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April 4, 2024

Via Electronic Mail and US First Class Mail

Filing Center
Public Utility Commission of Oregon
P.O. Box 1088
Salem, OR 97308-1088
puc.filingcenter@puc.oregon.gov

Re: Sunthurst Energy, LLC, Complainant
PacifiCorp, Defendant

Attention Filing Center:

Attached for filing is an electronic version of *Sunthurst Energy, LLC's Motion for Interim Relief and Preliminary Injunction* and *Sunthurst Energy, LLC's Declaration of Daniel Hale in Support of Motion for Interim Relief and Preliminary Injunction.* Complainants respectfully seek expedited consideration of this request today to avert potential termination of their PacifiCorp Community Solar Project interconnection agreements as early as Sunday, April 7, 2024.

Thank you in advance for your assistance.

Sincerely,

Ken Kaufmann
Attorney for Sunthurst Energy, LLC

Attach.

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

Docket No. UM _____

PILOT ROCK SOLAR 1, LLC, an Oregon limited liability company; **PILOT ROCK SOLAR 2, LLC**, an Oregon limited liability company; **TUTUILLA SOLAR, LLC**, an Oregon limited liability company; **BUCKAROO SOLAR 1**, **LLC**, an Oregon limited liability company; and **BUCKAROO SOLAR 2, LLC**; an Oregon limited liability company; Complainants, v. PACIFICORP D/B/A PACIFIC POWER, an Oregon corporation, Defendant.	COMPLAINANTS' MOTION FOR INTERIM RELIEF AND PRELIMINARY INJUNCTION EXPEDITED CONSIDERATION REQUESTED

I. INTRODUCTION

Complainants (aka "the Sunthurst Projects"[1]) hereby move the Oregon Public Utility Commission ("OPUC" or the "Commission") for interim relief to prevent irreparable harm to Complainants and to the Oregon Community Solar Program (the

[1] Complainants are five wholly owned subsidiaries of Sunthurst Energy, LLC. Pilot Rock Solar 1, LLC ("Pilot Rock 1") and the adjacent Pilot Rock Solar 2, LLC ("Pilot Rock 2") applied for and each received an INTERCONNECTION AGREEMENT FOR SMALL GENERATOR FACILITY. Tutuilla Solar, LLC ("Tutuilla), Buckaroo Solar 1 ("Buckaroo 1"), and Buckaroo Solar 2 ("Buckaroo 2") applied for and each received an INTERCONNECTION AGREEMENT FOR A COMMUNITY SOLAR PROJECT. All five Sunthurst Projects are Pre-Certified under Oregon's Community Solar Program.

"CSP"). Complainants attempted to resolve this matter with Defendant before filiing but were unsuccessful.

Complainants filed their Complaint so that the Commission could make just and reasonable amendments to their interconnection agreements (IAs) with PacifiCorp consistent with Section 8.10 of those Commission-approved form documents. Yet PacifiCorp d/b/a Pacific Power ("PacifiCorp") is threatening to terminate the IAs on or after April 7, 2024 based on a dispute over the very provisions that Complainants seeks to have the Commission review because they are unjust and unreasonable. Termination will effectively remove Complainants from the interconnection queue, causing them irreparable harm and preventing the Commission from meaningfully implementing Section 8.10 for the benefit of Complainants and the CSP. Complainants respectfully requests that the Commission promptly grant the requested relief and enjoin PacifiCorp from terminating the IAs. **Complainants seek expedited consideration of this request to avoid termination as early as April 7, 2024.**

Complainants believe this matter to be the first time the Commission will have considered and applied Section 8.10. Granting interim relief during the pendency of a Section 8.10 filing is necessary to meaningfully implement that provision. Also, granting the requested relief will uphold the Commission's public policy goals by facilitating a fair interconnection process, preventing undue discrimination, and promoting a just, speedy, and inexpensive resolution of disputes. It will also uphold the Commission's mandates to protect customers, promote qualifying facility ("QF") development under the Public Utility Regulatory Policies Act ("PURPA"), and establish the Oregon Community Solar Program, as Complainants are pre-certified projects in PacifiCorp's woefully

under-developed Community Solar Program. Without interim relief from the Commission, Complainants will not be able to develop their projects[2] and make good on the commitments Complainants, the Commission, and the Oregon State Legislature made to community solar subscribers in PacifiCorp's service territory. Further, granting the preliminary injunction likely will not unduly harm any lower-queued projects. On April 3, 2024, Complainants searched Serial, Community Solar, Transitional, and Provisional queues posted on PacifiCorp's OASIS website and found no lower-queued requests on any of the four distribution circuits where Complainants' projects will interconnect. To the best of Complainant's knowledge, no projects would be impacted directly by Complainant's requested relief.

II. BACKGROUND ON THE SECTION 8.10 COMPLAINT

Complainants and PacifiCorp dispute the appropriate payment and performance deadlines that should govern the IAs. Complainanats are alleging that PacifiCorp is imposing unjust and unreasonable demands upon them, while PacifiCorp seeks to enforce payment milestone dates that bear little relation to PacifiCorp's timing of expendidures and construction completion timelines that unfairly burden Complainants. Section 8.10 of the IAs gives the Commission broad authority to consider and rectify this situation. It states:

> **Reservation of Rights.** Either Party will have the right to make a unilateral filing with the Commission to modify this Agreement. This reservation of rights provision will [sic] includes but is not limited to modifications with respect to any rates terms and conditions, charges, classification of

[2] In support of this motion, Complainants submit the Declaration of Daniel Hale, the respective developer of Complainants' pre-certified projects, attached.

