

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1631

In the Matter of

Marquam Creek Solar, LLC,

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

MARQUAM CREEK SOLAR, LLC'S
RESPONSE TO COMMENTS OF
PORTLAND GENERAL ELECTRIC
COMPANY

I. INTRODUCTION AND SUMMARY

Marquam Creek Solar, LLC (“Marquam Creek Solar”) respectfully submits this Response to Portland General Electric Company’s (“PGE”) Comments filed with the Public Utility Commission of Oregon (“OPUC” or “Commission”) on April 1, 2021. PGE states that it does not support or oppose Marquam Creek Solar’s Petition for Waiver of OAR 860-082-0025(1)(c), but PGE makes certain assertions with which Marquam Creek Solar disagrees. PGE’s Comments also contain additional information that further support granting the Petition, including PGE’s latest interconnection study that forecasts another threefold increase in Marquam Creek Solar’s estimated interconnection costs to over \$3.8 million if the Petition is not granted. For the reasons explained below, Marquam Creek Solar continues to respectfully request that the Commission grant its Petition, which would give Marquam Creek Solar the option to elect to minimally reduce its capacity to the extent necessary to avoid cost-prohibitive interconnection upgrades identified in PGE’s interconnection re-studies.

II. RESPONSE COMMENTS

The Commission should grant a waiver of OAR 860-082-0025(1)(c) to allow Marquam

Creek Solar to make a relatively limited reduction in its nameplate capacity necessary to maintain economically feasible interconnection costs. Nothing in PGE’s Comments justifies refusing to grant the requested waiver.

A. Marquam Creek Solar’s Intent Is to Maintain the Benefit of the Bargain Within Its Fully Executed Generator Interconnection Agreement, Not to Harm Lower Queued Interconnection Customers

PGE oversimplifies the matter before the Commission by suggesting that the Petition presents nothing more than a choice between two competing interconnection customers in the queue.¹ That suggestion incorrectly frames the question before the Commission and relies on flawed assumptions.

Marquam Creek Solar is not just another customer in the queue. It applied for interconnection almost four years ago on July 24, 2017, at a time when there was no transparency as to the available distribution capacity on the feeder, or PGE’s procedures for evaluating it, that would have allowed anyone to “guess” how to size its facility to avoid expensive protective equipment. Additionally, Marquam Creek Solar has already secured a fully executed Generator Interconnection Agreement (“GIA”) that identifies interconnection upgrades with a cost estimate of \$268,350, and that GIA does not state that such cost estimates are contingent upon completion of any higher queued interconnection facilities.²

Yet Marquam Creek Solar has cooperated in good faith with PGE to attempt find a reasonable solution to the problems caused by higher queued generators dropping out of the queue. Marquam Creek Solar’s goal is to merely preserve the expected benefits of the

¹ *PGE’s Comments* at 11 (April 1, 2021) (“granting the Waiver Petition would result in the Commission effectively choosing which project will be able to proceed and which project will need to be abandoned as uneconomic and doing so in a manner that waives and is contrary to the current rules.”)

² *Marquam Creek Solar’s Petition* at Exhibit 1 (containing the GIA).

arrangement memorialized in its GIA, and the Petition is a good faith effort to do so by securing the option to minimally reduce the proposed solar facility's capacity. PGE's Comments confirm that granting the Petition would result in costs to Marquam Creek Solar of \$321,000,³ which, although significantly higher than those in the GIA, would be acceptably within the range of those previously established costs. Thus, by allowing Marquam Creek Solar to reduce its capacity by approximately five percent, its project could move forward after the extensive delay caused by cascading re-studies on this feeder.

