

May 19, 2020

Via Electronic Filing

Public Utility Commission of Oregon
Attn: Filing Center
PO Box 1088
Salem, OR 97308-1088

Re: UM 2051 - Fossil Lake Solar, LLC v. Portland General Electric Company

Attention Filing Center:

Enclosed for filing today in the above-named docket is the Declaration of Rebecca K. Dodd in Support of Portland General Electric Company's Motion for Summary Judgment.

Thank you for your assistance.

Very truly yours,



Jeffrey S. Lovinger

Attachment
1001286

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
UM 2051**

FOSSIL LAKE SOLAR, LLC,

Complainant,

vs.

PORTLAND GENERAL ELECTRIC
COMPANY,

Defendant.

**DECLARATION OF REBECCA
K. DODD IN SUPPORT OF
PORTLAND GENERAL
ELECTRIC COMPANY'S
MOTION FOR SUMMARY
JUDGMENT**

I, Rebecca K. Dodd, declare:

1. I am a paralegal for defendant, Portland General Electric Company ("PGE"), and I make this declaration in support of PGE's Motion for Summary Judgment. The following statements are true and correct and, if called upon, I could competently testify to the facts averred herein.

2. I have attached a true and accurate copy of the May 4, 2020 letter from Department of Energy, Bonneville Power Administration to Obsidian Renewables, LLC as **Exhibit 1** to this declaration. This document was produced by Fossil Lake Solar, LLC ("Fossil Lake") in response to PGE's First Set of Data Requests.

3. I have attached a true and accurate excerpt of Fossil Lake's Objections and Responses to PGE's First Set of Data Requests as **Exhibit 2** to this declaration. This document provides PGE's Data Request No. 10 and Fossil Lake's response.

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 in court and is subject to penalty for perjury.

DATED this 19th day of May, 2020.



Rebecca K. Dodd



Department of Energy

Bonneville Power Administration
P.O. Box 61409
Vancouver, WA 98666-1409

TRANSMISSION SERVICES

May 4, 2020

In reply refer to: TSE/TPP-2

Mr. Peter Brown, Vice-President
Obsidian Renewables, LLC
5 Centerpointe Drive, Suite 250
Lake Oswego, OR 97035

Subject: Bonneville Power Administration Transmission Deferral and Competition Process

Dear Mr. Brown:

Thank you for your letters dated January 27, 2020, and March 20, 2020. Bonneville Power Administration (BPA) appreciates your willingness to engage on issues associated with your Transmission Service Requests (TSR) and your efforts to develop constructive proposals. In our February 25, 2020 meeting, you asked that BPA not respond to your initial letter so that you could revise your proposals. BPA thus provides this response to your March 20, 2020 letter.

First, I would like to address Obsidian Renewables LLC's (Obsidian) two alternate proposals for improvements to BPA's deferral and competition process. Obsidian first proposes that sub-grid facilities should not be eligible for deferral if they are not also subject to competition. While this may impact Obsidian's situation to Obsidian's benefit, it would likely impact other customers' transmission service as well. The proposal could remove deferral flexibility even where there are no lower queued customers being impacted by the lack of competition on sub-grid.

Obsidian's second proposal for improvement to BPA's deferral and competition process is that BPA compete deferral requests on a sub-grid basis in addition to its existing ATC competitions. BPA is currently assessing the feasibility and other potential impacts associated with this change in its competition procedures. If BPA pursues this change to its policy to compete on sub-grid, it will require a change to BPA's Deferral Business Practice because the Business Practice currently states that BPA competes on an ATC basis.¹ BPA has assembled an internal team to assess this and other aspects of its Deferral and related Business Practices. As your Account Executive, I will keep you updated on BPA's efforts in this regard.