> service, rule or regulation under tariff rates or any applicable State or Federal law or regulation. Each Party shall have the right to protest any such filing and to participate fully in any proceeding before the Commission in which such modifications may be considered.[3]

Yet because Complainants are unable to comply with PacifiCorp's accelerated demands for excessive payments for unnecessary equipment, PacifiCorp has taken the position that Complainants are in default of the IAs. PacifiCorp is threatening the terminate the IAs on or after April 7, 2024.

Complainants seek interim relief to prevent irreparable harm and to allow this proceeding to be fully heard and considered, as Complainants believes is the intent of Section 8.10.

If Complainants were to concede to PacifiCorp's demands, they would be foregoing their right to interconnect consistent with the Commission's rules for interconnection. For instance, the Commission's Small Generator Interconnection Rules

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[3] The quoted language is from PacifiCorp's INTERCONNECTION AGREEMENT FOR SMALL GENERATOR FACILITY and is in the Pilot Rock Solar 1 and Pilot Rock Solar 2 interconnection agreements. Section 8.10 of the INTERCONNECTION AGREEMENT FOR A COMMUNITY SOLAR PROJECT, which is in the Tutuilla, Buckaroo 1, and Buckaroo 2 interconnection agreements, provides:

> Either Party will have the right to make a unilateral filing with the Commission to modify this Agreement. This reservation of rights provision will [sic] includes but is not limited to modifications with respect to any rates terms and conditions, charges, classification of service, rule or regulation under CSP Interconnection Procedures rates or any applicable State or Federal law or regulation. Each Party shall have the right to protest any such filing and to participate fully in any proceeding before the Commission in which such modifications may be considered.

For purposes of this complaint, the two provisions are essentially the same.

(OAR 860-082) specify that interconnection customers like Complainants need only pay for the "reasonable costs" of interconnection facilities and network upgrades that are "necessary to safely interconnect" the customer's facility.[4] Complainants and PacifiCorp dispute whether certain equipment is necessary, and Complainants believes no cost for unnecessary equipment could be reasonable. Thus, this proceeding seeks the Commission's review and appropriate amendments to ultimately enforce the Commission's rules and facilitate a fair and just interconnection process. However, without the interim relief requested in this motion, Complainants could not maintain their complaint. The Commission should not allow PacifiCorp to circumvent the application of the Commission's rules and undermine the potential of the Community Solar Program by preventing the fair consideration of Complainants' complaint through the untimely and unlawful termination of Complainants's IAs.

III. LEGAL STANDARD

Whether an interconnection customer can maintain its interconnection agreement (and therefore its queue position) during the pendency of a Section 8.10 proceeding appears to present a question of law not yet decided by this Commission. The Commission's orders and Administrative Law Judge ("ALJ") rulings have applied three different standards for interim relief in other types of proceedings, but to Complainants's knowledge, no Commission or ALJ order or ruling has addressed the question of which standard to apply to Section 8.10 proceedings. Complainants explains all three potentially applicable legal standards in this section. Notably, Complainants would qualify for relief

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[4] OAR 860-082-0035.

under any applicable standard. Therefore, the Commission does not need to decide this question to resolve this motion.

A. The Commission Has Adopted ORCP 79A for Some Motions for Interim Relief

OAR 860-001-0000(1) states that the Oregon Rules of Civil Procedure ("ORCPs") apply in the Commission's contested case proceedings "unless inconsistent with these rules, a Commission order, or an [ALJ] ruling."[5] In 1999, the Commission recognized its authority to order utilities to act (or not act) pending a dispute and stated that it would apply ORCP 79A to determine whether to order temporary relief.[6]

Then, in 2001, the Commission held that using preliminary injunction standards were appropriate for the particular request for interim relief it was reviewing, explaining that the standards were "logical, well established, and require the moving party to make a substantial but not overly burdensome showing before emergency relief is granted."[7] In that case, the Commission decided to apply ORCP 79A once again, but it stated that the standards were appropriate specifically for that proceeding, leaving it unclear if the Commission would apply the same standard elsewhere. [8]

In 2018, the Commission affirmed the use of ORCP 79A in contested case proceedings generally, but it did not address the specific question of complaints under

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5 OAR 860-001-0000(1).

6 *Rio Communications v. US West Communications*, Docket No. UC 410, Order No. 99-349, LEXIS at *7-8 (May 24, 1999).

7 *Wah Chang v. PacifiCorp*, Docket No. UM 1002, Order No. 01-185 at 3 (Feb. 21, 2001).

8 Docket No. UM 1002, Order No. 01-185 at 3.

Section 8.10 of the *pro forma* small generator interconnection and Community Solar Project interconnection agreements.[9]

Under ORCP 79A, a tribunal may grant a preliminary injunction either:

> 1) When it appears that a party is entitled to relief demanded in a pleading, and such relief, or any part thereof, consists of restraining the commission or continuance of some act, the commission or continuance of which during the litigation would produce injury to the party seeking the relief; or
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> 2) When it appears that the party against whom a judgment is sought is doing or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the rights of a party seeking judgment concerning the subject matter of the action, and tending to render the judgment ineffectual.[10]

Oregon courts have interpreted ORCP 79 to require that: 1) there must be an irreparable harm for which there is no adequate remedy at law;[11] 2) the threatened injury must be real and substantial,[12] and be a continuous harm or threat of harm;[13] and 3) the tribunal may consider the balance of the equities between the parties.[14]

Harm is irreparable and without legal remedy where no amount of monetary damages can provide complete recovery. It "depends not upon the magnitude of the injury, but upon the completeness of the remedy in law."[15] To be "adequate," the legal

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9 *Lightspeed Networks v. Hunter Communications*, Docket No. UM 1937, Order No. 18-108 at 3 (Mar. 30, 2018) (citing Docket No. UC 410, Order No. 99-349).