PGE's analysis also mistakenly assumes that if the Petition is denied, the lower queued customer (QSP247) will immediately accelerate to the head of the queue and benefit from the lowest interconnection costs forecasted for it in PGE's Comments, due to the assumed withdrawal of Marquam Creek Solar from the queue. To the contrary, if the Petition is denied, Marquam Creek Solar does not intend to withdraw from the queue. Marquam Creek Solar has no plans to walk away from its GIA or to accept the results of PGE's continually ballooning costs in its re-studies. As noted in the Petition, Marquam Creek Solar disagrees with PGE's analysis for determining when 3V0 sensing is properly required, which, in effect, double counts net metering generation on the feeder. It also appears that PGE improperly allowed several net metering facilities to advance ahead of Marquam Creek Solar in the interconnection queue. Furthermore, PGE's latest Facilities Re-Study states that the daytime minimum load on the feeder for 2020 increased to a level that is higher than the maximum generation of Marquam Creek Solar and other generators on the feeder, calling into question why PGE continues to insist

³ *PGE's Comments* at 2-3 (April 1, 2021).

on use of 3V0 sensing and transfer trip protection even without a reduction in capacity.⁴ If the Petition is denied, those issues, and likely others, must still be resolved, potentially through litigation or arbitration, and Marquam Creek Solar would seek interim relief to preserve its queue position.⁵ Thus, PGE is incorrect to assume that Marquam Creek Solar will simply throw in the towel in a manner that would result in the lower queued customer instantly realizing the lowest forecasted interconnection costs described in PGE’s Comments.

Further, PGE’s suggestion that the Commission would be picking one interconnection customer over the other assumes that the lower queued generator (QSP247) would in fact be developed when no such evidence exists. Even if Marquam Creek Solar walks away from its GIA and withdraws from the queue, there are countless other problems (e.g., land use permitting, further changes to PGE’s interconnection analysis, etc.) that could preclude successful completion of that project, which just entered the queue a little over a year ago.⁶

In sum, Marquam Creek Solar has no intent of harming other interconnection customers. But the fact is that Marquam Creek Solar is far ahead of the other project in the queue and requests the ability to make a reasonable adjustment to its proposed facility in order to preserve the benefit of its fully executed GIA – something that is routinely allowed in interconnection process throughout the country. Marquam Creek Solar prefers to not make any adjustment at all, particularly since PGE’s latest Facilities Re-Study now appears to suggest that load growth on

⁴ PGE’s March 15, 2021 Facilities Re-Study states daytime minimum load on the feeder for 2020 was 2.35 MW and the “amount installed and proposed generation on the feeder” is 2.193 MW. *PGE’s Comments*, Exhibit 1, p. 5. But the study still relies on the lower daytime minimum load from a prior year of 2.105 MW to maintain the conclusion that Marquam Creek Solar triggers back feed and must pay for protective equipment. *Id.*

⁵ See OAR 860-082-0080(5) (“The filing of a petition for arbitration of a dispute arising during the review of an application to interconnect a small generator facility does not affect the application’s queue position”).

⁶ PGE’s interconnection queue states SPQ247 entered the queue on March 2, 2020.

the feeder may have obviated the risk of backfeed. However, Marquam Creek Solar needs the ability to reduce its capacity in order to get its project across the finish line as soon as possible because it has been over four years since its interconnection application was originally submitted. Under these circumstances, the Petition is warranted.

B. PGE Fails to Refute that OAR 860-082-0025(1)(c) Is Inconsistent with Best Practices for Interconnection Procedures, which Routinely Allow for Capacity Reductions Analogous to that Proposed in the Petition.

Marquam Creek Solar's Petition explained that interconnection procedures throughout the country allow for much more significant changes to the nameplate capacity than that requested here without any waiver or other analysis, which allows the customer to "right size" the facility and avoid unnecessary system upgrades identified in initial interconnection studies.⁷ As examples, the Petition cited the Federal Energy Regulatory Commission's ("FERC") Large Generator Interconnection Procedures and certain California Independent System Operator ("CAISO") procedures. PGE attempts to distinguish these examples in an effort to suggest that the bar against any change in nameplate capacity in this Commission's small generator rules is not that far out of the norm. But PGE's arguments are misplaced. To the contrary, reductions in capacity are common in interconnection processes, and although the Commission's rules do not expressly provide such a right, a waiver of the Commission's Division 82 rules should not be unreasonably withheld.

