURPA and the Commission’s general statutory obligations to protect customers from PGE’s unjust and unreasonable exactions and practices and prevent PGE from giving anyone from unreasonable preference or advantage to any person. ORS 756.040; ORS 757.325.

Finally, REC notes that Sandy River’s Prayer for Relief has eleven requests for relief, including requesting that the Commission require PGE to provide Sandy River with information, timely complete studies, extend its commercial operation date, impose penalties, and grant “any other such relief as the Commission deems necessary.” Sandy River Complaint at 26 (Aug. 24, 2018). Sandy River is asking the Commission to provide relief when PGE is not living up to its obligations to Sandy River and other interconnection customers. While the primary request is that Sandy River be allowed to hire a third party, there are other ways in which the Commission can assist Sandy River. PGE should not be permitted to lay waste and cause irreparable damages to a wide swath of interconnection customers, including Sandy River, without facing any consequences.

Sandy River’s complaint, therefore, is not susceptible to a motion for partial summary judgment at this stage of the case, because the factual record has yet to be

developed to establish that PGE has acted unreasonably and prove that the Commission should grant Sandy River relief, including but not limited to:

1) provid[ing] 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[ing] 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.

Sandy River Amended Complaint at 2 (Sept. 27, 2018).

II. The Commission Should Reject PGE's Artificially Narrow View of the Case, and Should Instead Allow Sandy River and REC to Demonstrate the Factual Basis of Their Positions

Sandy River has alleged actions by PGE that are important for this Commission to review, and the types of actions that are especially of concern to REC. Specifically, Sandy River alleges that PGE has acted unreasonably toward it by failing to diligently perform its duties under the Commission's rules for small generator interconnections, and that PGE's actions have made its interconnection process unworkable and unreliable. The Commission should allow for a full review of the facts concerning PGE's behavior with respect to Sandy River, its actions with respect to other projects, the reasons for which the Commission's rules provide an opportunity for using third-parties to assist with interconnections, and the reasons why PGE has denied Sandy River that opportunity in this case.

PGE, on the other hand, invites the Commission to take an exceedingly narrow and inaccurate view of the issues in the case. REC sees this as the manifestation of a pattern, where PGE has sought over and over again to narrow the scope of the case in an apparent effort to keep the Commission from reviewing the reasonableness of its

implementation of the interconnection process. PGE previously argued, for example, that REC should not be allowed to even intervene in the proceeding because the dispute relates only to a “specific interconnection dispute between PGE and Sandy River,” and that because REC’s members already have interconnection agreements, they have no interest in the proceeding. PGE Objection to REC’s Intervention at 9 (Feb. 8, 2019). PGE has also sought to limit parties’ access to its other interconnection studies, even though Sandy River has alleged a larger problem with PGE’s interconnection department and the company’s overall approach to interconnections, claiming that those documents are irrelevant to the narrow dispute in this case. *See* Complainants’ Motion to Compel at 8-12 (Feb. 28, 2019). Now, PGE seeks to narrow the case so much that it tries boil it down to a single “core” legal issue of whether OAR 860-082-0060(8)(f) provides a unilateral right of a developer to insist on the use of a third-party to assist with interconnection, over the utility’s objection.

PGE thus seems to be using every avenue possible to prevent a Commission review of its interconnection processes, and seeks now to characterize Sandy River’s complaint so narrowly as to try to dispose of it through summary judgment. PGE’s picture of the case is inaccurate, however, and the Commission should not entertain PGE’s request to stay this proceeding while PGE takes the Commission and the parties down a trail that does not truly lead to a resolution of the issues that are under review. The case includes claims much broader than PGE states in its motions, and a factual record is necessary in order to review those claims before they can be decided.

III. PGE's Motion for Partial Summary Judgment, and Its Associated Stay Will Not Facilitate the Resolution of Discovery Disputes in the Case

In its motion for a stay, PGE asserts that a stay of discovery pending the determination of its motion for summary judgment will assist with discovery in the case, by limiting the disputes between the parties. PGE Motion for Stay Discovery at 2.

Although REC acknowledges that there have been discovery disputes in this case, and that there are some still pending, those disputes are not uncommon, and certainly do not represent a reason to truncate the parties' rights to develop a factual record. Those disputes are best resolved on their merits, though appropriate motions practice.

