BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 2111

In the Matter of PUBLIC UTILITY COMMISSION OF OREGON, Investigation Into Interconnection Process and Policies	SUPPLEMENTAL JOINT COMMENTS ON BEHALF OF THE COMMUNITY RENEWABLE ENERGY ASSOCIATION, RENEWABLE ENERGY COALITION, AND THE OREGON SOLAR + STORAGE INDUSTRIES ASSOCIATION

INTRODUCTION AND SUMMARY

In accordance with discussion at the Public Utility Commission of Oregon ("Commission" or "OPUC") Staff's Workshop held on June 20, 2023, the Community Renewable Energy Association ("CREA"), the Renewable Energy Coalition (the "Coalition"), and the Oregon Solar + Storage Industries Association ("OSSIA") (collectively the "Interconnection Trade Associations") respectfully submit these comments with respect to the proposed rules governing execution of the interconnection agreement in proposed OAR 860-082-0025(7)(f). As explained below, the Interconnection Trade Association generally supports the proposal of the Interstate Renewable Energy Council ("IREC") but recommends revisions to the currently proposed provision to bring it in line with standard processes. Specifically, the Interconnection Trade Associations recommend three substantive edits:

(i) Deposit: Delete the Joint Utilities' proposed requirement that the applicant furnish a security deposit with the executed interconnection agreement;

(ii) Time Period: Provide 30 days for the applicant to review and execute the public utility's proposed interconnection agreement, and

(iii) Dispute Resolution: Clarify and provide a reasonable process by which the applicant may initiate arbitration or an expedited complaint process under the rules if it disputes the public utility's proposal.

The Interconnection Trade Association's proposed edits to IREC's latest proposed language are included as an appendix to these comments to clearly demonstrate the proposal, and each individual issue is explained below.

COMMENTS

A. Deposit: Delete the Joint Utilities' proposed requirement that the applicant furnish a security deposit with the executed interconnection agreement.

The Joint Utilities proposed in their written comments that OAR 860-082-0025(7)(f) should require the applicant to submit a deposit with its signed interconnection agreement,[1] and subsequent proposals appear to have incorporated this proposal in the rule. The Interconnection Trade Associations strongly oppose requiring the applicant to submit a financial deposit on the short timeframe that will be applied to execution of an interconnection agreement. Instead, the deposit supporting procurement and/or

[1] Joint Utilities' Comments, Docket No. UM 2111, pp. 4-5 (May 5, 2023).

construction should be governed by the interconnection agreement itself, which should require the deposit be furnished a reasonable time (e.g., 20 days) before commencement of those activities. Requiring the applicant to furnish a financial deposit for interconnection upgrades with the executed interconnection agreement will impede renewable energy development because the deposit can be significant—several hundred thousand or even millions of dollars in some cases. Developers will likely need time to raise such funds, and many may not be able to do so within the short timeframe (15-30 days) within which it is reasonable to require the interconnection agreement to be executed.

A review of other relevant interconnection rules confirms that requiring the applicant to furnish the financial deposit supporting construction with the executed interconnection agreement is not the normal process. The Commission's current Division 82 rules do *not* state that financial security must be supplied with the executed interconnection agreement. The rules simply state that the customer must return the executed agreement within 15 business days.[2] The deadline to submit any financial deposit would be governed by the interconnection agreement itself, and that agreement should provide reasonable time to submit the deposit before the utility must begin procurement and construction. Similarly, the Federal Energy Regulatory Commission's ("FERC") Small Generator Interconnection Procedures ("SGIP") (at § 4.8) provides the customer 30 days to sign the Small Generator Interconnection Agreement ("SGIA"), or

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[2] OAR 860-082-0025(7)(e).

request that the disputed agreement be submitted to FERC for resolution.[3] But it does not state that a deposit must be submitted within 30 days. Instead, the SGIP states the customer that executes the SGIA then proceeds under the SGIA. In turn, FERC's SGIA (§ 6.3) requires the financial security in the amount of the construction costs be submitted at least 20 days before commencement of procurement and/or construction. That process makes sense because the customer has time to raise the potentially significant financial deposit after execution of the interconnection agreement, but the customer cannot compel the utility to commence procurement and construction activities prior to doing so.

