

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1860, UM 1861 and UM 1862

RED PRAIRIE (UM 1860), VOLCANO)	
(UM 1861), TICKLE CREEK (UM 1862))	
Complainant,)	
)	
v.)	RESPONSE TO PORTLAND
)	GENERAL ELECTRIC COMPANY’S
)	MOTION FOR REQUEST FOR
)	EMERGENCY STAY AND
)	CONFERENCE
PORTLAND GENERAL ELECTRIC)	
COMPANY,)	
)	
Defendant.)	
_____)	

I. INTRODUCTION

Red Prairie Solar, LLC (“Red Prairie Solar”), Volcano Solar, LLC (“Volcano Solar”) and Trickle Creek Solar, LLC (“Tickle Creek Solar”)¹ (collectively “Complainants”) respectfully request that Oregon Public Utility Commission (the “Commission” or “OPUC”) Administrative Law Judge (“ALJ”) Allan Arlow deny Portland General Electric’s (“PGE’s”) motion for request for emergency stay and set a schedule that requires PGE to file its answer no later than Wednesday, August 30, 2017.

Consolidation of the Red Prairie Solar and Volcano Solar complaints is reasonable because they were developed and are owned by the same company (TLS Capital), but Complainants object to any consolidated treatment with other complaints

¹ PGE executed the partially executed Tickle Creek Solar power purchase agreement (“PPA”) on August 25, 2017, and Tickle Creek Solar filed a notice of withdrawal today.

filed against PGE or any other proceeding in which PGE is involved. A prehearing conference should be scheduled immediately to process the above-referenced complaints, but the prehearing conference should not be included any unrelated complaints or other administrative proceedings that happen to include PGE and/or counsel for Complainants.

Complainants strongly object to their filings being delayed, because additional time is not warranted. PGE's claims about its workload overblown and irrelevant. PGE has already had sufficient time to prepare answers for these complaints, and simply chose not to. Providing additional time to PGE would also cause substantial harm to Complainants. Each day of delay in establishing a PPA costs Complainants money.

PGE withheld information from the Commission regarding the Complainants' willingness to work with PGE to provide the Company with at least some additional time—if PGE would only explain to Complainants' what information PGE believes PGE still needs to move forward with its PPA requests. Specifically, Complainants were willing to agree to a 45-day delay for Red Prairie Solar, but Volcano Solar needs to be processed expeditiously because it has a commercial operation date of December 31, 2017 and any delays will cause it significant harm. PGE's delay tactics are causing Complainants' damages, and should not be rewarded.

However, Volcano Solar was also willing to agree to an extension of time, but only if PGE would explain why it had stopped processing Volcano Solar's PPA. PGE has raised a number of alleged concerns regarding Red Prairie Solar and Volcano Solar's generation profiles, but Red Prairie Solar and Volcano Solar do not understand the basis of these concerns because PGE has recently executed at least two PPAs with substantially

identical type of generation profile information.² PGE refuses to explain what its specific concerns are, why the previously acceptable information is inadequate, and what type of information PGE is now requiring. Volcano Solar needs expedited resolution of this issue and a final PPA soon, or it will suffer significant and immediate damages.

II. BACKGROUND

Complainants are qualifying facilities (“QFs”) with projects ranging in size from 0.75 to 2.2 megawatts (“MWs”) that will interconnect with PGE. Complainants began negotiating with PGE as early as February, but PGE has not negotiated in good faith.³ PGE unilaterally decided to cease negotiations regarding the Red Prairie Solar and Volcano Solar projects, and is no longer processing Complainants’ pending PPA requests due to its raising alleged concerns regarding generation deliveries without informing Red Prairie Solar and Volcano Solar of what information PGE supposedly wants or why the previously provided information is insufficient.

When the parties were negotiating, PGE took numerous illegitimate actions to keep Complainants from finalizing their PPAs or establishing a legally enforceable obligation. For example, by failing to provide PPA drafts in a timely manner, and raising issues regarding generation profiles that used substantially the same information as PGE had accepted with previously executed PPAs. The timing of PGE’s recent OPUC filings and its negotiations with Complainants also establishes a pattern of delay with the

² Red Prairie Solar and Volcano Solar suspect that PGE’s newly minted concerns regarding generation profiles are simply ways to delay providing PPAs to prevent contract execution while the Commission addresses PGE’s request for interim relief seeking to change the Commission’s PURPA policies and rates.