Additionally, PGE's proposed stay pending the resolution of its motion for partial summary judgment will not reduce the amount of discovery that is appropriate for this case. Sandy River and REC would still be entitled to review PGE's administration of the interconnection process for reasonableness to determine if Sandy River should be provided additional information in its studies, be provided an extension of its commercial operation date or have the Commission impose penalties on PGE, even if PGE's motion for partial summary judgment on the narrow issue it presents was decided in its favor, given Sandy River's broader allegations in this case.

IV. PGE's Motion for Stay of Discovery Is Especially Problematic, Given That PGE Raises New Factual Issues in Its Motion for Partial Summary Judgment

Rather than representing an orderly administration of this case, PGE's motion to stay and its motion for partial summary judgment only confuse the process further by raising numerous disputed factual issues, in the context of a motion that purports to be based on undisputed facts and a pure application of the law. A review of PGE's motions

and the record reveals that PGE's statements about a lack of disputed material facts are inaccurate.

For example, PGE argues in its motion that the rulemaking record shows that the rule regarding use of third-parties was meant to prohibit a reasonableness obligation on utilities' ability to refuse to use a third-party. PGE Motion for Partial Summary Judgment at 18-20 (Feb. 27, 2019). However, REC has previously submitted testimony arguing that the understanding of the parties to the rulemaking was that the utility's consent would not be unreasonably withheld. REC/100, Lowe/9. REC also submitted testimony that the Commission's adoption of the current rules was based, in part, on a reliance of what PGE said at the time—that it supported the idea of allowing third-party assistance so long as there was utility oversight and approval. REC/100, Lowe/17-18.

PGE makes assertions about what REC intended in the rulemaking proceedings, arguing that “[i]n other words, REC understood that the current rules did not allow the QF to demand to use third-party contractors, and wanted the Commission to consider revisions.” PGE Motion for Partial Summary Judgment at 7. As described above, REC has already submitted testimony explaining that the understanding of the parties to the rulemaking, including its view, was that the utility's consent would not be unreasonably withheld. REC/100, Lowe/9. PGE asserts that if there were a reasonableness standard imposed under the regulations, this would result in an inefficient and unworkable situation for small interconnection projects. PGE Motion for Partial Summary Judgment at 10-11. REC already testified to the contrary, that use of third-parties by interconnection customers is likely to lower costs and increase the quality of the interconnection. *See* REC/100, Lowe/4-5. PGE's statements are also disputed by Sandy

River's testimony, which explains that PGE already has a system for allowing third-parties to work on its system, and that doing so does not prevent the operation of a safe and reliable system. Sandy River/100, Snyder/18-21. Sandy River also testifies that use of a third-party would reduce the strain on resources that PGE has already acknowledged. Sandy River/100, Snyder/14.

PGE also asserts in its motion for partial summary judgment that “[t]he process and other controls that need to be in place if a QF is going to take responsibility for construction on the utility’s system, especially over the utility’s objection, need to be significant, and built into the rule.” PGE Motion for Partial Summary Judgment at 21. However, REC provided testimony that PacifiCorp routinely grants third-party assistance for interconnections, in accordance with the same rule. REC/100, Lowe/6. Sandy River also provides evidence that the work it would have a third-party perform for its project is relatively straightforward and does not implicate PGE’s concerns. Sandy River/100, Snyder/17-18.

Finally, PGE asserts in its motion that “[p]ractically, under many situations (including this case) the use of a third-party contractor will not expedite the interconnection process, because higher-queued projects still must be completed before lower-queued projects can be placed in-service.” PGE Motion for Partial Summary Judgment at 23. REC testified, however, that part of the logic for the current rules was that it would reduce backlogs and lead to a more efficient administration of the interconnection process. REC/100, Lowe/17.

All parties in the case are entitled to try to reconcile these disputed facts through the evidentiary process, rather than through a motion for partial summary judgment at

CONCLUSION

For all of the reasons explained herein, PGE's Motion for Stay of Discovery and Procedural Schedule should be denied.

DATED this 6th day of March 2019.

Respectfully submitted,

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