

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1631

In the Matter of

Marquam Creek Solar, LLC,

Petition for Waiver of OAR 860-082-
0025(1)(c)

MARQUAM CREEK SOLAR, LLC'S
SUPPLEMENTAL COMMENTS FOR
PUBLIC MEETING ON MAY 4, 2021

INTRODUCTION

Marquam Creek Solar, LLC (“Marquam Creek Solar”) respectfully submits these Supplemental Comments to the Public Utility Commission of Oregon (“OPUC” or “Commission”) in advance of the public meeting on May 4, 2021. Marquam Creek Solar refers the Commission to prior written filings for detailed analysis of the issues supporting its Petition for Waiver of OAR 860-082-0025(1)(c) and will not repeat all of those arguments here. These Supplemental Comments update the status of the issues since the last public meeting and summarize the key points supporting Marquam Creek Solar’s Petition.

For the reasons explained previously and below, Marquam Creek Solar renews its request that the Commission grant a waiver of OAR 860-082-0025(1)(c) allowing it to reduce its nameplate capacity by 88 kilowatts (“kW”) or such other reasonable amount Portland General Electric (“PGE”) deems necessary to avoid aggregate generation on the Scotts Mills feeder exceeding daytime minimum load.

BACKGROUND

At the last public meeting, the Commission deferred ruling on Marquam Creek Solar’s

Petition for Waiver to allow PGE to evaluate whether it would reconsider its position that 3V0 sensing and transfer trip protection is needed for Marquam Creek Solar's interconnection. The period to allow for reconsideration was provided because shortly before the last public meeting the community solar program's ("CSP") third-party engineering firm confirmed Marquam Creek Solar's concerns that PGE's proposed need for 3V0 sensing and transfer trip is flawed and based on extremely conservative assumptions even without a capacity reduction from 2.0 megawatt ("MW").¹ Additionally, PGE's most recent Facilities Re-Study demonstrated that PGE's measure of daytime minimum load for 2020 had increased to a level that should eliminate the risk of back-feed regardless of how net metering generation is treated.² Marquam Creek Solar was hopeful that the CSP's third-party engineering review or the new daytime minimum load measurement would convince PGE to change its requirements for cost-prohibitive protective equipment even without a reduction in nameplate capacity and thus obviate the need for the Commission to rule on the Petition for Waiver.

Unfortunately, however, PGE has communicated that it does not intend to voluntarily change its position. Thus, if the Petition for Waiver is denied, PGE appears to be prepared to attempt to require Marquam Creek Solar to revise its fully executed Generator Interconnection Agreement ("GIA") to increase the estimated interconnection costs 14-fold from \$268,350 to \$3,822,530, which is PGE's most recent estimate for facilities including 3V0 sensing and transfer trip protection. Because Marquam Creek Solar continues to disagree with PGE's

¹ *Marquam Creek Solar's Response to Staff Report*, at Attachment 1, EN Energy Engineering Report at 4-5.

² PGE's March 15, 2021 Facilities Re-Study states daytime minimum load on the feeder for 2020 was 2.35 MW and the "amount installed and proposed generation on the feeder" is 2.193 MW. *PGE's Comments*, Exhibit 1, p. 5. But the study still relies on the lower daytime minimum load from a prior year of 2.105 MW to maintain the conclusion that Marquam Creek Solar triggers back feed and must pay for protective equipment. *Id.*

analysis for the reasons previously stated, a denial of the Petition for Waiver will mean that the parties will need to resort to some form of dispute resolution or other adjudicated process.

RENEWED REQUEST FOR WAIVER

Marquam Creek Solar renews its request that the Commission grant the Petition for Waiver of OAR 860-082-0025(1)(c) to allow Marquam Creek Solar to make a relatively limited reduction in its nameplate capacity necessary to maintain the economically feasible interconnection costs. The points and authorities supporting the Petition were stated in detail in the prior filings.

To summarize and supplement the main points from the last public meeting, Marquam Creek Solar submits that this is a unique case where good cause exists to grant the waiver and where doing so would create a narrow and limited precedent. As previously discussed, the following key points make Marquam Creek Solar's circumstances unique from most interconnection customers who might seek to reduce their capacity:

- Minimal Reduction: The requested reduction in capacity is very small, less than five percent of the initial capacity in the interconnection application.
- Avoidance of Contract Dispute: Allowing for this minimal reduction would avoid the need to litigate or otherwise resolve a contract dispute under Marquam Creek Solar's executed GIA, which contains no provision allowing PGE to unilaterally revise the cost estimates on the basis of a higher queued generator dropping out of the queue.
- Adverse Impact of Net Metering: Net energy metering ("NEM") generation on the feeder is the sole cause for PGE's conclusion that aggregate generation will exceed daytime minimum load; Marquam Creek Solar's 2 MW facility does not itself exceed PGE's preferred measure of daytime minimum load. This is a unique circumstance. As PGE itself stated: "In most cases, including existing NEM generation in the aggregate generation compared to measured DML would make no difference in protection requirements since aggregate QF generation is

typically much larger than existing NEM generation[, and] PGE has not always clarified its method of including existing NEM generation in the aggregate generation considered for protection requirements.”³ Additionally, NEM generation can – and in this case did – come online while a customer in the small generator queue is delayed with re-studies. Thus, the impact of NEM generation is difficult to forecast or control for a customer like Marquam Creek Solar, but in this rare case causes a very significant increase in interconnection costs.

- Lack of Transparency on Feeder: As Staff agrees, there was inadequate transparency as to available capacity on the Scotts Mills feeder at the time Marquam Creek Solar entered the queue to allow Marquam Creek Solar to “preemptively identify sizing issues.”⁴
- Utility Does Not Oppose: While PGE does not actively support the requested waiver, PGE has also not opposed the waiver.