³ See e.g., Trickle Creek Solar v. PGE, Docket No. UM 1862, Complaint (Aug. 7, 2017).

intention of changing its rules and rates before Complainants could finalize their PPAs. Overall, although PGE was planning several filings that would impact or limit Complainants' ability to enter into a PPA during the time that the parties were exchanging information and negotiation standard PPAs, PGE never informed Complainants that it was considering making these filings or explaining their consequences.⁴

Worse yet, PGE has not been forthcoming with Complainants. For example, after privately stating that it would not expedite a request for an executed PPA and would instead follow its normal Schedule 201 timelines, PGE privately planned not to execute any PPAs before the Commission ruled on its request for interim relief, which was inconsistent with its normal Schedule 201 timelines.

PGE has now moved from processing the Complainants' PPA requests with glacial speed to an outright stop, and is refusing to explain to Red Prairie Solar and Volcano Solar what generation profile information it will find accepted or why the generation profile information that it used to execute at least two PPAs is no longer acceptable. PGE may be punishing and/or discriminating against the Complainants for their insistence on having their complaints processed in a timely manner. PGE's failure

⁴ Re PGE Application to Update Schedule 201 Qualifying Facility Information, Docket No. UM 1728, Order No. 17-177 (May 19, 2017) (lowering avoided cost rates ahead of Complainant' expectations); Re PGE Application to Lower the Standard Price and Standard Contract Eligibility Cap for Solar QFs, Docket No. UM 1854, PGE's Motion for Interim Relief at 1 (June 30, 2017) (seeing to lower eligibility for standard contract rates); Re PGE Updates to Schedule 201 QF (10MW or Less) Avoided Cost, Docket No. UM 1728, PGE's Motion for Temporary Relief From Schedule 201 Prices at 1-4 (Aug. 18, 2017) (lowering avoided cost rates ahead of Complainant' expectations).

to process or negotiate in good faith with Complainants (or even process or negotiate at all at this point) is the reason that Complainants now object to a stay of their complaint proceedings, and support the ALJ requiring PGE to expeditiously file its answers.

III. ARGUMENT

A. Complainants Objects to Consolidated Treatment with Other Complainants

OAR 806-01-0600 provides for the consolidation of proceedings at the discretion of the Commission or ALJ. The Complainants are owned and developed by the same small Oregon company, TLS Capital, and support consolidation of their own complaints, but object to any additional consolidation with other complaints filed against PGE. PGE's own motion points out, "each complaint involves a unique set of facts . . . is relatively complex," and "involves a series of dozens of communications between PGE and the Complainant."⁵ Yet, PGE chose to lump all of its complaints together rather than address the fact that some of its complaints, like Complainants', will in fact be prejudiced by any delay.

PGE's Motion suggests that because many of the complaints against PGE were filed by the same counsel, and the same PGE employees are needed to review the facts, that they should all be subject to the same types of delays.⁶ This just does not make any sense given the costs such delay inflicts upon these Complainants. The fact that Complainants' attorney has filed complaints against PGE from other QFs with different owners should be irrelevant to the unique facts and circumstances surrounding Complainants' projects. PGE and Complainants' counsel are also involved in a number

⁵ PGE's Motion at 2.

⁶ Id.

of other unrelated complaints,⁷ PGE-specific regulatory proceedings,⁸ and other generic proceedings regarding PURPA and independent power producers that PGE is an active party to,⁹ none of which should be consolidated with these complaints. Complainants therefore request that PGE be required to proceed with its complaints according to the Commission's established process, and without delay.

⁷ Blue Marmot V, LLC v. PGE, Docket No. UM 1829 (April 28, 2017); Blue Marmot VI, LLC v. PGE, Docket No. UM 1830 (April 28, 2017); Blue Marmot VII v. PGE, Docket No. UM 1831 (April 28, 2017); Blue Marmot VIII, LLC v. PGE, Docket No. UM 1832 (April 28, 2017); Blue Marmot IX v. PGE, Docket No. UM 1833 (April 28, 2017) (Counsel representing Blue Marmot V, VI, VII, VIII and IX QFs against PGE for failure to execute PPAs).

⁸ Re PGE Application to Update Schedule 201 Qualifying Facility Information, Docket No. UM 1728 (Counsel representing Renewable Energy Coalition ("REC") in PGE's avoided cost rate update); Re PGE 2016 Integrated Resource Plan, Docket No. LC 66 (Counsel representing Northwest and Intermountain Power Producers Coalition ("NIPPC") and REC in PGE's integrated resource plan); Re Northwest and Intermountain Power Producers Coalition, Community Renewable Energy Association and Renewable Energy Coalition v. PGE, Docket No. UM 1805 (Counsel representing NIPPC, Community Renewable Energy Association ("CREA") and REC in complaint against PGE regarding its PURPA PPA); Re Application to Lower the Standard Price and Standard Contract Eligibility Cap for Solar Qualifying Facilities, Docket No. UM 1854 (Counsel representing NIPPC and REC in PGE's request to reduce standard contract eligibility); Re Staff Investigation Into Qualifying Facility Contracting and Pricing, Docket No. UM 1610 (Counsel representing REC in generic PURPA investigation); Re PGE Application for Transportation Electrification Programs, Docket No. UM 1811 (Counsel representing Electric Vehicle Charging Association); and Re PGE Advice No. 17-05 (ADV 523), Schedule 134 Gresham Privilege Tax Payment Adjustment, UE 324 (Counsel representing City of Gresham).

