

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2091

Served electronically at Salem, Oregon, 05/14/2020, to:

Respondent's Attorney
Douglas C. Tingey
Portland General Electric Company
doug.tingey@pgn.com

Complainant's Attorneys & Representative
Irion A. Sanger
Sanger Law, PC
irion@sanger-law.com

Joni L. Sliger
Sanger Law, PC
joni@sanger-law.com

Colin Murphy
Ashfield Solar, LLC
c/o Sulus Solar c/o WeWork
920 SW 6th Ave
Portland, OR 97204
Colin.murphy@sulus-solar.com

Re: UM 2091, ASHFIELD SOLAR, LLC, Complainant
vs. PORTLAND GENERAL ELECTRIC COMPANY, Respondent

Ashfield Solar, LLC has filed a complaint against Portland General Electric Company. A copy of the complaint is attached and served on Respondent, under ORS 756.512(1). The Commission has assigned Docket No. UM 2091 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 its attorneys by June 3, 2020, under OAR 860-001-0400(4)(a). A copy must be served on the complainant.

After the filing of the answer, the PUC will contact the parties to provide information about further proceedings in this matter.

PUBLIC UTILITY COMMISSION OF OREGON

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

c: Helen Parker, Helen.Parker@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.

Notice to Active Duty Servicemembers: Active Duty Servicemembers have a right to stay these proceedings under the federal Servicemembers Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 503-584-3571 or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll free telephone number.

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.

Notice of Contested Case Rights and Procedures continued

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
1041 SE 58th Place
Portland, OR 97215
503-756-7533 (tel.)
503-334-2235 (fax)
irion@sanger-law.com

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

ASHFIELD SOLAR, LLC,

Complainant,

v.

PORTLAND GENERAL ELECTRIC
COMPANY,

Defendant.

DOCKET NO. UM 2091

COMPLAINT

EXPEDITED CONSIDERATION
REQUESTED

I. INTRODUCTION

This is a complaint (“Complaint”) filed by Ashfield Solar, LLC (“Ashfield Solar” or “Complainant”) with the Oregon Public Utility Commission (the “Commission” or “OPUC”) against Portland General Electric Company (“PGE” or the “Company”) under Oregon Revised Statute (“ORS”) 756.500 and Oregon Administrative Rule (“OAR”) 860-001-0170. Ashfield Solar and PGE were parties to a power purchase agreement (“PPA”) for the output of the Ashfield Solar facility, which is a 1.98-megawatt (“MW”) solar qualifying facility (“QF”) under the Public Utility Regulatory Policies Act (“PURPA”). Ashfield Solar terminated the PPA, but certain provisions survive

termination. Ashfield Solar seeks a ruling that the surviving provisions do not prevent Ashfield Solar from participating in the Community Solar Program (“CSP”).

PGE has taken the position that Section 9.5 of the PPA gives PGE the right to prevent QFs with executed PPAs, including terminated PPAs, from participating in the CSP. Ashfield Solar is currently on the waitlist for the CSP. Ashfield Solar seeks to have Section 9.5 deemed inapplicable to Ashfield Solar’s participation in the CSP.

On May 11, 2020, Ashfield Solar provided formal notice of its understanding of the surviving PPA provisions to PGE and requested that PGE confirm that PGE does not dispute Ashfield Solar’s right to participate in the CSP. As of this filing, PGE has not responded.

Ashfield Solar requests expedited consideration of this complaint and Commission order no later than August 7, 2020. Ashfield Solar proposes that PGE file its Answer on or before June 12, 2020, followed by three simultaneous rounds of cross-motions for summary judgment, to be filed on July 3, 2020; July 17, 2020; and July 24, 2020.

Ashfield Solar and PGE have reached a settlement in principle that is being finalized. PGE has filed a tariff request to allocate all generic costs of the CSP to all customers.¹ Under the settlement, PGE and Ashfield Solar can enter into a mutual agreement for termination of Ashfield Solar’s PPA Section 9.5 if the Commission approves this tariff request, and will support the expedited schedule for resolution of this complaint if the Commission does not timely approve the tariff. Under the settlement,

¹ *PGE Schedule 136, Adv No 20-09 Cmty. Solar Cost Recovery Mechanism Update*, Docket No. ADV 1112, PGE Advice No. 20-09 at 1-2 (May 4, 2020).

Ashfield Solar will provide a statement of support explaining that the CSP furthers decarbonization of energy supply in Oregon and provides a public benefit and a public good that benefits all customers. Under the settlement, Ashfield Solar will not take a position on PGE’s proposed tariff, but will support the Commission and PGE considering responsibility of program costs. Ashfield Solar has filed this complaint as a “placeholder” in the event that PGE disputes Ashfield Solar’s right to participate in the CSP. If PGE agrees not to dispute Ashfield Solar’s right to participate in the CSP, Ashfield Solar will withdraw this complaint.