B. <u>Time Period:</u> Provide 30 days for the applicant to review and execute the public utility's proposed interconnection agreement.

The currently proposed draft rule provides the customer 15 business days to execute the interconnection agreement or initiate negotiation of a non-standard interconnection agreement. However, as noted above, FERC's SGIP provides the customer with 30 days to execute the utility's proposed interconnection agreement or to initiate a dispute resolution process through the filing of an unexecuted agreement with FERC. The Interconnection Trade Associations recommend use of the 30-day period in FERC's SGIP for the applicant's review and execution of utility's proposed interconnection agreement.

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[3] Current versions of FERC's approved pro forma interconnection agreements and procedures are available at: https://www.ferc.gov/electric-transmission/generator-interconnection/standard-interconnection-agreements-and-procedures.

C. <u>Dispute Resolution</u>: Clarify and provide a reasonable process by which the applicant may initiate arbitration or an expedited complaint under the rules if it disputes the public utility's proposal.

The currently proposed draft rule maintains the existing rule's language suggesting that the applicant may request negotiation of a "non-standard" interconnection agreement if it chooses not to execute the utility's proposed interconnection agreement.[4] The Interconnection Trade Associations are concerned with the lack of clarity on the process for the alternative options to simply signing the utility's proposed interconnection agreement. Those options include negotiating a non-standard interconnection agreement or, alternatively, initiating an available dispute resolution procedure, such as arbitration through use of Division 82's arbitration process in OAR 860-082-0080, filing an expedited complaint pursuant to ORS 756.500, or filing a petition for alternative dispute resolution before a mediator pursuant to Division 2 of the Commission's rules, OAR 860-002-0000 *et seq*. In most cases, a dispute would regard the contents of the proposed interconnection agreement's addendums, which contain substantive provisions regarding the upgrades and costs required for the interconnection. A dispute over those issues may not be properly resolvable through negotiation of a "non-standard" interconnection agreement, but rather would more likely be resolvable through the Commission's arbitration, complaint, or mediation processes. However, nothing in the current or proposed rules regarding execution of the interconnection agreement references the

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[4] OAR 860-082-0025(7)(e) (stating applicant must "return an executed interconnection agreement to the public utility or request negotiation of a non-standard interconnection agreement within 15 business days of receipt").

option to initiate available dispute resolution processes, and thus there is ambiguity as to how quickly the applicant must initiate such a dispute resolution process to ensure it maintains its queue position while a good faith dispute is resolved.

Clarity regarding the rights of interconnection customers will save the Commission and interconnection customers significant resources and remove a powerful tool that at least Portland General Electric Company ("PGE") has used to attempt to force interconnection customers to agree to PGE's position or be removed from the interconnection queue. For example, in the Zena Solar dispute, PGE recently took the position that the interconnection customer should be removed from the interconnection queue (effectively killing the project) if the interconnection customer sought to challenge PGE's proposed interconnection upgrades. The lack of clarity on the point in the Commission's rules resulted PGE and the interconnection customer making five separate filings, totaling 101 pages of argument and 71 pages of exhibits and affidavits, regarding whether Zena Solar would be removed from the interconnection queue.[5] The Commission ultimately decided that the interconnection customer could proceed with its

[5] *See generally Zena Solar, LLC v. Portland Gen. Elec. Co.*, Docket No. UM 2164, Zena Solar Motion for Interim Relief and Preliminary Injunction (May 24, 2021); UM 2164, PGE Response to Motion for Interim Relief (July 2, 2021); UM 2164, Zena Solar Reply in Support of Its Motion for Interim Relief and Preliminary Injunction (July 23, 2021); UM 2164, PGE Leave to File Sur-Reply and Sur-Reply in Opposition to Zena Solar's Motion for Interim Relief and Preliminary Injunction (Aug. 12, 2021); UM 2164, Zena Solar Motion to File Surreply and Surreply in Support of Its Motion for Interim Relief and Preliminary Injunction (Aug. 16, 2021).

complaint without compromising its queue position during the complaint proceeding,[6] but not after the small interconnection customer engaged in significant litigation just to know whether it would have the opportunity to adjudicate its dispute.