⁹ Re OPUC Staff Investigation of Competitive Bidding Guidelines Related to Senate Bill 1547, Docket No. UM 1776 (generic investigation to competitive bidding guidelines for utility resource acquisitions)(counsel representing NIPPC, REC and CREA); Re Rulemaking Regarding Allowances for Diverse Ownership of Renewable Energy Resources, Docket No. AR 600 (competitive bidding rulemaking)(Counsel representing NIPPC, REC and CREA), and Re Recommendation for Portfolio Options pursuant to ORS 757.603(2) and OAR 860-038-0220, Docket No. UM 1020 (use of voluntary renewable funds for generators and QFs)(Counsel representing REC).

B. PGE Did Not Accurately Reflect Complainants' Position Regarding a Stay

PGE's Motion notes that it requested additional time to answer its complaints and that in 17 cases, PGE and the QF Complainants were not able to reach agreement regarding an extension of time to file an answer. PGE did not, however, provide a single detail regarding those failures. For example, Complainants informed PGE that it was willing to agree to: 1) file a notice of withdrawal obviating the need to file an answer for Tickle Creek Solar, if PGE provided an executed PPA for Tickle Creek Solar;¹⁰ 2) a 45-day extension of time for Red Prairie Solar; and 3) to an 18-day extension of time for Volcano Solar, but only if PGE agreed to meet with Volcano Solar to identify what information PGE will accept regarding its maximum generation.

Complainants are unwilling to agree to an extension of time for Volcano Solar, unless PGE agrees to clearly explain or to meet with Volcano Solar and identify exactly what type of information PGE will accept regarding its maximum generation profile, and why it has changed its requirements from the information it was willing to execute a PPA with only just Friday August 25, 2017. Complainants understand that PGE may also be treating the Red Prairie Solar and Volcano Solar projects differently than other similarly situated projects, which would constitute unlawful discrimination. Complainants have previously executed PPAs with PGE providing substantially the same information regarding a solar generation facility's maximum generation profile that it provided for Volcano Solar. In fact, PGE previously executed the Willamina Mill Solar PPA and just

¹⁰ PGE provided an executed PPA for Tickle Creek Solar on Friday August 25, 2017, and Tickle Creek Solar filed a notice of withdrawal today.

executed the Tickle Creek Solar PPA on August 25, 2017, both of which included substantially the same information that Volcano Solar submitted. In addition to executing these PPAs, PGE did not previously raise any issues or ask for additional clarifying information that used substantially the same information regarding solar generation facilities maximum generation profile as provided by Volcano Solar.

The crux of the dispute between PGE and Volcano Solar is that PGE will not identify what information it now claims that it needs Volcano Solar to provide regarding the maximum generation profile and why the maximum generation profile information that Volcano Solar submitted, which has been accepted, is no longer acceptable. PGE has refused and is continuing to refuse to provide any explanation to Volcano Solar generation why the previously acceptable information is inadequate and what type of maximum generation profile information it now wants. Essentially, if PGE is not willing to follow its regular Schedule 201 process and identify what information Volcano Solar needs to provide, then Volcano Solar is not willing to delay its complaint against PGE.

PGE's Motion failed to include any information about its discussions with Complainants, and therefore failed to adequately inform the ALJ of Complainants' efforts and willingness to work with PGE. Thus, ALJ Grant suspended PGE's due date for responding to Complainants based on inaccurate information, and PGE should be directed to provide its answer by Wednesday, August 30, 2017.

C. Suspending the Procedure Prejudices Complainants

Complainants suffer substantial damages due to the delay awarded to PGE. The commercial operation date for Volcano Solar is December 31, 2017, which means that time is of the essence to finalize at least this PPA. Worse yet, each day of delay on the

Volcano Solar and Red Prairie Solar projects inflicts unnecessary costs upon Complainants. Volcano Solar and Red Prairie Solar will also be harmed in numerous ways, including payments to land owners, additional financing costs, and potentially being subject to significantly higher panel costs depending on the outcome of trade disputes.