10 ORCP 79A.

11 *Knight v. Nyara*, 240 Or App 586, 597 (2011) (citing *Wilson v. Parent*, 228 Or 354, 369-370 (1961)).

12 *Wilson*, 228 Or at 370.

13 *Knight*, 240 Or App at 597.

14 *Hickman v. Six Dimension Custom Homes, Inc.*, 273 Or 894, 898 (1975) (citations omitted).

15 *Winslow v. Fleischner*, 110 Or 554, 563 (1924), *cited by Arlington Sch. Dist. No. 3 v. Arlington Educ. Ass'n*, 184 Or App 97, 101–102 (2002).

remedy must be "practical, efficient, and adequate, as a full remedy as that which can be obtained in equity."[16]

Specifically, injunctive relief may be appropriate in the following circumstances:

1) Where there is a possibility of being forced out of business;[17] or

2) Where there is a statutory right to injunctive relief.[18]

Regarding the balance of equities, Complainants notes that a 2020 ALJ Ruling granted interim relief to an interconnection customer where a lower-queued customer stated its non-objection to the relief.[19] The Ruling also relied upon the fact that the interconnection customer stated that it requested to negotiate a non-standard agreement.[20] Thus, the Commission appears to recognize that the balance of equities should also consider non-parties to the dispute, specifically lower-queued customers.

B. For Yet Other Motions for Interim Relief, the Commission Has Adopted a Different Legal Standard that Focused on Harm to Customers

In other proceedings, the Commission has applied a different legal standard to determine whether interim relief was warranted. In 2015, the Commission issued the first of three orders to Oregon's investor-owned electric utilities, granting interim relief by lowering the eligibility cap on QFs for power purchase agreements. The Commission

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16 *Alsea Veneer, Inc. v. State,* 318 Or 33, 43 (1993).

17 *Los Angeles Mem'l Coliseum Com. v. Nat'l Football League,* 634 F2d 1197, 1203 (9th Cir 1980); *see also* Docket No. UC 410, Order No. 99-349, LEXIS at *8.

18 *See Napolski v. Champney,* 295 Or 408, 415–416 (1983) (Oregon landlord-tenant law allows a tenant to bring an action for damages or injunctive relief when a landlord is not compliant with the law).

19 *Zena Solar, LLC v. PGE*, Docket No. UM 2074, Ruling at 2 (March 27, 2020).

20 Docket No. UM 2074, Ruling at 2.

noted its view that such interim relief should be "narrow, targeted, and proportionate."[21] In those three orders, the Commission identified the primary question in awarding interim relief is whether doing so will prevent harm to utility customers from potential, significant cost impacts.[22] The Commission later affirmed that harm to customers is the primary question and also clarified that the potential harm to customers should be "concrete and imminent as opposed to generalized and lacking specificity."[23] Complainants understands that the Commission's orders were intended to protect the utility and its customers from harm, but in a carefully constructed manner that limited any potential harm to the counter parties. This standard is similar to that for injunctive relief in ORCP 79A, but without the requirement that the party seeking the relief would go out of business or suffer irreparable harm in which no amount of monetary damages could provide complete recovery.

C. Most Recently, the Commission Has Found Interim Relief Appropriate For Interconnection Disputes in Complaints for Enforcement

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21 *In Re Idaho Power Company Application to Lower Standard Contract Eligibility Cap and to Reduce the Standard Contract Term, for Approval of Solar Integration Change, and for Change in Resource Sufficiency Determination*, Docket No. UM 1725, Docket No. UM 1725, Order No. 15-199 at 7 (June 23, 2015).

22 Docket No. UM 1725, Order No. 15-199 at 6-7; *see also In Re PacifiCorp, dba Pacific Power, Application to Reduce the QF Contract Term and Lower the QF Standard Contract Eligibility Cap*, Docket No. UM 1734, Order No. 15-241 at 3 (Aug. 14, 2015); *see also In Re PGE Application to Lower the Standard Price and Standard Contract Eligibility Cap for Solar QFs*, Docket No. UM 1854, Order No. 17-310 at 7 (Aug. 18, 2017).

23 *In re PacifiCorp, dba PacifiC Power, Updates Standard Avoided Cost Purchases from Eligible Qualifying Facilities*, Docket No. UM 1729, Order No. 18-289 at 5 (Aug. 9, 2018).

In September 2021, the Commission faced a question of first impression as to the appropriate standard for interim relief under a complaint for enforcement of an interconnection agreement pursuant to OAR 860-082-0085. In that case of *Zena Solar v. Portland General Electric Company,* the Commission first awarded interim relief for 30 days to allow for full consideration of the unprecedented legal question.[24] Specifically the Commission prohibited the utility from terminating the interconnection customer's interconnection agreement "for a period of 30 days, or until such time as the Commission issues a ruling or order on the initial motion, whichever shall occur first."[25]

Then in Order No. 21-319, the Commission extended that interim relief for the expected pendency of the case.[26] The Commission based this approach in part on two factors: 1) a "finding of no harm to other projects in the queue"; and 2) the expedited scheduling that would govern the complaint for enforcement. The Commission stated:

> We explicitly acknowledge in this order that one reason to efficiently conduct complaints for IA enforcement is to avoid unintended consequences such as an interconnection customer being removed from a queue during the pendency of a complaint, or from discouraging an interconnection customer from bringing a complaint due to a fear of losing a queue position.[27]

Although this proceeding is not a complaint for enforcement, these public policy reasons appear equally applicable to proceedings pursuant to Section 8.10 of the IA.

