

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2164

ZENA SOLAR, LLC,

Complainant,

vs.

PORTLAND GENERAL ELECTRIC
COMPANY,

Defendant.

RULING

DISPOSITION: EXPEDITED MOTION TO MODIFY PROCEDURAL SCHEDULE
DENIED

I. INTRODUCTION AND BACKGROUND

On June 4, 2021, an initial procedural schedule was established for this proceeding as jointly proposed by the parties. The procedural schedule included a deadline of July 27, 2021, for PGE to file testimony, subsequent to its answer, with Zena Solar, LLC filing its response to PGE's answer and counterclaims 10 days later. The schedule also included a milestone to conduct a prehearing conference within two weeks of PGE filing its testimony. On July 2, 2021, Portland General Electric Company filed a motion for partial summary judgment. Also on July 2, 2021, PGE filed a motion to modify the procedural schedule, requesting an extension of the deadline for PGE to file testimony from July 27, 2021, to 30 days after Commission resolution of PGE's pending motion for partial summary judgment. On July 9, 2021, Zena Solar filed its response to PGE's motion to modify procedural schedule. On July 12, 2021, Zena Solar filed a motion seeking clarification that PGE's motion for summary judgment was not official filed, and thus there was no filing deadline for Zena Solar to respond. In the alternative, Zena Solar requests a stay of the deadline to respond until an ALJ determination that the case will proceed through a summary judgment process, or at least until after PGE files its testimony. Zena Solar seeks expedited consideration, noting that its response could be due as soon as July 19, 2021. On July 13, 2021, PGE filed a request for leave to file a reply along with a reply in support of its motion to modify the procedural schedule.

II. PGE'S MOTION

PGE requests an extension of the deadline for PGE to file testimony in this case until 30 days after Commission resolution of its pending motion for partial summary judgment. PGE contends that its motion for partial summary judgment should not unreasonably delay the proceedings, and if granted, will significantly narrow the issues in this case. PGE contends that it raises legal arguments that many of Zena Solar's factual and legal theories are barred by the parties' settlement agreement, by claim preclusion, or by the Commission's jurisdictional statutes, and that each of these issues will require extensive effort to respond to with formal testimony. PGE argues that its requested extension will allow PGE to avoid developing testimony regarding issues that may be dismissed and will ensure that the testimony filed is tailored to those issues that survive summary judgment. PGE contends that pursuant to OAR 860-001-0360, case schedules should "facilitate the orderly and efficient resolution of the case" and "discourage wasteful activities" and maintains that its requested extension will increase administrative efficiency and reduce the potential for confusion in this proceeding.

In its reply, PGE disputes that the filing of its motion for partial summary judgment was procedurally invalid, and asserts that in jointly proposing the initial schedule, the parties reserved the right to file dispositive motions at any time. PGE also disputes that Zena Solar would be harmed by the proposed modification to the schedule, explaining PGE does not seek to modify the briefing schedule with regards to Zena Solar's pending motion for interim relief and a preliminary injunction to enable it to remain in the queue during the pendency of this proceeding.

III. ZENA SOLAR'S OPPOSITION

Zena Solar argues that PGE's motion should be denied, and that PGE should be required to file its testimony on July 27, 2021. Zena Solar also requests that a case management conference be scheduled. Zena Solar contends that PGE's filing of a motion for partial summary judgment before filing its testimony violates the applicable procedural rule, OAR 860-082-0085. Zena Solar asserts that the interconnection rules require testimony to be filed concurrently with a defendant's answer, in order to support the factual allegations in the answer. Zena Solar asserts that whether a case under OAR 860-082-0085 proceeds through dispositive motions or a full hearing is a decision for the ALJ to make after considering the pleadings and "all supporting documents" which necessarily include testimony. Zena Solar contends that in this proceeding the parties agreed to a modified initial schedule, which allowed PGE to file its testimony at a later date and separately from its answer, but that Zena Solar did not agree that PGE could file a dispositive motion before PGE filed its testimony. Additionally, Zena Solar asserts that PGE has not sought a good cause waiver of the

requirement that testimony must be filed prior to filing dispositive motions and contends that only the Commission may grant waivers of the interconnection rules. As a result, Zena Solar contends that requiring PGE to file testimony and support the allegations in its answer is not premature nor wasteful, but is required by the relevant rules.

Zena Solar also argues that even if PGE were to prevail on its motion for partial summary judgment, PGE would still need to file testimony on all the same factual issues because of the overlap that exists in the factual matters relevant to the issues that would remain live. Zena Solar contends that PGE's requested extension would delay the ultimate resolution of this proceeding, contrary to the expedited procedure intended in OAR 860-082-0085, which would be harmful and potentially prejudicial to Zena Solar relative to the interconnection queue and Community Solar pre-certification process.

IV. RULING

As a complaint for enforcement of an interconnection agreement under OAR 860-082-0085, the applicable procedure for this proceeding is set forth within that rule, which prescribes a timeline and filing requirements for pleadings, followed by a conference. Specifically, OAR 860-082-0085(10) requires that the ALJ schedule a conference within five business days after the answer is filed, to be held as soon as practicable. The rule further provides

Based on the complaint and the answer, all supporting documents filed by the parties, and the parties' oral statements at the conference, the ALJ determines whether the issues raised in the complaint can be determined on the pleadings and submissions without further proceedings or whether further proceedings are necessary. If further proceedings are necessary, the ALJ establishes a procedural schedule.¹

The initial schedule in this proceeding, as jointly proposed by the parties, provided PGE with additional time to submit its testimony after submitting its answer. The June 4, 2021 ruling adopting the parties' joint proposal also included a prehearing conference prior to any OAR 860-082-0085(10) conference, and noted that whether an OAR 860-082-0085(10) conference would occur would be a topic for discussion at the prehearing conference. In that ruling, I also recognized that the parties reserved the rights to conduct discovery, file a motion for summary judgment, or another dispositive motion, as well as the right to seek modification of the initial procedural schedule.

¹ OAR 860-082-0085(10)(b).

I decline to modify the existing procedural schedule at this time. The current schedule provides for a prehearing conference to determine the next steps for this docket after the filing of complete pleadings, including supporting testimony, by both parties.² I find that this conference, to be conducted after pleadings with all supporting documents are available, remains the appropriate time to establish the remaining process for this docket. I also anticipate addressing at this conference any deadlines for dispositive motions. Thus, any deadline for Zena Solar to submit its response to PGE's motion for summary judgment will be established at that time. Accordingly, I deny PGE's motion to modify the procedural schedule and do not reach Zena Solar's motion for clarification. The procedural schedule as adopted in my June 4, 2021 ruling remains in effect.

Dated this 14th day of July, 2021 at Salem, Oregon.



Traci Kirkpatrick
Administrative Law Judge

² OAR 860-082-0085(5) provides that the answer must contain “a statement of the facts or law supporting defendant’s position” and that “[s]tatements of facts must be supported by written testimony with affidavits made by persons competent to testify and having personal knowledge of the relevant facts.” Although the schedule provides PGE with additional time to file its testimony, PGE’s answer will not be complete under the rules until the required testimony is also filed.