

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1906

Served electronically at Salem, Oregon, 10/10/17, to:

Respondent's Attorney

V. Denise Saunders
Portland General Electric Company
121 SW Salmon Street
Portland, Oregon 97204
denise.saunders@pgn.com

Complainant's Attorney & Representative

Irion A. Sanger
Sanger Law, PC
1117 SE 53rd Avenue
Portland, Oregon 97215
irion@sanger-law.com

Ryan N. Meyer
Senior Vice President
Pacific Northwest Solar, LLC
9450 SW Gemini Drive, #33304
Beaverton, Oregon 97008
rmeyer@pnw-solar.com

Re: UM 1906, Complainant, PACIFIC NORTHWEST SOLAR, LLC,
vs. PORTLAND GENERAL ELECTRIC COMPANY, Respondent

PACIFIC NORTHWEST SOLAR, LLC has filed a complaint against Portland General Electric. A copy of the complaint is attached and served on Respondent, under ORS 756.512(1). The Commission has assigned Docket No. UM 1906 to this complaint. Please use this number whenever you refer to this case.

The Public Utility Commission must receive an Answer from the Respondent or their attorney by October 30, 2017, under OAR 860-001-0400(4)(a). A copy must be served on the complainant.

After the filing of the answer, the matter will be set for hearing and you will be notified of the time and place.

PUBLIC UTILITY COMMISSION OF OREGON

/s/Cheryl Walker
Cheryl Walker
Administrative Specialist 2
Administrative Hearings Division
(503) 378-2849

c: Barbara Parr, barbara.parr@pgn.com

Attachments: Complaint; Notice of Contested Case Rights and Procedures

NOTICE OF CONTESTED CASE RIGHTS AND PROCEDURES

Oregon law requires state agencies to provide parties written notice of contested case rights and procedures. Under ORS 183.413, you are entitled to be informed of the following:

Hearing: The time and place of any hearing held in these proceedings will be noticed separately. The Commission will hold the hearing under its general authority set forth in ORS 756.040 and use procedures set forth in ORS 756.518 through 756.610 and OAR Chapter 860, Division 001. Copies of these statutes and rules may be accessed via the Commission's website at www.puc.state.or.us. The Commission will hear issues as identified by the parties.

Right to Attorney: As a party to these proceedings, you may be represented by counsel. Should you desire counsel but cannot afford one, legal aid may be able to assist you; parties are ordinarily represented by counsel. The Commission Staff, if participating as a party in the case, will be represented by the Department of Justice. Generally, once a hearing has begun, you will not be allowed to postpone the hearing to obtain counsel.

Administrative Law Judge: The Commission has delegated the authority to preside over hearings to Administrative Law Judges (ALJs). The scope of an ALJ's authority is defined in OAR 860-001-0090. The ALJs make evidentiary and other procedural rulings, analyze the contested issues, and present legal and policy recommendations to the Commission.

Hearing Rights: You have the right to respond to all issues identified and present evidence and witnesses on those issues. *See* OAR 860-001-0450 through OAR 860-001-0490. You may obtain discovery from other parties through depositions, subpoenas, and data requests. *See* ORS 756.538 and 756.543; OAR 860-001-0500 through 860-001-0540.

Evidence: Evidence is generally admissible if it is of a type relied upon by reasonable persons in the conduct of their serious affairs. *See* OAR 860-001-0450. Objections to the admissibility of evidence must be made at the time the evidence is offered. Objections are generally made on grounds that the evidence is unreliable, irrelevant, repetitious, or because its probative value is outweighed by the danger of unfair prejudice, confusion of the issues, or undue delay. The order of presenting evidence is determined by the ALJ. The burden of presenting evidence to support an allegation rests with the person raising the allegation. Generally, once a hearing is completed, the ALJ will not allow the introduction of additional evidence without good cause.

Record: The hearing will be recorded, either by a court reporter or by audio digital recording, to preserve the testimony and other evidence presented. Parties may contact the court reporter about ordering a transcript or request, if available, a copy of the audio recording from the Commission for a fee set forth in OAR 860-001-0060. The hearing record will be made part of the evidentiary record that serves as the basis for the Commission's decision and, if necessary, the record on any judicial appeal.