IV. ARGUMENT

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24 *Zena Solar v. Portland General Electric Company,* Docket No. UM 2164, Ruling at 1 (Sept. 1, 2021).

25 *Id.*

26 Docket No. UM 2164, Order No. 21-319 at 5 (Sept. 29, 2021).

27 *Id.*

Complainants meet all three potentially applicable standards for interim relief. Additionally, such relief is warranted to effectuate the Commission's interconnection policies and uphold a fair, just, and non-discriminatory interconnection process.

A. Complainants Meets the Standard in ORCP 79A for Granting Interim Relief

No other remedy in law or equity could prevent the immediate, substantial, and irreparable harms that would flow from PacifiCorp terminating Complainants's IAs. Allowing PacifiCorp to terminate its IAs with Complainants will result in significant sunk costs or future costs for Complainants and may ultimately cause Complainants to go out of business. Complainants are entitled to interim relief under the ORCP standard, given that the harm to Complainants resulting from a termination of its IAs and removal from the interconnection queue is immediate, real and substantial, and irreparable.[28]

First, Complainants will experience immediate and irreparable harm if the Commission does not grant interim relief. Should PacifiCorp terminate the IAs, Complainants would face the choice of re-applying or abandoning their project. If Complainants re-apply, it is not clear whether they could even join the serial Community Solar interconnection queue, as PacifiCorp currently is not accepting new applications for projects like Complainants'.[29] If Complainants cannot rejoin the community solar queue,

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28 ORCP 79A.

29 *See In re Implementation of Community Solar Program*, Docket No. UM 1930, Order No. 19-392 (Nov. 8, 2019) (requiring utilities to accept new applications until the end of an 18-month period or until the aggregate capacity exceeded a certain threshold). Further, admission to the community solar queue requires meeting certain factual thresholds, and Complainants do not have sufficient information about PacifiCorp's system to know whether new applications could meet that standard. Complainant notes PacifiCorp's publicly posted community

their only option to proceed would be to enter PacifiCorp's regular clustered queue, which has experienced extensive delays and has the additional uncertainty of PacifiCorp's imminent changes to comply with the Federal Energy Regulatory Commission's ("FERC's") Order No. 2023. Complainants understand PacifiCorp is actively seeking the Commission's permission to *not* allow ANY new interconnection customers this year.[30] Thus it is possible Complainants would be entirely incapable of even beginning an alternative interconnection application this year if its current IAs were to be terminated as PacifiCorp is threatening. Even if it could do so, Complainants would then join the queue behind one or more projects, potentially making interconnection technologically impossible or prohibitively expensive.

Additionally, Complainants are pre-certified projects with limited time to achieve certification in the Community Solar Program. Community Solar Projects are typically only allowed 18 months to achieve certification from pre-certification, and one requirement of certification is that the project expect to be fully interconnected and operational within 6 months of certification.[31] Thus even *if* the Complainants could re-enter the queue, they would be substantially delayed and unable to meet the expected timeframes of the Community Solar Program. This harm extends beyond Complainants alone, as the practical impact is that the bill credits Qhat would flow to all of the

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solar queue does not indicate any new applications since April of *last* year. See *PacifiCorp Community Solar Interconnection Queue*, oasis.oati.com/woa/docs/PPW/PPWdocs/pacificorpocsiaq.htm. (last accessed April 4, 2024).

30 *See generally In re PacifiCorp Application for Waiver of Large and Small Generator Interconnection Procedures,* Docket No. UM 2361.

31 OAR 860-088-0040; Program Implementation Manual at 82.

subscribers to Complainants' projects will similarly be delayed. This undermines the Community Solar Program itself, particularly as PacifiCorp's program is so under-developed. A January 2024 OPUC Staff Report to the Commission noted that of the 161 MW capacity initially allocated for Community Solar in 2019, only 29.1 MW have achieved operation, and only 2.4 MW of the operational projects are in PacifiCorp's service territory.[32] At this time it is not clear whether PacifiCorp's Community Solar Program would even be available for Complainants to re-apply to if they lost their IAs and lost their pre-certified status. The program is set to stop accepting new applications for pre-certification in January 2026.[33] Thus PacifiCorp's termination of Complainants' IAs could prevent Complainants from getting interconnectioned, prevent Complainants from participating in and supporting the Community Solar Program, prevent Complainants from delivering expected bill credits to community solar subscribers, and ultimately prevent the full development of the Community Solar Program in PacifiCorp's service territory.

Such a result poses more than just a substantial temporal and financial burden on Complainants. If Complainants are not able to absorb the costs associated with the re-application process and is forced to abandon its project, Complainants will suffer significant and unrecoverable sunk costs, a high probability of significant future costs, loss of the opportunity to develop its project, and ultimate loss of the business venture due to prohibitively high costs. Therefore, under the first prong of the three-prong test in

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32 Docket No. UM 1930, Staff Report at 4 (Jan. 2024).

33 Docket No. UM 1930, Order No. 24-026 (Jan. 26, 2024).

the ORCP standard, Complainants is entitled to interim relief from the immediate and irreparable harm that will occur should the Commission allow PacifiCorp to terminate the IA.