These circumstances support a finding of good cause and are unlikely to frequently arise again.

There was concern expressed at the public meeting that allowing such minimal reduction to Marquam Creek Solar’s requested capacity may harm the lower queued customer on the feeder, SPQ0247, but this concern does not justify denial of the Petition. As stated previously, Marquam Creek Solar’s intent is to preserve the benefit of the bargain in its executed GIA, not to harm any other projects. At this time, the lower queued generator’s position is unstated, and Marquam Creek Solar reserves the right to respond to any statements that may be made. However, it is significant that unlike Marquam Creek Solar, the lower queued generator entered the interconnection queue on March 2, 2020, when there should have been sufficient information publicly available to determine the Scotts Mills feeder was oversubscribed. Thus, the lower queued customer entered the queue aware that it was taking the risk that it would be assessed significant upgrade costs. Indeed, SPQ0247’s most recent study includes substantial upgrade

³ See *Petition* at Ex. 7, p. 3 (PGE’s letter dated December 7, 2020).

⁴ *Staff Report* at 8 (noting useful information was not made available until 2019).

costs in excess of \$762,058 for transfer trip protection required of all generators after 3V0 protection is installed.⁵

And, importantly, it would appear that SPQ0247 would truly benefit only if Marquam Creek Solar is withdrawn from the queue altogether, which is necessary for it to achieve the lowest cost estimate in PGE's Comments of approximately \$220,000.⁶ In other words, the lower queued generator's interest is not in avoiding delay from re-study or in benefiting from an upgrade (3V0 protection) installed by Marquam Creek Solar, but its interest appears to actually be to have Marquam Creek Solar's project fail and withdraw. If so, it is questionable whether an expectation of a higher queued generator's demise is really the type of interest that the Commission's serial queue rules should be intended to protect.

In any event, Marquam Creek Solar's reduction of a minimal amount is something of the nature that is routinely allowed throughout the country in interconnection procedures for large and small generators without regard to the a possible impact on lower queued generators.⁷ The reasoning behind these policies is that there needs to be some reasonable flexibility for the higher queued generator, and particularly in the case of reductions in capacity, the higher queued generator is simply using capacity to which it had already reserved a preferred right. The fact that a lower queued generator may be adversely impacted by the decisions and actions of a higher queued generator is a just a fact of life in a serial interconnection queue. As the Federal Energy Regulatory Commission ("FERC") explained in addressing this point in Order No. 845:

Furthermore, lower-queued interconnection requests have always faced potential impacts from the decisions of higher-queued interconnection requests. For

⁵ *PGE's Comments* at 8 n. 8.

⁶ *PGE's Comments* at 9 (noting that if SPQ0247 is in the first queue position it would likely see a cost reduction of \$539,733).

⁷ *Petition* at 9-14; *Marquam Creek Solar's Response to PGE's Comments* at 5-7.

example, lower-queued interconnection requests are frequently impacted by the withdrawal of higher-queued interconnection requests. The impact on lower-queued interconnection requests from a withdrawal higher in the queue is similar to what would happen when a higher-queued interconnection customer requests a reduction in interconnection service level. In both cases, the higher-queued interconnection request could avoid paying for some level of network upgrades (if such upgrades are required), and lower-queued interconnection requests could be impacted as a result.⁸

The same reasoning applies here. The lower queued generator will be harmed even if the Petition is denied because that will result in a protracted dispute before anyone can move forward. At the very least, the lower queued generator would be subjected to a delay and re-study because there is no scenario where Marquam Creek Solar will pay for the \$3.8 million in upgrades as assumed in the lower queued generator's current studies. Given the pace with which net metering has been added to the feeder, the certain delay and re-study caused by denial of the Petition could materially alter the upgrades PGE requires for the lower queued generator. If Marquam Creek Solar can prevail in a dispute with PGE, the lower queued generator would suffer delay and a then a re-study that assumes Marquam Creek Solar will take up much of the remaining spare capacity on the feeder, meaning the lower queued generator would need to pay for 3V0 sensing. In sum, it is highly speculative to assume the lower queued generator will in fact be better positioned if the Petition is denied and such assumptions should not stand as a bar to granting the Petition.

Thus, the Commission should grant the Petition for Waiver.

ALTERNATIVE PROCEDURAL REQUEST

In the alternative, if the Commission denies the Petition, all parties agreed at the last public meeting that the Commission should provide 60 days to file a complaint or other dispute

⁸ Order No 845, 163 FERC ¶ 61,043, 61,239 (April 19, 2018).

resolution process and proscribe PGE from attempting to remove Marquam Creek Solar from the queue during such 60 days. Further, although PGE disagreed, Marquam Creek Solar continues to maintain that it should not be withdrawn from the interconnection queue until such dispute or adjudication is finally resolved. Preservation of the queue position is the required by OAR 860-082-0080(5) under the Commission's arbitration process and should also be the result under other forms of dispute resolution. Otherwise, it would be impossible for an interconnection customer to meaningfully challenge a utility's study results through adjudication without the utility mooted such challenge by removing the customer from queue before the dispute could be resolved. That procedural outcome would be unjust and unfair, especially where the interconnection customer's position is supported by the CSP's third-party engineering review.

CONCLUSION

For the reasons set forth above and in prior filings, the Commission should grant the requested waiver of OAR 860-082-0025(1)(c) to allow Marquam Creek Solar to reduce its nameplate capacity by 88 kW or such other reasonable amount PGE deems necessary to avoid aggregate generation on the Scotts Mills feeder exceeding daytime minimum load.

Respectfully submitted on this 30th day of April 2021.

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