Final Order and Appeal: After the hearing, the ALJ will prepare a draft order resolving all issues and present it to the Commission. The draft order is not open to party comment. The Commission will make the final decision in the case and may adopt, modify, or reject the ALJ's recommendation. If you disagree with the Commission's decision, you may request reconsideration of the final order within 60 days from the date of service of the order. *See* ORS 756.561 and OAR 860-001-0720. You may also file a petition for review with the Court of Appeals within 60 days from the date of service of the order. *See* ORS 756.610.

Irion A. Sanger
OSB No. 003750
Sanger Law, PC
1117 SE 53rd Ave.
Portland, Oregon 97215
503-756-7533 (tel.)
503-334-2235 (fax)
irion@sanger-law.com

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

Pacific Northwest Solar, LLC,)	
Complainant,)	DOCKET NO. ____
)	
v.)	COMPLAINT
)	
Portland General Electric Company,)	
Defendant.)	
)	
_____)	

I. INTRODUCTION

This is a complaint (“Complaint”) filed by Pacific Northwest Solar, LLC (“PNW Solar” or “Complainant”) with the Oregon Public Utility Commission (“Commission”) under Oregon Revised Statute (“ORS”) 756.500 and Oregon Administrative Rules (“OAR”) 860-001-0170. Portland General Electric Company (“PGE”) has failed to comply with Oregon’s interconnection rules and its own study deadlines for PNW Solar’s facility (the “Starlight Project”), which is a qualifying facility (“QF”) under the Public Utility Regulatory Policies Act of 1978 (“PURPA”). Overall, PGE’s illegal delays and failures to establish reasonable deadlines has resulted in delays of 6 to 7 months. PNW Solar seeks the Commission’s assistance to force PGE to timely process its

interconnection, and ensuring that PNW Solar is held harmless from PGE's failure to comply with the law.

PGE failed to meet numerous small generator interconnection deadlines as required by OAR 860-082-0025(7)(g), and failed to provide appropriate notice of the delays. PNW Solar has not waived by agreement any of the small generator interconnection deadlines. PGE also failed to include schedules that are reasonable in its Feasibility Study Agreement and Facilities Study Agreement and has not made a reasonable and good faith effort to follow the schedules as set forth in all three of its agreements as required by OAR 860-082-0060.

PNW Solar made repeated attempts to confirm the receipt of its documents and to check on the status of PGE's review of those documents or the status of its studies. In response, PGE has repeatedly lost emails, lost letters and checks sent via U.S. mail, and delayed the interconnection process. In one instance, PNW Solar did not receive verification that its study deposit check was received by PGE until a month after it was sent.

Given PGE's missed deadlines, PNW Solar respectfully requests that the Commission: 1) confirm that PGE failed to meet applicable deadlines in the small generator interconnection rules, failed to reasonably and in good faith follow the schedules as set forth in its own Feasibility Study Agreement and Facilities Study Agreement, or provide appropriate notice of its delays; 2) confirm that PGE failed to include reasonable schedules in its Feasibility and Facilities Study Agreements; 3) confirm that PGE failed to appropriately assign PNW Solar's Starlight Project an interconnection queue position; 4) require PGE to timely complete the interconnection

process; 5) require an extension of PNW Solar's 15-year fixed price guarantee under its Power Purchase Agreement ("PPA") with PGE because PGE's delays are resulting in a delay in the Starlight Project's commercial operation date; and 6) fine PGE and impose any other such relief as warranted.

II. SERVICE

Copies of all pleadings and correspondence should be served on PNW Solar's counsel and representatives at the addresses below:

Irion Sanger
Sanger Law, PC
1117 SE 53rd Ave.
Portland, Oregon 97215
irion@sanger-law.com

Ryan N. Meyer
Senior Vice President
Pacific Northwest Solar, LLC
9450 SW Gemini Drive, #33304
Beaverton, OR 97008
rmeyer@pnw-solar.com

In support of this Complaint, PNW Solar alleges as follows:

III. IDENTITY OF THE PARTIES

1. PGE is an investor-owned public utility regulated by the Commission under ORS Chapter 757. PGE is headquartered at 121 Southwest Salmon Street, Portland, Oregon 97204.