Alternatively, if PacifiCorp is allowed to terminate the IAs prior to Commission's determination of the merits, Complainant could prevail and yet have no remedy because PacifiCorp erased it from the queue, and because their interconnection agreements (Section 5.4) purports to waive recovery of consequential damages., Complainants will face the real and substantial harm of having to incur potentially unreasonable and unnecessary costs it may never be able to recover. Even if Complainants are able to successfully recover these costs, they will nevertheless be irreparably harmed by having to expend time and resources to pursue the lengthy administrative battle against PacifiCorp in order to achieve such relief.

Second, the threatened injury has more than a mere potential to impose significant costs upon Complainants. PacifiCorp is threatening to terminate the IA as early as April 7, 2024.[34] This is a real and substantial threat of harm. Therefore, granting injunctive relief will prevent a probable and significant injury.

Third, the balance of hardships weighs in favor of granting interim relief. As was previously mentioned, if PacifiCorp terminates the IA and Complainants are withdrawn from the queue, Complainants will suffer significant sunk costs they cannot recover, lose the opportunity to develop their projects, and go out of business.[35] If the Commission

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34 Declaration of Dan Hale.

35 Declaration of Dan Hale.

grants injunctive relief, there is no harm to PacifiCorp, and PacifiCorp will simply be obligated to continue working to provide interconnection service. In the end, the balance of hardships favors granting interim relief for Complainants.

B. Complainants Also Meet the Commission's Alternative Test for Granting Interim Relief Where The Focus is Harm to Customers

Complainants also meets the Commission's alternative test for granting interim relief where such relief is narrow and avoids the potential for significant costs to utility customers. Here, Complainants seek relief only for the pendency of this case, which Complainants hope to be resolved speedily. Further, Complainants are utility customers, and the potential costs to Complainants from denying interim relief could be catastrophic. Finally, these potential costs are concrete and imminent, because PacifiCorp is threatening to terminate the IAs on or after April 7, 2024.

In considering the potential for significant costs factor, Complainants urges the Commission to recognize the broader cost considerations beyond their own projects, as the Commission's decision here—that is, whether a utility has the discretion to remove an interconnection customer from the queue when the interconnection customer seeks the Commission's review on the reasonableness or necessity of the utility's proposed upgrades—will impact all customers and the interconnection process itself. Complainants are not the only utility customers who face potential costs from denying interim relief. All interconnection customers and retail ratepayers will have significant cost increases if the Commission does not provide interim relief to interconnection customers seeking to enforce their IAs or otherwise dispute utility interconnection proposals without losing their IA or queue position.

Complainants notes that the FERC has recognized it would be unreasonable to require interconnection customers to pay disputed costs for interconnection studies before a dispute is first resolved.[36] FERC stated that "requiring the Interconnection Customer to pay all invoiced amounts, no matter how unreasonable, or lose its Queue Position would invite abuse on the part of the Transmission Provider."[37]

1. Interconnection Customers Will Face Excessive Costs If There Is No Reasonable Way to Dispute Utility Interconnection Upgrades

The Commission has approved a community solar IA that provides interconnection customers may petition the Commission to review and amend the IA as appropriate. This provision would lose much of its practical meaning if interconnection customers could not obtain adequate interim relief during the pendency of such a case. Here, PacifiCorp threatens to terminate the IA based on the very terms that Complainants seeks to have the Commission review. Allowing PacifiCorp to do so would essentially end this case before it began. This would make the Commission's approved template language ineffective and largely eliminate interconnection customers' right to ask the Commission to review and amend IAs.

Denying interim relief would not only undermine the Commission's specified provision as a legal or policy matter, but it would have substantial practical consequences as well. Complainants exemplifies this predicament. Whether an interconnection customer like Complainants might face removal from the queue materially alters the

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[36] *Standardization of Generator Interconnection Agreements and Procedures,* 104 FERC ¶ 61,103, P 278 (2003) (FERCOrder No. 2003).

[37] FERC Order No. 2003 at P 278.

bargaining position between the utility and the interconnection customer. Allowing PacifiCorp to terminate an IA the customer is actively seeking to have the Commission to review would allow utilities to leverage disproportionate bargaining power during negotiations to enter into or amend interconnection agreements. Utilities will be able to force interconnection customers to either: 1) agree to terms that favor the utility; or 2) face termination of their IA and the loss of their queue position.

If a customer refuses these choices and instead seeks relief through litigation, the practical impacts become only more stark and clear. Interconnection customers like Complainants will have the following practical choices without interim relief. First, the interconnection customer can maintain its queue position by paying for the unnecessary upgrades during the pendency of their litigation. While litigating the case, the utility will construct the disputed upgrades.[38] Second, the interconnection customer can lose their queue position and litigate the dispute. Under either approach, interconnection customers are discouraged from challenging utility decisions no matter how unreasonable.

These two choices, while feasible in theory, are unreasonable in reality. For many interconnection customers, especially small ones like Complainants, the combined expenses of disputed costs and litigation will be too much to bear. Only developers that can afford to lose the case and be liable for disputed costs will be able to move forward with both litigation and construction. For example, Complainants is unable to pay for PacifiCorp's proposed interconnection upgrades, and is unwilling to take responsibility

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[38] The utility could itself seek interim relief. However, it would be inefficient and manifestly unfair to deny interim relief to a customer, require the customer to pay for upgrades, and then excuse the utility from doing the work it was paid to do.

for these higher costs if it loses this litigation. Interim relief is appropriate in this circumstance.