PGE attempts to distinguish the FERC LGIP and CAISO allowances for capacity reductions on the ground that the utility will ultimately pay for network upgrades under those FERC-jurisdictional interconnection procedures.⁸ But PGE makes no effort to explain how this

⁷ *Petition* at 9-14

⁸ *PGE's Comments* at 13 (April 1, 2021).

fact has any relevance to PGE's primary argument that the lower queued customers are harmed by such reductions to capacity. The question of whether the higher queued customer or the utility pays for any network upgrades makes no difference to lower queued customers.

In any event, PGE's distinguishing fact regarding network upgrade costs does not hold true in Oregon, where the Oregon-jurisdictional LGIP's § 4.4 contains the very same capacity reduction allowances as the FERC-jurisdictional LGIP's § 4.4. Specifically, in Order No. 10-132, this Commission approved use of the LGIP provision that entitles the interconnection customer to unilaterally reduce its capacity by up to 15 percent prior to the Facilities Study stage,⁹ which is analogous to when Marquam Creek Solar sought a reduction of only five percent prior to its Facilities Re-Study. As the Commission is aware, such Oregon-jurisdictional large generator interconnection customers are not always entitled to a refund for network upgrades, and therefore PGE's factual distinction on this point is misplaced. But it is certainly quite relevant that even other Oregon interconnection customers are entitled to make the types of capacity reduction requested by Marquam Creek Solar here without any analysis whatsoever, and certainly without filing a petition for waiver with the Commission.

Additional authority also exists to demonstrate this treatment is common in small generator interconnection procedures. One of the leading interconnection rules for state-jurisdictional small generators is California's Rule 21, which has evolved since enactment of the Public Utility Regulatory Policies Act of 1978.¹⁰ Under the Rule 21 modifications provision, there is a catch-all direction that utilities not unreasonable withhold any requested changes to the

⁹ OPUC Order 10-132, App. A at pp. 20-22 (containing OPUC-approved LGIA § 4.4).

¹⁰ See <https://www.cpuc.ca.gov/Rule21/>.

application that improves the cost or timing of the interconnection.¹¹ The rules also specifically allow decreases in capacity of *any amount* upon receipt of the System Impact Study without any further review of lower queued interconnection customers.¹² Additionally, in a recent New York proceeding for state-jurisdictional interconnections under 5 MW, a Staff Guidance clarified that decreases in capacity are among the changes that should not typically be considered material modifications affecting the queue position.¹³ These additional examples further confirm that decreases to capacity, as opposed to increases to capacity, are commonly allowed without any showing of no harm to lower queued customers.

Thus, contrary to PGE's suggestion, the Commission's small generator rules are unique in their failure to allow for reasonable capacity reductions as a matter of right, and therefore a waiver of OAR 860-082-0025(1)(c) should not be unreasonably withheld.

III. CONCLUSION

For the reasons set forth above and the Petition, the Commission should grant the requested waiver of OAR 860-082-0025(1)(c).

¹¹ Cal. Pub. Utils, Comm'n Decision 12-09-018, Rulemaking 11-09-011, at Attachment at § F.3.d.v, 2012 Cal. PUC LEXIS 408 at **274-277 (Sept. 13, 2012).

¹² *Id.*; see also Pacific Gas and Electric's Rule 21 Interconnection Procedures, at Sheet No. 42387-E, § F.3.b.v, available at https://www.pge.com/tariffs/assets/pdf/tariffbook/ELEC_RULES_21.pdf (containing the same rule today).

¹³ N.Y. Pub. Serv. Comm'n, Case 19-E-0566, 2019 N.Y. PUC LEXIS 679 at *136 (Dec. 13, 2019).

Respectfully submitted on this 8th day of April 2021.

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