2. PNW Solar, a limited liability company organized under the laws of Oregon, is the controlling owner and manager of the Starlight Project and will be the seller of the net output of the Starlight Project. PNW Solar's address is 9450 SW Gemini Drive, #33304, Beaverton, OR 97008.

IV. APPLICABLE STATUTES AND RULES

3. The Oregon statutes expected to be involved in this case include: ORS 756.040-756.068, 756.500-756.558, 756.990, and 758.505-758.575. The Oregon rules expected to be involved in this case include: OAR 860-001, 860-029, and 860-082.

4. The federal statute expected to be involved in this case is PURPA, 16 United States Code (“USC”) 824a-3. The federal rules expected to be involved in this case include: 18 Code of Federal Regulations (“CFR”) 292.101-292.602.

V. JURISDICTION

5. FERC has adopted regulations and policies governing utility purchases from QFs under PURPA. 18 CFR 292.101-292.602. State regulatory agencies are required to implement FERC’s regulations. See 16 USC 824a-3(f); FERC v. Mississippi, 456 U.S. 742, 751, 102 S. Ct. 2126 (1982).

6. Specifically, the state agencies that implement PURPA have authority to determine the manner for payment of interconnection costs by QFs. 18 CFR 292.306.

7. The Commission is the Oregon state agency that implements the state and federal PURPA statutes. ORS 758.505(3); OAR 860-029-0001; Snow Mountain Pine Co. v. Maudin, 84 Or. App. 590, 593 (1987). Public utilities are defined in ORS 758.505(7), and include PGE. Oregon law provides that the “terms and conditions for the purchase of energy or energy and capacity from a qualifying facility shall . . . [b]e established by rule by the commission if the purchase is by a public utility.” ORS 758.535(2)(a). The Commission has the power and jurisdiction to hear complaints by QFs against public utilities, including PGE. ORS 756.040, 756.500-756.558, and 758.505-758.555; OAR 860-001-0010(3), and 860-029-0030.

VI. FACTUAL BACKGROUND

8. The Starlight Project will be a 2.2 megawatt (“MW”) nameplate solar generation facility located in Yamhill County, Oregon.

9. The Starlight Project will interconnect with PGE.

10. On April 29, 2016, PNW Solar submitted an interconnection application for the Starlight Project to PGE.

11. On May 13, 2016, PGE confirmed the interconnection application was complete.

12. On June 6, 2016, PGE proposed that a scoping meeting be held on June 16, 2016, but PNW Solar staff was not available that day and requested an earlier time.

13. PGE held the scoping call on June 22, 2016.

14. On July 1, 2016, PGE provided an executable Feasibility Study Agreement to PNW Solar.

15. On July 18, 2016, PNW Solar executed the Feasibility Study Agreement, emailed it to PGE and mailed a check for \$1,000 for the deposit on the study.

16. On August 8, 2016, PNW Solar emailed PGE to confirm receipt of the executed Feasibility Study Agreements, but PGE claimed they had not been received.

17. On August 17, 2016, PNW Solar again emailed PGE to confirm they had received all the information and the deposit necessary to commence the Feasibility Study.

18. On August 18, 2016, PGE confirmed that it had received the executed Feasibility Study Agreement earlier and claimed that it had been misrouted.

19. The Feasibility Study Agreement provides, in section 7, that the study would be completed and transmitted within “30 calendar days” unless otherwise agreed, and, in Attachment B, for at least “60 days” to complete the study from the time the executed agreement and deposit was received. The agreement did not provide a maximum amount of time by which the study would be completed but PGE stated that

the study would be delivered by October 15, 2016 (60 calendar days from August 15, 2016).

20. PNW Solar is not aware of exactly when the Feasibility Study was completed because this information is within the exclusive control of PGE.