The practical consequences would also resonate throughout the interconnection queue. If the Commission denies interim relief, it would cost the litigating interconnection customer its queue position, which almost always means that the customer will not receive any practical benefit from litigating because the customer behind them would enjoy the fruits of the litigation.[39] For example, assume that there is only 3 MW of interconnection capacity available, and there are two 3 MW interconnection customers. If the first interconnection customer challenges the utility's proposed upgrades and loses its queue position, then they are effectively moved to the second queue position, and there is no more additional capacity for their construction. If they can afford it, then the first interconnection customer is likely to pay for whatever unreasonable and unnecessary costs the utility imposes, solely so that they do not lose their queue position. Small customers like Complainants cannot afford this costly queue-position insurance approach.

The Commission could reinstate the first interconnection customer if they win their litigation, such that costs are allocated appropriately between the two interconnection customers as they would have been if the utility's upgrades were correct in the first place and no dispute occurred. However, this would harm both

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[39] While there may not always be another interconnection customer in the queue behind a litigating interconnection customer, there will (almost) always be the risk that a new interconnection customer enters the queue before the litigation ends and the litigant re-enters the queue.

interconnection customers. The first interconnection customer would not know whether or not they will be reinstated. This uncertainty imposes risk on their business. The second interconnection customer would also experience harm because they would move forward as if they are at the top of the interconnection queue, perhaps unknowing that their position is even in question while the litigation proceeds. The second interconnection customer may pay for study or upgrade costs, which may provide no benefit if the first interconnection customer is reinstated in its queue position. The most preferable outcome to the second interconnection customer is simply for the parties and Commision to promptly resolve the dispute. If the utility is wrong (as Complainants believes), the second interconnection customer will not benefit from the first interconnection customer leaving the queue. Instead, the second interconnection customer would merely inherit the disputed upgrades.

The Commission should promote an effective dispute resolution process that can examine allegations of utility mistakes and amend IAs quickly to be just and reasonable while imposing minimal disruption to interconnection customers. Granting interim relief during the pendency of a swift process is a necessary component.

2. Ratepayers Could Face Imprudent Costs if the Commission Denies Interim Relief to Interconnection Customers Disputing Utility Upgrades

Denying interim relief would not only require interconnection customers to pay for disputed upgrades, but it would require utilities to build potentially unnecessary and unreasonable facilities. For example, Complainants is disputing whether PacifiCorp should construct certain proposed upgrades or not. PacifiCorp should not charge for those costs long in advance of construction, nor actually begin construction when there is

a possibility that the Commission may decide those upgrades were not reasonable or necessary. As those costs could not be passed to Complainants, PacifiCorp's shareholders or ratepayers would be responsible for the costs of interconnection facilities that were imprudent to build. Further, Community Solar subscribers, like those for Complainants's project, will not receive bill credits from projects like Complainants's if utilities impose unreasonable requirements and build unnecessary and expensive facilities. Thus, granting interim relief protects more entities than just Complainants.

Also, granting interim relief and upholding the Commission's ability to amend an interconnection agreement under Section 8.10 will benefit ratepayers even in disputes where the parties agree on the upgrades but disagree over who must pay for them. Requiring interconnection customers to pay would allow a utility to abuse an interconnection process, as FERC recognized. Like FERC, the Commission predicates its interconnection process upon a fair, reasonable, and nondiscriminatory process. ORS 757.325 provides, "[n]o public utility shall . . . subject any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect."[40] Interconnection costs imposed on a QF must also be assessed on a nondiscriminatory basis.[41] OAR 860-082-0035(4) and OAR 860-082-0015(1) additionally only allow PacifiCorp to charge Complainants for interconnection costs that are reasonable, necessary, and attributable to the adverse impacts caused by Complainants's interconnection.[42]

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40 ORS 757.325.
41 18 CFR 292.306(a).
42 OAR 860-082-0015(1); OAR 860-082-0035(4).

In this case, Complainants asserts that the costs assessed are unreasonable, unnecessary, and not caused by its interconnection. The rules described in the preceding paragraph encourage Complainants to bring a claim against a utility if it has acted in a discriminatory manner and assessed unreasonable and unnecessary costs for system upgrades not attributable to the interconnection customers. Denying this motion for interim relief would have an opposite, chilling effect, where interconnection customers would be discouraged from challenging a utility under these rules for fear of losing their interconnection queue position.

The Commission should not allow utilities to penalize interconnection customers by terminating their IAs for challenging a utility decision. Yet denying interim relief would act as a penalty, one which the utilities could abuse to reduce competition. This abuse would ultimately harm utility ratepayers because competition encourages efficiency and reduces costs. Without a viable interconnection process, non-utility generators will be unable to compete, even in requests for proposals. This will ultimately result in higher costs to utility ratepayers.

As a result, awarding interim relief is consistent with the Commission's primary mandate to protect both interconnection customers and ratepayers. The Commission has the general power to protect customers of any public utility (including Complainants) in all controversies and matters where the Commission has jurisdiction. The Commission has the power to protect customers from unjust and unreasonable exactions and practices imposed on customers seeking to obtain adequate service at fair and reasonable rates.[43]

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[43] ORS 756.040(1).

When exercising these general powers, the Commission must balance the interests of the utility investor and the consumer.[44] The Commission cannot protect interconnection customers or ratepayers if it cannot hear complaints or Section 8.10 requests. Neither PacifiCorp nor its ratepayers will be unduly burdened by a Commission resolution, which is only possible if the Commission first grants interim relief.

