

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1877-UM 1882, UM 1884-UM 1886, UM 1888-UM 1890

In the Matters of

BOTTLENOSE SOLAR, LLC;
VALHALLA SOLAR, LLC;
WHIPSNAKE SOLAR, LLC;
SKYWARD SOLAR, LLC;
LEATHERBACK SOLAR, LLC; PIKA
SOLAR, LLC; COTTONTAIL SOLAR,
LLC; OSPREY SOLAR, LLC; WAPITI
SOLAR, LLC; BIGHORN SOLAR,
LLC; MINKE SOLAR, LLC; HARRIER
SOLAR, LLC,

Complainants,

v.

PORTLAND GENERAL ELECTRIC
COMPANY,

Defendant.

RESPONSE IN OPPOSITION TO PGE
MOTION FOR EXTENSION OF TIME

I. INTRODUCTION

Bottlenose Solar, LLC, Valhalla Solar, LLC, Whipsnake Solar, LLC, Skyward Solar, LLC, Leatherback Solar, LLC, Pika Solar, LLC, Cottontail Solar, LLC, Osprey Solar, LLC, Wapiti Solar, LLC, Bighorn Solar, LLC, Minke Solar, LLC, and Harrier Solar, LLC (“Complainants”) file this Response, requesting that the Oregon Public Utility Commission (the “Commission” or “OPUC”) Administrative Law Judge (“ALJ”) Allan Arlow deny Portland General Electric Company’s (“PGE’s”) Motion for Extension of Time.

If PGE's Motion for Extension of Time is granted, then the Complainants request that ALJ Arlow provide PGE with notice that PGE be directed to provide responsive information no later than January 12, 2018, which is one month prior to Complainants' testimony deadline, in the event that Complainants' Motion to Compel is granted.

II. BACKGROUND

Complainants filed their complaints between August 7 and 14, 2017. PGE filed its responses between October 11 to 18, 2017. ALJ Arlow adopted a schedule on November 14, 2017, and Complainants' opening testimony is due on February 12, 2018. PGE agreed to this schedule, which provided less than three months (over the holiday period) for Complainants to conduct discovery and prepare their initial case.

Complainants served their first set of data requests on November 21, 2017, and PGE provided its responses on December 5, 2017. Complainants' Data Request No. 1 sought information regarding PGE's policies for negotiating standard power purchase agreements, and Data Requests Nos. 2 and 3 sought information regarding PGE's claimed three stage process in which PGE claims it must provide at least one copy each of a draft and final power purchase agreement before providing an executable power purchase agreement.

Complainants dispute that each of these stages is required by Commission rule or by PGE's own Schedule 201, and, if each step is required, then this three-stage contracting process violates the Public Utility Regulatory Policies Act by not giving the qualifying facility control over establishing a legally enforceable obligation. Complainants are not raising those issues now, but only seeking information about what PGE's actual actions regarding the alleged three-stage process have been.

Complainants immediately raised concerns with PGE regarding PGE's objections and non-responses to Complainants' Data Requests Nos. 1, 2 and 3, and discussed the discovery dispute with PGE on December 6, 2017. Over the next couple of weeks, Complainants sought to work with PGE in good faith to resolve the discovery dispute, which resulted in Complainants re-asking (and re-starting the 14 day time for responses) for Complainants' Data Request No. 1. Despite negotiations appearing to be promising, PGE ultimately agreed to provide *no* additional information responsive to Data Request Nos. 1, 2 or 3.

After discovery discussions ended, Complainants filed their Motion to Compel on December 21, 2017 seeking information responsive to Data Request Nos. 2 and 3.¹ Complainants informed PGE that they would seek prompt resolution of their Motion to Compel, but PGE has instead sought to delay resolution by seeking an additional week to respond. PGE has also claimed that it will take a substantial amount of time to compile responsive information and has refused to commit to begin preparing responsive documents until after the ALJ issues its ruling. Essentially, PGE has proposed a process and schedule in which PGE will not provide *any* responsive documents until well after Complainants' testimony is due.

III. RESPONSE

As explained in the Motion to Compel, Complainants requested expedited consideration because their testimony is due in about a month and a half, and PGE has suggested that it may delay providing responses, if the Motion to Compel is granted.

Unless the ALJ requires PGE to provide information on an expedited basis, then

¹ Complainants may file a motion to compel later regarding PGE's response to Data Request No. 1.

Complaints will be forced with the choice of either submitting testimony without potentially important information or requesting an extension of time to submit their testimony.

Complainants also have a very realistic need for this case to be processed in a timely manner because they are currently suffering harm from PGE's refusal to execute power purchase agreements, and PGE's delays may ultimately result in PGE winning the case simply because it may become uneconomic or infeasible to complete the projects. PGE is well aware of these facts, and Complainants believe that PGE has taken an overall strategy in both its power purchase agreement negotiations and its processing of the outstanding complaints against it to delay resolution to ensure that projects cannot be completed. PGE's approach has been at least partially successful as its delays and surprise regulatory filings have resulted in numerous qualifying facilities being unable to obtain contracts and simply giving up.

The Motion to Compel is not overly long, and only 13 pages, including a boilerplate legal standard and signature page. Over the past two weeks of attempts to resolve the discovery dispute, PGE has been made aware of the Complainants' arguments, justifications for needing the information, and desire for timely resolution. There should have been no surprises in the Motion to Compel, and PGE should not need even a full 14 days to respond.

In the event that the ALJ decides to provide PGE with additional time, then Complainants request that the ALJ provide PGE with notice that, if the Motion to Compel is granted, then it will be required to provide any information by January 12, 2017. At least, PGE can immediately begin taking non-time consuming steps to be

prepared to expeditiously provide complete information in the event it is compelled to provide responsive documents regarding whether PGE has followed its alleged three-step process of requiring qualifying facilities to wait for a draft, final, and executable power purchase agreement.

Finally, Complainants note that these are the only complaints that are currently being processed related to the complaints filed between August 7 and 14, 2017. While three of those complaints have settled, none of the others have settled. Some other complaint may be awaiting resolution of this and other proceedings before deciding whether to pursue their complaints. Therefore, PGE's delays not only harm these Complainants, but other parties.

IV. CONCLUSION

For the reasons stated above, the Complainants request that PGE's Motion for Extension of Time be denied, or the ALJ otherwise inform PGE that it will be required to provide any responsive information by January 12, 2017, if the Motion to Compel is granted.

Dated this 26th day of December, 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".

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Of Attorneys for Complainants