21. On November 1, 2016, PGE emailed PNW Solar the results of the Feasibility Study, 17 calendar days past the October 15, 2016 date PGE provided and a total of 106 calendar days after PNW Solar actually sent the agreement and deposit.

22. PGE never provided a formal Feasibility Study report, other than the November 1, 2016 email.

23. On February 10, 2017, PGE provided PNW Solar with an executable System Impact Study Agreement, over three months after the Feasibility Study email was sent.

24. On February 17, 2017, PNW Solar executed the System Impact Study Agreement and mailed it to PGE along with the study deposit.

25. The System Impact Study Agreement provides that the study will be completed and results provided to PNW Solar within 30 business days after the agreement is signed by the parties.

26. PNW Solar is not aware of exactly when the System Impact Study Agreement was received by PGE or when the System Impact Study was completed because this information is within the exclusive control of PGE.

27. On April 3, 2017, PGE provided the System Impact Study.

28. On June 13, 2017, PGE provided PNW Solar with an executable Facilities Study Agreement.

29. On June 13, 2017, PNW Solar executed the Facilities Study and mailed it on June 14, 2017. PGE confirmed that it was received on June 21, 2017.

30. The Facilities Study Agreement provides that it is to be completed within “60 days” of the date the executed agreement, deposit and other information requested in the agreement is received.

31. The Facilities Study Agreement did not specify whether the “60 days” was measured in calendar or business days.

32. PGE gave an estimated completion date for the Facilities Study of September 13, 2017, calculated based on 60 business days from the date it was received, not 60 calendar days.

33. PNW Solar is not aware of whether the Facilities Study has been completed because this information is within the exclusive control of PGE.

34. As of the date of filing, PGE has not yet provided the Facilities Study to PNW Solar, and it has been more than both 60 calendar and 60 business days since PGE received the executed agreement, deposit, and information requested.

35. In total, PGE’s delays have resulted in approximately 160 business days (230 calendar days) of delay.

36. PNW Solar requested that PGE amend its PPA to accommodate for PGE’s delay.

37. On June 23, 2017, PNW Solar sent a letter to PGE explaining how the delays have harmed its projects.

38. On July 21, 2017, PGE responded that there have only been a few delays.

39. PGE's small generator interconnection study agreements submitted to and approved by the Commission in AR 521, Order No. 09-350 provide that the Feasibility Study, System Impact Study, and Facilities Study shall be completed and the results transmitted to the Applicant within thirty (30) calendar days after the date the agreement is signed by the Parties unless the Parties agreed to an alternate schedule. PGE Compliance Filing August 21, 2009, AR 521 at 15, 20 & 24.

40. As of October 25, 2016, PGE did not maintain a posted queue for state jurisdictional interconnection requests.

41. As of October 25, 2016, PGE did not have queue numbers for state jurisdictional interconnection requests.

42. PGE later assigned Starlight Solar a queue position because one is listed in the System Impact Study dated April 3, 2017.

VII. LEGAL CLAIMS

Complainant's First Claim for Relief

PNW Solar is entitled relief because PGE failed to meet applicable deadlines in the small generator interconnection rules, failed to reasonably and in good faith follow the schedules as set forth in its Feasibility and Facilities Study Agreements, or provide appropriate notice of its delays.

43. PNW Solar re-alleges all the preceding paragraphs.

44. PGE is obligated to purchase a QF's net output that is directly or indirectly made available to PGE. 18 CFR 292.303(a), 292.304(d); ORS 758.525(2), 758.535(2)(a)&3(b); OAR 860-029-0030(1).

45. PGE is obligated to make interconnections with any QF that may be necessary to accomplish the required purchases. 18 CFR 292.303(c); OAR 860-029-0030(3).

46. PGE is obligated to meet “all applicable deadlines in the small generator interconnection rules unless the deadlines have been waived by agreement.” OAR 860-082-0025(7)(g).

47. If PGE cannot meet an applicable deadline, then PGE is obligated to provide written notice to PNW Solar explaining the reasons for the failure to meet the deadline and an estimated alternative deadline. OAR 860-082-0025(7)(g).