3. Denying Interim Relief Will Also Impose Excessive Costs on the Commission Itself

If the Commission refuses to protect an existing IA during the pendency of an enforcement complaint, it will force interconnection customers to file for relief as early as possible. The practical effect of an interconnection customer spending more time working with the utility rather than promptly filing for relief results in the interconnection customer having less time to adjudicate any dispute if the parties cannot reach an agreement. Initiating a hurried proceeding, or proceeding that must be cut short due to IA termination, would result in an administratively inefficient and wasteful process. The Commission should encourage good-faith negotiations to avoid litigation by liberally granting interim relief as needed for the pendency of proceedings.

Additionally, denying interim relief to interconnection customers like Complainants (a QF and pre-certified project for the Oregon Community Solar Program) would increase the Commission's costs in carrying out its mandates to: 1) adopt policies and rules that promote QF development; and 2) establish the Community Solar

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[44] ORS 756.040(1).

Program.[45] Neither goal can be achieved if QFs and Community Solar projects cannot achieve interim relief while seeking Commission resolution of disputes with the utility. Thus, from a state policy implementation standpoint, it is in the Commission's interest to grant this motion for interim relief.

C. Complainants Meets the *Zena Solar* Standard for Granting Interim Relief

Although Complainants is not seeking specifically to enforce its complaint and is instead seeking Commission review and amendment of certain provisions under Section 8.10 of PacifiCorp's community solar IA, the public policy reasons from *Zena Solar* apply here. Just as there, the Commission should act to "avoid unintended consequences such as an interconnection customer being removed from a queue during the pendency of a complaint, or from discouraging an interconnection customer from bringing a complaint due to a fear of losing a queue position."[46]

Regarding the first factor of harm to other projects in the queue, Complainants recent electronic search of interconnection queues posted on PacifiCorp's website revealed no evidence of any junior position seeking interconnection to the circuits that will connect to Complainants' projects; it is reasonable to find that interim relief will not cause harm to other projects in those queues.[47] Thus the commission should find there is no harm to lower-queued projects in this case.

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45 *In Re Commission Staff's Investigation Relating to Electric Utility Purchases from QFs*, Docket No. UM 1129, Order No. 05-584 (May 13, 2005); ORS 757.386.

46 *Id.*

47 As noted earlier, PacifiCorp's community solar queue does not indicate any new applications since April of 2023.

Regarding the second factor of granting interim relief only for an expedited case, Complainants notes that it would gladly support having this complaint follow expedited procedures. Complainants's financing depends in part of the expeditious processing of this case.

Therefore Complainants satisfies both factors of the standard the Commission most recently articulated.

V. CONCLUSION

For the reasons articulated above, the Commission should grant Complainants's request for interim relief and order PacifiCorp not to terminate its IA with Complainants or withdraw Complainants from the interconnection queue during the pendency of this case. Allowing PacifiCorp to terminate the very IA that Complainants seeks to have the Commission review would be manifestly unjust and would eviscerate interconnection customers' right to seek Commission review under Section 8.10.

Dated this 4th day of April 2024.

Respectfully submitted,

By: _____
Kenneth E. Kaufmann, OSB 982672
Attorney for Complainants

CERTIFICATE OF SERVICE

In accordance with OAR 860-082-0085 and OAR 860-001-0180; I certify that on April 4, 2024, I filed and served a full and exact copy of the foregoing **Sunthurst Energy, LLC's Motion for Interim Relief and Preliminary Injunction** and **Sunthurst Energy, LLC's Declaration of Daniel Hale in Support of Motion for Interim Relief and Preliminary Injunction** upon the parties shown below via:

☒ First Class Mail with postage prepaid, deposited in the US Mail at Tigard, Oregon
☐ hand delivery
☐ facsimile transmission
☐ overnight delivery
☒ e-mail
☒ OPUC EFILING SYSTEM, if registered at the party's e-mail address as recorded on the date of service in the eFiling system, pursuant to UTCR 21.100 addressed to the following parties at the address(es) listed below:

Kristopher Bremer Pacific Power 825 NE Multnomah, Suite 800 Portland, OR 97232 **Kristopher.Bremer@PacifiCorp.com** (electronic mail)	Filing Center Public Utility Commission of Oregon PO Box 1088 Salem, OR 97308-1088 **PUC.FilingCenter@puc.oregon.gov** (electronic mail and USPS First Class Mail)
Matthew Loftus Pacific Power 825 NE Multnomah, Suite 1600 Portland, OR 97232 **Matthew.Loftus@PacifiCorp.com** (electronic mail)	Pacific Power 825 NE Multnomah, Suite 2000 Portland, OR 97232 **oregondockets@PacifiCorp.com** (electronic mail)

Dated: April 4, 2024
s/ Kenneth E Kaufmann
Kenneth E Kaufmann
Attorney for Sunthurst Energy, LLC
OSB# 982672

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BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

DOCKET NO. UM 2118

PILOT ROCK SOLAR 1, LLC, an Oregon limited liability company, PILOT ROCK SOLAR 2, LLC, Etc. Complainant, v. PACIFICORP d/b/a Pacific Power, an Oregon corporation, Defendant	DECLARATION OF DANIEL HALE

I, DANIEL HALE, declare under penalty of perjury under the laws of the state of Oregon:

1. My name is Daniel Hale. I am president and owner of Sunthurst Energy, LLC (Sunthurst), an Oregon company located at: 43682 SW Brower Lane, Pendleton, OR.
2. Sunthurst Energy, LLC is the sole owner of Complainants Pilot Rock Solar 1, LLC; Pilot Rock Solar 2, LLC; Tutuilla Solar, LLC, Buckaroo Solar 1, LLC, and Buckaroo Solar 2, LLC (the "Sunthurst Projects" aka "Complainants' Projects").
3. I am the Manager of each of Complainants'. This Declaration is based on my personal knowledge and, if called to testify to the following facts, I could and would competently do so. I submit this declaration in support of Complainants' Motion for Interim Relief and Preliminary Injunction.