I would also like to address Obsidian's suggestion that it was given incorrect information that it could secure transmission from the Fort Rock substation to the La Pine substation through the Generator Interconnection queue. The generator interconnection process is wholly separate and distinct from the process for securing transmission service. BPA includes a statement to this effect in its study reports, including the 2010 System Impact Study and 2013 Facilities Study in which Obsidian took part. Separation between the generator interconnection and transmission service queues is an industry standard

¹ Bonneville Power Administration, Deferral Business Practice, B.5 (May 10 2019).

and is consistent with policy set by the Federal Energy Regulatory Commission. *E.g.*, Standardization of Generation Interconnection Agreements and Procedures, Federal Energy Regulatory Commission, Order 2003, 104 FERC P 61,103 at P 23 (Jul. 24, 2003) (“ . . . Interconnection Service or an interconnection by itself does not confer any delivery rights from the Generating facility to any points of delivery.”); Standardization of Generation Interconnection Agreements and Procedures, Federal Energy Regulatory Commission, Order 2003-A, 106 FERC P 61,220 at P 12 (Mar. 5, 2004). The generator interconnection queue cannot confer transmission rights on BPA’s transmission facilities, including the segment from Fort Rock to La Pine.

In your letter, you suggest that BPA created a new Point of Receipt (POR) in 2017 and fully subscribed it without Obsidian having the chance to request transmission at that POR. This is not a full picture of the cluster study results. As a part of the cluster study, BPA moved TSRs with a POR of La Pine 230 kV to La Pine 115 kV to better reflect the impacts to BPA’s transmission facilities in the La Pine substation. BPA would have made this change for any request that had a La Pine 230 kV POR. Obsidian did not have a TSR at the La Pine 230 kV POR so its TSRs were not similarly changed.

The current study evaluation of the sub-grid limits in the La Pine area indicate the system can handle 92 MW. Of the 92 MW available, 15 MW are confirmed and being used with the remaining 77 MW in deferral status. Project upgrades were identified in the 2016 cluster study that, once completed, will add an additional 113 MW to the La Pine area. Those additional MW are currently subscribed to New Sun who participated in the 2016 study and signed preliminary engineering agreements to move the projects forward.² The complexity of the cluster study may warrant another discussion with our subject matter experts.

If you have further questions or concerns about this process or how it played out in the 2017 cluster study, please do not hesitate to reach out to me for more information.

In closing, BPA is considering Obsidian’s proposals with respect to competing deferrals on sub-grid. I will keep you updated on this process. Thank you again for your continued engagement and efforts to suggest constructive proposals. BPA appreciates your willingness to work collaboratively together.

Sincerely,



Digitally signed by Christopher
Lockman
Date: 2020.05.04 15:01:35 -07'00'

Transmission Account Executive
Transmission Sales

Attachment

² Obsidian was also offered a preliminary engineering agreement for its Transmission Service Requests at La Pine, but declined to sign it. A summary of these Obsidian’s decision points in relation to its TSRs is included with this letter for reference.

ATTACHMENT 1

Fossil Lake Solar – Transmission Service Request Queue

ARef	Queued	Declined	ATC	Subgrid	Comments
83844022	12/1/2016	01/02/2019	No ATC	LaPine/Bethel	Did not sign Cluster Study
85377912	8/16/2017	10/27/2017	Partial ATC (no ROFR)	LaPine/Bethel	Declined Partial Offer
85803176	11/2/2017	9/23/2019	ATC	LaPine/Bethel	Did not sign Preliminary Engineering
90031436	10/8/2019	10/16/2019	N/A	N/A	Did not submit deposit
90076658	10/16/2019	N/A	Partial ATC	LaPine/Bethel	In Study

Fremont Lake Solar – Transmission Service Request Queue

ARef	Queued	Declined	ATC	Subgrid	Comments
84952829	06/06/2017	07/02/2018			Withdrawn by Fremont
85842065	11/09/2017	09/23/2019	No ATC	LaPine/Bethel	Did not sign Preliminary Engineering
87583265	08/31/2018	9/23/2019	No ATC	LaPine/Bethel	Did not sign Preliminary Engineering
90031688	10/8/2019	10/16/2019	N/A	N/A	Did not submit deposit
90076687	10/16/2019	N/A	Partial ATC	LaPine/Bethel	In Study

**BEFORE THE PUBLIC UTILITY COMMISSION OF
OREGON**

FOSSIL LAKE SOLAR, LLC,
Complainant,

v.