Moreover, PGE has managed to secure a procedural advantage for itself by commandeering the Commission's complaint process to suit its needs. In short, PGE's motion claims that Complainants will not be harmed by a delay because they claim to have established a legally enforceable obligation. Yet this ignores the obvious fact that PGE is claiming that Complainants have not established a legally enforceable obligation. In this situation, time delays work in PGE's favor. PGE appears to believe that Complainants can only establish a legally enforceable obligation if PGE unilaterally decides to provide an executable PPA. To that end, PGE is using delay tactics to prevent Complainants from ever establishing a legally enforceable obligation. PGE should not be able to use the complaint process to procedurally disadvantage QFs seeking to establish a legally enforceable obligation.

Finally, Complainants are aware that complaints before the Commission can be difficult and time consuming. PGE often raises arguments and motions and refuses to provide information, with the result that the adjudicatory process is slowed down. It is an inauspicious start to this complaint that PGE has sought to delay the process even before it starts. Therefore, Complainants urges the ALJ to consolidate the above-referenced complaints and require PGE to promptly file an answer to move these complaints toward a timely resolution.

D. PGE’s Claims About Workload Are Over Exaggerated and Irrelevant

PGE argues that it will take PGE a Herculean 186 business days to review all of its newly-filed complaints while simultaneously acknowledging that its projection does not account for any efficiencies of scale and is therefore overblown.¹¹ PGE suggests it “*may* be possible PGE staff to assemble the facts regarding one complaint while PGE’s attorneys are drafting an answer to another complaint (for which PGE’s staff has already assembled the facts)” and, thus, “it *may* be possible for PGE to develop answers to all 31 complaints in less than the 186 business days”¹²

PGE should have more faith and confidence in its ability to work hard in a timely and efficient manner. PGE has a full internal staff and team of lawyers, and has recently retained at least two outside law firms as well.¹³ PGE also has a nearly unlimited legal budget, courtesy of its ratepayers, and has litigated a wide variety of complex issues before the Commission, at the Federal Energy Regulatory Commission, and in our court systems. Thus, PGE has demonstrated enough legal prowess and expertise to figure out how to manage its own internal workflow in a way that actually does account for economies of scale and ensures that PGE meets its deadlines.

Moreover, PGE should not be permitted to use a self-inflicted problem to its advantage. PGE’s PURPA staff, which PGE claims would be forced to “work on nothing but” reviewing complaints and developing answers,¹⁴ was certainly able to make several

¹¹ PGE’s Motion at 3.

¹² Id. at 3-4 (emphasis added).

¹³ These firms include McDowell Rackner and Gibson (which has six lawyers) and the Law Office of Jeffery Lovinger.

¹⁴ PGE’s Motion at 3.

discretionary filings recently (including requests for retroactive relief that would subject developers to dire consequences as well as its own complaint against the Covanta Marion QF¹⁵) to undermine its ongoing PURPA negotiations. If PGE spent its time processing PPAs and preparing its answers rather than trying to put Complainants out of business, then it should have easily been able to file its answers. Thus, PGE's claims that its staff is too busy to deal with the results of those filings should be ignored.

Complainants notes that its own legal counsel does not appear to have the same difficulties completing its work as PGE. At bottom, if a two-attorney firm can process all these complaints in a timely manner along with their regular workload (including responding to PGE's myriad of regulatory filings), then PGE should be able to do so with vastly superior resources.

IV. CONCLUSION

For the reasons outlined above, PGE has failed to establish any justification for delaying the prosecution of the Complainants complaint. PGE did not adequately represent Complainants' offer to allow PGE an 18-day and 45-day delay if PGE would merely explain what information PGE still wants from Complainants' to process its PPA requests. PGE should not be permitted to use that omission to its advantage to secure additional delays that disadvantage Complainants. PGE's attempts to lump all of its recently-filed complaints together ignores the unique harm inflicted upon each

¹⁵ Re PGE Application to Lower the Standard Price and Standard Contract Eligibility Cap for Solar QFs, Docket No. UM 1854, PGE's Motion for Interim Relief at 1 (June 30, 2017); Re PGE Updates to Schedule 201 QF (10MW or Less) Avoided Cost, Docket No. UM 1728, PGE's Motion for Temporary Relief From Schedule 201 Prices at 1 (Aug. 18, 2017); PGE v. Covanta Marion, Inc., Docket No. UM 1887, Complaint (Aug. 11, 2017).

complainant. Because each day of delay subjects Complainants to substantial harm, PGE should be required to proceed under the Commission's normal process.

Dated this 28th day of August 2017.

Respectfully submitted,

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

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