48. PGE is obligated to schedule a scoping meeting within 10 business days after notifying an applicant that its application is complete. OAR 860-082-0060(5).

49. PGE violated the Commission’s rules by scheduling the scoping meeting 28 business days after application was deemed complete under OAR 860-082-0025(7)(a)(A).

50. PGE is obligated to provide PNW Solar an executable Feasibility Study agreement within 5 business days of scoping meeting. OAR 860-082-0060(6).

51. PGE violated the Commission’s rules by not providing PNW Solar with an executable Feasibility Study Agreement until 7 business days after the scoping meeting.

52. PGE is obligated to make reasonable, good-faith efforts to follow the schedule set forth in the Feasibility Study Agreement for completion of the study. OAR 860-082-0060(6)(d).

53. PGE violated the Commission’s rules by providing an informal email that purports to be the Feasibility Study 17 calendar days after PGE committed to provide the Feasibility Study, and 106 calendar days after PNW Solar sent the required Agreement and deposit.

54. PGE is obligated to provide the Feasibility Study within 5 business days after completion. OAR 860-082-0060(6)(g).

55. If PGE completed the Feasibility Study more than 5 business days prior to the date it provided it to PNW Solar, then PGE violated the Commission's rules.

56. PGE is obligated to provide PNW Solar with an executable System Impact Study Agreement within 5 business days after completion of the Feasibility Study. OAR 860-082-0060(7).

57. PGE violated the Commission's rules by not providing the System Impact Study Agreement to PNW Solar until 72 business days after the Feasibility Study was provided.

58. PGE is obligated to provide the System Impact Study within 5 business days after completion. OAR 860-082-0060(7)(g).

59. If PGE completed the System Impact Study more than 5 business days prior to the date it provided it to PNW Solar, then PGE violated the Commission's rules.

60. PGE is obligated to provide PNW Solar with an executable Facilities Study Agreement within 5 business days of completion of the System Impact Study. OAR 860-082-0060(8).

61. PGE violated the Commission's rules by not providing the Facilities Study Agreement to PNW Solar until 51 business days after the System Impact Study results were provided.

62. PGE is obligated to make reasonable, good-faith efforts to follow the schedule set forth in the Facilities Study Agreement for completion of the study. OAR 860-082-0060(8)(d).

63. PGE violated the Commission's rules by not delivering the Facilities Study results within 60 calendar or within 60 business days of the date PGE received the agreement, deposit, and requested information, as provided in the Facilities Study Agreement.

64. PGE continues to violate the Commission's rules by not delivering the Facilities Study results.

65. PNW Solar is entitled to relief because of PGE's failure to meet numerous small generator interconnection deadlines as required by OAR 860-082-0025(7)(g) and the study agreements, to provide appropriate notice of the delays, and to otherwise timely process and complete the interconnection agreement process.

Complainant's Second Claim for Relief

PNW Solar is entitled relief because PGE failed to maintain a queue of pending interconnection applications and failed to appropriately assign PNW Solar's queue position.

66. PNW Solar re-alleges all the preceding paragraphs.

67. PGE is obligated to assign a queue position to PNW Solar once PGE deems PNW Solar's application complete. 860-082-0025(7)(b).

68. PGE violated the Commission's rules by not assigning PNW Solar's Starlight Project a queue position.

69. PNW Solar is entitled to relief because PGE failed to maintain a queue and failed to assign PNW Solar's Starlight Project a queue position.

Complainant's Third Claim for Relief

PNW Solar is entitled relief because PGE failed to include reasonable schedules in its Feasibility and Facilities Studies.

70. PNW Solar re-alleges all the preceding paragraphs.

71. PGE is obligated to include in its Feasibility Study Agreement, a reasonable schedule for completion of study. OAR 860-082-0060(6)(a).

72. It is not reasonable to have a Feasibility schedule that provides “at least 60 days” to complete with no end date by which completion is required.

73. PGE violated the Commission’s rules by not including a reasonable schedule in its Feasibility Study Agreement because it provides no end date on the obligation to complete.

