

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1967

In the Matter of

SANDY RIVER SOLAR, LLC,

vs.

PORTLAND GENERAL ELECTRIC
COMPANY,

Pursuant to ORS 756.500

RULING

DISPOSITION: MOTION REQUESTING ALJ CERTIFICATION DENIED

I. SUMMARY

I deny the request of Sandy River Solar, LLC (Sandy River) to certify my ruling, dated March 19, 2019, that granted in part, and denied in part, the motion of Portland General Electric Company (PGE).

II. BACKGROUND AND PROCEDURAL HISTORY

The above-captioned docket involves a complaint filed by Sandy River against PGE regarding the reasonableness and lawfulness of the company’s interconnection process for complainant’s qualifying facility (QF) project. As a primary remedy, Sandy River seeks the ability to hire a third-party consultant to facilitate interconnection. Sandy River contends that the remedy is allowed under the Commission’s rules, but is being unreasonably withheld by PGE. The parties agreed to a procedural schedule for the docket at a prehearing conference that was held on November 13, 2018. That schedule was stayed by my ruling dated March 19, 2019. The ruling denied PGE’s motion to stay in part by allowing discovery to continue uninterrupted, but granted it in part, by staying procedural dates, such as due dates for testimony. My ruling held (citations omitted):

In order to facilitate efficient progress in this case on all outstanding motions as well as development of the issues, I deny PGE’s motion to stay discovery and the procedural schedule in part and grant it in part. I deny the motion to stay with regard to PGE’s response to Sandy River’s sixth set of data requests, and PGE’s response to Sandy River’s second motion to compel. As established at the preheating conference and memorialized

by the preheating conference memorandum, dated March 13, 2018, PGE agreed to file a response to Sandy River's sixth set of data requests, as well as a response to Sandy River's second motion to compel. Sandy River may file a reply to PGE's response.

I grant PGE's motion to stay with regard to any *new* discovery, however. I also grant a stay with regard to the procedural schedule adopted in the first preheating conference memorandum, dated November 14, 2018, noting that PGE need not file response testimony on March 21, 2019.

To the extent that Sandy River or the Coalition asks that PGE's motion for partial summary judgment be denied without further consideration, I deny that request. Instead, I direct Sandy River to file a response to PGE's motion for partial summary judgment. Sandy River has requested that a response to PGE's motion for partial summary judgment be due fifteen days after resolution of PGE's motion to stay. I will honor this request and Sandy River's response to PGE's motion for partial summary judgment will be due fifteen days from the date of this ruling. OAR 860-001-0420 otherwise applies to the pending motions.

On April 3, 2019, Sandy River filed a motion requesting certification of my ruling to the Commission. PGE filed a response on April 18, 2019.

III. DISCUSSION

A. Positions of the Parties

Asserting that my ruling failed to consider and balance the competing interests associated with a stay, Sandy River contends that my ruling should be certified to the Commission because of prejudice resulting to complainant (OAR 860-001-0110(2)(a)) and otherwise for good cause (OAR 860-001-0110(2)(c)). Sandy River seeks to have the Commission remove the stay, and allow its complaint to be processed as closely as possible to the original schedule.

My ruling prejudices complainant by subjecting it to economic harm resulting from a delayed judgment, thereby jeopardizing the ultimate vitality of the QF project, Sandy River alleges. Missing the desired decision date for the litigation of July 31, 2019, will mean Sandy River misses its commercial operation date (COD) of December 1, 2019, subjecting complainant to financing difficulties, cost increases, damages, and the expiration of tax credits. Sandy River also expresses concern about the precedential value of the stay with regard to the ability of an interconnection customer to experience,

and expect, a timely and fair hearing of a complaints without unnecessary and diverting motions.

Sandy River also argues that good cause exists to certify my ruling to the Commission for review. Although my ruling identified competing interests to be considered when determining whether a motion for a stay should be granted, Sandy River states, my ruling “did not go through the steps of considering these factors,”¹ which would have led to denying PGE’s motion in full. Sandy River challenges the appropriateness of allowing a stay that interrupts time-sensitive litigation in order to entertain a motion for partial summary judgment that is unable to resolve any of Sandy River’s claims. Sandy River claims that PGE is relatively unharmed by proceeding with the litigation on schedule as the motion is unlikely to succeed, and discovery can be handled concurrently. Although PGE delays the submission of testimony, Sandy River asserts that it is unfair that PGE manipulated the timing of its motion to gain this time. Sandy River also points out that any delay may ultimately benefit PGE by jeopardizing the project so that PGE avoids the need to purchase any output.

PGE responds that my ruling should be upheld, contending that Sandy River fails to show either the existence of undue prejudice or good cause. Observing that Sandy River’s motion for certification offers no new legal analysis or argument, PGE argues that the complainant’s arguments were fully reviewed and considered by my ruling. The stay is appropriate because it facilitates the efficient administration of the case without harming Sandy River, PGE asserts. An administrative law judge has the inherent authority and discretion to control the docket in a manner that furthers efficiency, PGE observes.