4. Each of Complainants' Projects is party to an interconnection agreement with PacifiCorp.
5. On February 7, 2024 PacifiCorp issued a default notice to each of the Sunthurst Projects for nonpayment of the third milestone payment under their respective interconnection agreement. The total from five projects is about $775,000.
6. Complainants' Projects have not paid the required third milestone payments because PacifiCorp has not acted in good faith and because it has not offered to build Project interconnections on terms that are just and reasonable.
7. PacifiCorp is unwilling to discuss the terms of its service, other than to postpone milestones—with a day for day postponement of the commercial operation date. Such an offer does not result in just and reasonable service.
8. PacifiCorp has represented that it may terminate the interconnection agreements if each Complainant does not cure its default by April 7, 2024.
9. PacifiCorp refused to grant Complainants any grace period beyond April 7, even though Sunthurst inquiries to PacifiCorp went unanswered, from March 25-April 1 due to vacation schedules.
10. Complainants are unable to pay the third milestone payments at this time.
11. If Complainants' interconnection agreements are terminated, Complainants will lose their queue positions.
12. If Complainants' interconnection agreements are terminated, Complainants will suffer significant and unrecoverable sunk costs.

13. If Complainants' interconnection agreements are terminated, Complainants fear they will lose the opportunity to develop their projects.

14. If Complainants cannot develop their projects, they will not be able to deliver bill credits to the community solar subscribers.

15. If Complainants' interconnection agreements are terminated, Complainants may go out of business.

16. Sunthurst is a small, family-owned developer of renewable energy headquartered in Oregon. In 2018, Sunthurst answered the State's call to participate in Oregon's new community solar program created in 2016 by Senate Bill 1547. Since then, Sunthurst's primary focus has been developing five Oregon community solar projects. One of its projects is 35% constructed, but cannot proceed further until interconnection issues are resolved. It hasn't been easy, but I trust Oregon won't let the program fail, and remain committed to the ideals of community solar.

17. Many persons and organizations have put their faith in Complainants and the Commission to deliver community solar projects, and hope to benefit when those projects are completed. Those persons and organizations include providers of low-income housing and individual low-income customers, private businesses, and agencies of the State of Oregon seeking to become carbon neutral. They also include rural governments, including the City of Pilot Rock, City of Pendleton, and the Confederated Tribes of the Umatilla Indian Reservation (CTUIR).

18. The CTUIR are counting on one of Complainants' projects to provide affordable energy for low-income Tribal members, rental income for its Tribal industrial park, tax revenues, and technology transfer to the Tribe and its members.[1]

19. State tax-payers also have a stake in the success of the program. Several of Sunthurst's Projects are recipients of State C-REP energy grants, funded with tax revenues, because they further HB 2021 requirements. And last legislative session, County governments allowed the Legislature to extend the Net Metering tax exemptions from property taxes to Community Solar, because they understood its importance to achieving Oregon's decarbonization goals.

20. The 11.92 MW nameplate of Complainants' projects is almost five times the total Community Solar capacity currently connected to PacifiCorp. If Complainants succeed, Oregon Community Solar stakeholders will succeed, too.

21. I believe Complainants were *very* close to closing on financing in 2022, had PacifiCorp processed the PPA requests promptly. All summer long I watched interest rates and prices rise, and couldn't close without executed PPAs. I feel badly mistreated by PacifiCorp on that account.

22. There are so many ways PacifiCorp could facilitate our interconnections. For example, I have the possibility of closing on financing very soon, but only if

[1] See CTUIR's December 28, 2023 letter in support of the Tutuilla Project filed in Docket UM 2177 at: https://edocs.puc.state.or.us/efdocs/HPC/um2177hpc325977023.pdf (", the Tutuilla Solar project will directly benefit the Umatilla Indian Reservation community through a subscription agreement whereby 10% of the power generated (i.e. financial benefits) will help off-set low-income tribal households' electricity bills. Additionally, annual fair market lease payments will be paid to the Tribal Government over the life of the project along with property taxes for providing essential governmental services.")

PacifiCorp can interconnect the first three projects in 2024. These are small jobs, and can be done in weeks, whereas PacifiCorp is taking years.

23. Direct Transfer Trip is another example. I just learned from the Commission's Order 24-068, that PacifiCorp used DC capacity (which is the wrong data) for modeling interconnections for many years. Very likely this means that PacifiCorp would not have required DTT on all my projects if it had done the studies correctly. Without DTT requirements, I could have financed the Projects years ago.

24. After its mistakes on DTT and on PPA contracting, now PacifiCorp wants to terminate my contracts. I have to wonder whether it's all about killing off their competition.

25. My pre-filed testimony and exhibits are true and accurate based on my information and belief.

26. I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence before the Public Utility Commission of Oregon and is subject to penalty for perjury.

SIGNED this 4th day of April, 2024, at Portland, Oregon.

Signed: 

Daniel Hale