74. PGE is obligated to include in its Facilities Study Agreement, a reasonable schedule for completion of study. OAR 860-082-0060(8)(a).

75. It is not reasonable to have a Facilities Study schedule that provides “60 days” when PGE intended it to say “60 business days.”

76. PGE violated the Commission’s rules by not including a reasonable schedule in its Facilities Study Agreement because it incorrectly identified the time to complete the study.

77. PNW Solar is entitled to relief because PGE’s study agreement schedules are not reasonable because they are unclear and inconsistent with PGE’s own estimated completion dates, PGE included an unreasonable schedule in its Feasibility Study Agreement and Facilities Study Agreement, and these unclear schedules and inconsistent representations by PGE make it difficult to track the interconnection process and allow PGE to delay the process.

Complainant’s Fourth Claim for Relief

PNW Solar is entitled to an extension of its 15-year fixed price guarantee under its PPA if PGE’s action cause PNW Solar’s date of commercial operation to be delayed.

78. PNW Solar re-alleges all the preceding paragraphs.

79. PGE has taken the position that the Starlight Solar PPA only provides fifteen years of fixed prices from the date of contract execution rather than power deliveries.

80. The Starlight Solar PPA was executed on May 20, 2016.

81. If the Starlight Solar PPA only provides fifteen years of fixed prices from the date of contract execution, then PGE's delays will result in the loss of at least 230 calendar days of fixed price power deliveries.

82. If PGE's actions result in delay in the date of PNW Solar's commercial operation, the 15-year fixed price guarantee period should be extended by at least the same amount.

83. PNW Solar is entitled to relief because PGE's delays in the interconnection process have caused or may result in the delay of PNW Solar's 15-year fixed price guarantee period.

VIII. PRAYER FOR RELIEF


WHEREFORE, PNW Solar respectfully requests the Commission issue an order:

1. Finding PGE in violation of applicable deadlines in the small generator interconnection rules.
2. Finding PGE in violation of the requirement to reasonably and in good faith following the schedules as set forth in its own Feasibility Study Agreement and Facilities Study Agreement.
3. Finding PGE in violation of its obligation to assign PNW Solar's Starlight Project an interconnection queue position.

4. Finding PGE in violation of its obligation to include reasonable schedules in its Feasibility and Facilities Study Agreements.
5. Requiring PGE to timely complete the interconnection process consistent with the applicable deadlines in the small generator interconnection rules, including but not limited to a reduction in the time to complete the interconnection process due to PGE's delays.
6. Requiring an extension of PNW Solar's 15-year fixed price guarantee under its PPA with PGE if PGE's delays result in a delay in the Starlight Project's commercial operation date.
7. Instituting penalties up to \$10,000 pursuant to ORS 756.990 against PGE and paid by PGE's shareholders for each violation of ORS 758.525(2), 758.535(2)(b)&(3)(b), 18 CFR 292.303(a)&(c), 292.304(d), OAR 806-029-0030(1)&(3), 806-082-0025(7), 806-082-0060(5)-(8), and Commission Order Nos. 09-350.
8. Granting any other such relief as the Commission deems necessary.

Dated this 9th day of October, 2017.

Respectfully submitted,

A handwritten signature in black ink that reads "Irion Sanger". The signature is written in a cursive style with a large, looped initial "I".

Irion A. Sanger
Marie Phillips Barlow
Sanger Law, PC
1117 SE 53rd Avenue
Portland, OR 97215
Telephone: 503-756-7533
Fax: 503-334-2235
irion@sanger-law.com

Of Attorneys for PNW Solar

CERTIFICATE OF FILING

I certify that on October 9, 2017, I filed the foregoing Complaint on behalf of PNW Solar with the Oregon Public Utility Commission by electronic communication as consistent with OAR 860-001-0170.



Marie Phillips Barlow
Sanger Law, PC
1117 SE 53rd Avenue
Portland, OR 97215
Telephone: 503-420-7734
Fax: 503-334-2235
marie@sanger-law.com