PORTLAND GENERAL ELECTRIC
COMPANY,

Defendant.

DOCKET NO. UM 2051

**FOSSIL LAKE SOLAR, LLC'S
RESPONSE TO PGE'S FIRST SET OF
DATA REQUEST**

Fossil Lake Solar, LLC (“Complainant” or “Fossil Lake”) responds to Defendant Portland General Electric Company’s (“Defendant” or “PGE”), First Set of Data Request (“Requests”) as follows:

**GENERAL OBJECTIONS TO DEFENDANT’S
FIRST SET OF DATA REQUESTS**

1. Fossil Lake objects to the Requests to the extent that they seek to impose obligations and require procedures beyond those set forth in the Oregon Rules of Civil Procedure and the rules or orders of the Public Utility Commission of Oregon (“Commission”).

2. Fossil Lake objects to the Requests to the extent that the information sought is unreasonably cumulative, duplicative or obtainable from other sources that are more convenient, less burdensome, or less expensive, as provided by the Oregon Rules of Civil Procedure or the rules or orders of the Commission.

3. Fossil Lake objects to the Requests to the extent that they are vague, ambiguous, overly broad, unduly burdensome, seek irrelevant information or are not reasonably calculated to lead to the discovery of admissible evidence.

4. Fossil Lake objects to the Requests to the extent that they seek information protected by the attorney-client privilege or any other applicable privilege, statute, law, or rule. Fossil Lake hereby claims such privileges and protections to the extent implicated by the Request for Admissions and excludes privileged information from its responses. Any disclosure of such protected or privileged information is inadvertent and not intended to waive those privileges or protections. Inadvertent disclosure of any privileged or protected information shall not constitute waiver of any privilege, immunity, or any other ground for objecting to discovery of the information. If the production of any privileged information is deemed to be a waiver of any right or privilege, the waiver shall be a limited waiver pertaining to that information only.

5. Fossil Lake objects to the Requests to the extent that they purport to require the disclosure of information not presently within the possession, custody or control of Fossil Lake.

6. Fossil Lake objects to the Requests insofar as they seek information equally accessible to PGE or reasonably likely to be in PGE's possession, custody, or control.

7. Fossil Lake objects to the Requests insofar as they do not identify with reasonable particularity the information PGE seeks.

8. In making these objections, Fossil Lake does not in any way waive or intend to waive, but rather preserves and intends to preserve:

- a. all rights to object on any ground to the competency, relevancy, materiality, and admissibility of any information or document that may be provided in response to the Requests or the subject matter thereof;
- b. all rights to object on any ground to the use of any information that may be provided in response to the Requests or the subject matter thereof, in any subsequent proceeding, including the trial of this or any other action; and
- c. all rights to object on any ground to any request for further responses to these or any other requests.

9. Fossil Lake reserves the right to make any use of, or to introduce at any hearing and at trial, information responsive to the Requests but discovered subsequent to the date of

Fossil Lake's responses and initial production, including, but not limited to, any information obtained during discovery.

10. Fossil Lake's discovery and investigation of the facts relevant to this case are ongoing and Fossil Lake's responses to the Requests are made to the best of its present knowledge, information, and belief. Fossil Lake reserves the right to amend and/or supplement its responses, which are subject to such additional or different information as discovery or further investigation may disclose.

11. Fossil Lake objects to the Requests on the grounds and to the extent that they seek the disclosure of confidential information (including, but not limited to, confidential business information, trade secrets, or information subject to any confidentiality agreement, order, and/or obligation) without entry by the Commission of an appropriate protective order. Fossil Lake will not produce any Fossil Lake confidential information until such a protective order is agreed to by the parties and entered by the Commission.

12. All of the General Objections set forth above are incorporated by reference into each of the specific responses set forth below and have the same force and effect as if fully set forth therein.