PGE deems Sandy River’s allegations of harm to be unspecific and speculative. PGE observes that Sandy River fails to offer evidence that it will be unable to obtain financing as a result of the stay, or that it will lose money due a change in the applicable tax law. It is purely speculative, PGE asserts, that Sandy River will face increased construction costs, or be forced to pay damages under its PPA if it fails to meet its scheduled COD. In any case, Sandy River cannot be prejudiced by the stay, PGE observes, because Sandy River’s desired COD is unachievable due to higher-queued projects.²

¹ Request for ALJ Certification for Commission Consideration, at 8.

² PGE’s Response, at 21-22 (“Sandy River’s transfer trip protective scheme cannot function until the Dunns’ Corner substation upgrades are placed in service as part of SPQ0070. That work is scheduled to be completed and in-service by February 17, 2020. That work will require specialized equipment—a mobile substation. There is a limited supply of mobile substations and PGE has scheduled its mobile substation for this work under SPQ0070 at the first available date. While it might be possible to lease a mobile substation, it would be necessary for PGE to put any new mobile substation through a series of tests to confirm that it was properly configured to work on PGE’s system, and PGE expects that such a process would take longer than PGE’s currently scheduled plans to use its own mobile substation to perform the necessary substation work under SPQ0070. In short, it is not possible to speed up the necessary substation work by making that work a part of the Sandy River interconnection. PGE has already scheduled the work to occur at the first opportunity and as rapidly as possible under SPQ0070, with a scheduled in-service date

PGE takes the position that the second claim for relief is the core issue in this case and that resolving it upfront will facilitate resolution of the remaining claims. PGE indicates that settlement may be possible, but it not, resources will be saved with regard to reduced preparation and review of the issues. PGE asserts that the administrative law judge's decision granting a stay allows the Commission to first determine the threshold legal issue before considering the facts and circumstances necessary to apply such a test.

PGE rebuts the idea that PGE's motion for partial summary judgment together with a motion to stay "was an intentional abuse of the litigation process," because PGE should have filed the motion earlier, and did it at a time that impedes a schedule that would make Sandy River's desired COD possible.³ PGE reflects that the company explicitly reserved the right to file a motion for summary judgment at the start of the docket, and that there is no requirement that PGE file the motion earlier. The applicable rules allow for either party to file a motion for summary judgment anytime up to 60 days before the date of a trial or hearing, PGE observes; PGE filed the motion before the company had even filed testimony. PGE also points out that there were good reasons why the motion was not filed sooner, including efforts to mutually resolve the dispute and significant discovery. PGE also indicates that it spent time trying to obtain agreement from Sandy River regarding a process for addressing a motion for summary judgment. PGE denies that the company is purposely engaging in a strategy of delay, and reports to the contrary, that it still seeks to execute an interconnection agreement that would enable interconnection by March of 2020 at the latest.

B. Applicable Law

OAR 860-001-0110 allows a party to request the certification of an ALJ ruling for the Commission's consideration. Section (2) of the rule provides that an ALJ must certify the ruling to the Commission if the ALJ finds that:

- (a) The ruling may result in substantial detriment to the public interest or undue prejudice to a party;
- (b) The ruling denies or terminates a person's participation; or
- (c) Good cause exists for certification.

for the substation improvements of February 17, 2020. Under these facts, a stay of a few months in this case has no impact on Sandy River's ability to achieve its overly-aggressive scheduled COD.")

³ PGE's Response, at 23, citing Sandy River's Req. for Cert. at 15-16.

C. Discussion

I deny Sandy River’s Motion for certification of my ruling dated, March 19, 2019, that granted in part, and denied in part, PGE’s motion for a stay. Setting forth detailed accounts of each party’s positions with regard to the appropriateness of setting a stay during the consideration of PGE’s Motion for Summary Judgment, my ruling identified in detail, thereby taking them into account, all of the arguments supporting and opposing a stay. In accordance with my responsibility to regulate the course of a docket, my ruling explicitly prioritized the efficient development and resolution of the issues in the case, and granted a stay as to the procedural schedule and new discovery.

My ruling expressly did not take into account the merits of PGE’s motion for summary judgment. I had already explained in the preceding prehearing conference that a motion for summary judgment should be considered by the Commission. I had also explained at that time, that although the date for a final order may be identified in a procedural schedule as a target and a courtesy to the parties—at least when it is not mandated by a statutory deadline—it is not a date that can necessarily be achieved for many reasons.

Given the right of PGE to file a motion for summary judgment, and the need to facilitate the Commission’s review of the motion with the possibility that their resolution may alter the scope of the docket, I deemed it appropriate to issue a stay on new activities in the docket, recognizing that the nature of those activities were subject to change. It would be extremely inefficient and ultimately harmful to the procedural schedule and final resolution of the case to proceed with discovery and testimony in the face of a risk that both could be negated or need revision. I also note that the importance of the COD identified in Sandy River’s PPA is subject to evidentiary and legal debate.

IV. RULING

For these reasons I do not find that undue prejudice to complainant or general good cause justify certification of my ruling to the Commission. Sandy River’s Request for Certification of ALJ Ruling Granting Stay is denied.

Dated this 25th day of April, 2019, at Salem, Oregon.



Traci Kirkpatrick
Administrative Law Judge