To avoid unnecessary procedural disputes, the rules should clearly explain that initiation of available dispute resolution processes does not compromise the customer's queue position. The Commission's existing rules already specify that the applicant's queue position is maintained during pendency of an arbitration petition pursuant to OAR 860-082-0080, and it would be appropriate to also include the option to use an expedited version of the Commission's complaint process under ORS 756.500, or the recently adopted alternative dispute resolution process OAR 860-002-0000 *et seq*. The Interconnection Trade Associations are open to discussing additional details for an expedited version of a complaint process for this purpose in a future phase of this rulemaking.

Accordingly, the Interconnection Trade Associations recommend an edit to clarify that the applicant does not lose its queue position if it provides notice of intent to initiate an available dispute resolution process within 30 days of the receipt of the utility's

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[6] *See Zena Solar, LLC v. Portland Gen. Elec. Co.*, Docket No. UM 2164, Order No. 21-319 at 5 (Sept. 29, 2021) (stating, "We do not award an injunction, but we extend the interim relief that we granted on August 31, 2021, to December 10, 2021, by which time we plan to issue a final decision in this docket on an accelerated procedural schedule further addressed below."); *see also Zena Solar, LLC v. Portland Gen. Elec. Co.*, Docket No. UM 2074, Ruling at 1-2 (March 27, 2020) ("I find good cause to grant, on a temporary basis, the interim relief requested by Zena regarding their queue position…. Therefore, I grant Zena's motion for preliminary relief and direct PGE to keep Zena in its current position in the queue.")

proposed interconnection agreement and, within 30 days of providing such notice, files an arbitration petition pursuant to OAR 860-082-0080, an expedited complaint pursuant to ORS 756.500, or a petition for alternative dispute resolution before a mediator pursuant to OAR 860-002-0000 *et seq.*

Dated this 28th day of June 2023.

Respectfully submitted,

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ADDENDUM – PROPOSED RULE REVISION

Proposed Edits to IREC's Proposal Filed June 16, 2023:

OAR 860-082-0025(7)(f) Interconnection Agreement. If the proposed interconnection requires no construction of facilities by the public utility, the public utility must provide the applicant an executed interconnection agreement no later than five business days after providing Tier 2 or Tier 3 screen results, approving the interconnection despite screen failure, the applicant options meeting, providing supplemental review screen results, or completing the last tier 4 study. If the proposed interconnection requires construction of facilities, the public utility must provide the applicant an executed interconnection agreement, along with a non-binding good faith cost estimate and construction schedule for any required upgrades, no later than fifteen 15 business days after the applicant options meeting, approval despite screen failure, providing supplemental review screen results, or completing the last tier 4 study. If the applicant does not return a countersigned interconnection agreement ~~and any required deposit~~ to the public utility, ~~or~~ request negotiation of a non-standard interconnection agreement, or provide the public utility with written notice of intent to initiate an available dispute resolution process within ~~15 business~~ 30 days of receipt of an executed interconnection agreement, the application is deemed withdrawn. In the event that the applicant provides notice of intent to initiate an available dispute resolution process, the applicant shall file an arbitration petition pursuant to OAR 860-082-0080, an expedited complaint pursuant to ORS 756.500, or a petition for alternative dispute resolution before a mediator pursuant to OAR 860-002-0000 *et seq.* within 30 days of sending the utility the notice of intent to initiate dispute resolution. The applicant's queue position will be maintained during the applicant's chosen dispute resolution process.