PGE'S FIRST SET OF DATA REQUESTS

AND FOSSIL LAKE'S RESPONSES

PGE REQUEST NO. 1:

If you admitted Request for Admission No. 1, no response to Data Request No. 1 is required. If you denied Request for Admission No. 1 or qualified the admission, please explain why Fossil Lake does not admit that the prices in table 6a and 6b of Exhibit D to the Fossil Lake PPA are the fixed prices that Fossil Lake expects to receive for Net Output from the Facility delivered to PGE by Fossil Lake during the 15-year fixed-price period. Please explain which prices under Exhibit D Fossil Lake maintains are the fixed prices applicable to Net Output delivered to PGE by Fossil Lake.

FOSSIL LAKE RESPONSE:

Subject to, as limited by, and without waiving the foregoing General Objections, Fossil Lake specifically objects that Data Request No. 9 is unduly burdensome and not directly relevant to the narrow legal issue presented in this proceeding. Fossil Lake has been working with BPA to obtain transmission and interconnection services for nearly ten years. It would be unduly burdensome for Fossil Lake to search through ten years of correspondence, communications, and other records to identify *all* documents related to BPA transmission and interconnection services. Further, Fossil Lake objects because the actual documents and correspondence concerning Fossil Lake’s interconnection and transmission services will have no bearing on the legal interpretation of Section 2.2.3 of the PPA. Notwithstanding the foregoing, Fossil Lake will provide its transmission and construction agreements with BPA and other responsive documents as are readily available to it.

PGE REQUEST NO. 10:

Data Request No. 10 seeks information regarding the status of the Facility and when Fossil Lake expects to begin delivery of Net Output:

A.) Is the Facility constructed? If not, how long does Fossil Lake expect it will take to construct the Facility?

B.) When does Fossil Lake expect to begin initial delivery of Net Output from the Facility to PGE? What is the basis for this expectation?

C.) When does Fossil Lake expect to provide PGE with the information necessary to allow PGE to deem the Facility fully operational and reliable under Section 1.5 of the PPA? What is the basis for this expectation?

FOSSIL LAKE RESPONSE:

Subject to, as limited by, and without waiving the foregoing General Objections, Fossil Lake responds as follows:

A.) The Facility is not yet constructed. Putting aside the potential impact on all construction activities in Oregon due to COVID-19, Fossil Lake reasonably expects that it can complete construction of the Facility in less than six (6) months from the time that it initiates construction.

B.) If Fossil Lake can obtain from BPA the required transmission capacity between the Fort Rock and LaPine substations, then Fossil Lake expects to begin initial deliveries from the Facility to PGE on or about June 1, 2021.

C.) If Fossil Lake can obtain from BPA the required transmission capacity between the Fort Rock and LaPine substations, then Fossil Lake expects to provide PGE with the information necessary to allow PGE to deem the Facility fully operational and reliable under Section 1.5 of the PPA within thirty (30) days following the initial deliveries to PGE from the Facility.

PGE REQUEST NO. 11:

Please provide any and all documentation or evidence that Fossil Lake understood, at the time it executed the Fossil Lake PPA, that the renewable resource deficiency date as defined by the Commission and for purposes of Section 2.2.3 of the Fossil Lake PPA could be a date other than January 1, 2020.

FOSSIL LAKE RESPONSE:

Subject to, as limited by, and without waiving the foregoing General Objections, Fossil Lake specifically objects to this Request to the extent that it seeks Commission Orders and other information that is publicly available. Fossil Lake responds that, at the time it executed the Fossil Lake PPA, its understanding of the meaning and intent of Section 2.2.3 of the Fossil Lake PPA comes from the plain language of Section 2.2.3.

PGE REQUEST NO. 12:

Please provide any and all documentation or evidence that Fossil Lake and PGE agreed that PGE's resource deficiency date as defined by the Commission for purposes Section 2.2.3 of the Fossil Lake PPA could be a date other than January 1, 2020.

DATED April 10, 2020.

CABLE HUSTON LLP

s/ Richard G. Lorenz

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