II. SERVICE

Copies of all pleadings and correspondence should be served on Complainant’s counsel and representatives at the addresses below:

Irion Sanger
Sanger Law, PC
1041 SE 58th Place
Portland, OR 97215
irion@sanger-law.com

Colin Murphy
Ashfield Solar, LLC
c/o Sulus Solar c/o WeWork
920 SW 6th Ave
Portland, OR 97204
Colin.murphy@sulus-solar.com

Joni L. Sliger
Sanger Law, PC
1041 SE 58th Place
Portland, OR 97215
joni@sanger-law.com

In support of this Complaint, Complainant 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. Ashfield Solar, LLC is an Oregon limited liability company, the owner of a QF solar project, and will be the seller of the net output from that project. Ashfield Solar's mailing address is 920 SW 6th Ave, Portland, OR 97204.

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, 757.020, 757.325, 757.386, 758.010-758.035, and 758.505-758.555. The Oregon rules expected to be involved in this case include: OAR 860-001, 860-023, 860-024, 860-029, 860-082, and 860-088.

4. The federal statute expected to be involved in this case is PURPA: 16 USC 824a-3. The federal rules expected to be involved in this case include: 18 CFR 292.101-292.602 (2020).

V. JURISDICTION

5. The Federal Energy Regulatory Commission ("FERC") 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 (1982).

6. 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. Maudlin*, 84 Or App 590, 593 (1987). PGE is a public utility according to the definition in ORS 758.505(7). 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), 860-029-0030, and 860-088-0140.

7. The Commission has jurisdiction to represent the customers of any public utility, including interconnection customers, in all controversies respecting rates, valuations, service and all matters of which the Commission has jurisdiction, and has jurisdiction to protect customers, and the public generally, from unjust and unreasonable exactions and practices and to obtain for them adequate service at fair and reasonable rates. ORS 756.040.

8. The federal District Court and/or an Oregon Circuit Court has concurrent and may have exclusive jurisdiction over certain claims in this Complaint. However, Ashfield Solar understands that the Commission has held that it has primary and concurrent jurisdiction over post-contract execution claims involving PGE's standard PURPA PPA. *PGE v. Pac. Nw. Solar, LLC*, Docket No. UM 1894, Order No. 18-025 at 7 (Jan. 25, 2018); *PGE v. Alfalfa Solar*, Docket No. UM 1931, Order No. 18-174 at 3-4 (May 23, 2018). Ashfield Solar is not waiving any rights to have a District or Circuit court adjudicate and resolve its claims for relief by filing this Complaint before the Commission.

VI. FACTUAL BACKGROUND

9. The Ashfield Solar project will be a 1.98-megawatt ("MW") nameplate solar generation facility located in Marion County, Oregon.

10. The Ashfield Solar project will interconnect with PGE.

11. On March 27, 2018, Ashfield Solar executed a Standard Renewable In-System Variable PPA with PGE, which PGE counter-signed on April 19, 2018 (available at: <https://edocs.puc.state.or.us/efdocs/HAQ/re143haq161457.pdf>).

12. On August 6, 2019, Ashfield Solar requested that PGE agree to amend the PPA to reduce the project size.

13. On August 12, 2019, PGE refused to amend and instead instructed Ashfield Solar to terminate the PPA, pay damages, and enter a new PPA for the new project size.

14. On December 9, 2019, PGE and Ashfield Solar mutually agreed to terminate the PPA (“Termination Agreement”).

15. Ashfield Solar reduced the size of the Ashfield Solar project from 3.0 MW to 1.98 MW.

16. Ashfield Solar and PGE never executed a new PPA.

17. The Termination Agreement does not limit “any rights and obligations of the Parties [PGE and Ashfield Solar] that are expressly designated under the terms of the [PPA] as surviving the termination of the [PPA].”

18. Section 9.5 of the PPA states that “In the event PGE terminates this Agreement pursuant to this Section 9, and Seller wishes to again sell Net Output to PGE following such termination, PGE in its sole discretion may require that Seller shall do so subject to the terms of this Agreement, including but not limited to the Contract Price until the Term of this Agreement (as set forth in Section 2.3) would have run in due course had the Agreement remained in effect. At such time Seller and PGE agree to execute a written document ratifying the terms of this Agreement.”

19. Under Section 2.3 of Ashfield Solar’s PPA, the PPA would have run until December 1, 2034 if it not for the Termination Agreement.

20. PGE has taken the position that Section 9.5 prevents QFs with executed PPAs, including terminated PPAs, from participating in the CSP.

21. Section 9.5 only applies to PURPA sales subsequent to PPA termination from the QF directly to PGE for the QF's entire net output at a price higher than the terminated contract price.

22. Section 9.5 does not apply to subsequent sales to non-PGE buyers, including sales to PGE ratepayers as Subscribers.

23. Section 9.5 does not apply to subsequent sales to PGE at a price lower than the terminated contract price.

24. PGE's rate for unsubscribed energy will likely be substantially lower than the contract price in Ashfield Solar's standard PPA.

25. PGE has made assertions that the standard PPAs force PGE's customers to purchase wholesale power at above-market prices.

26. For example, on June 30, 2017, PGE asserted that standard avoided cost prices for solar QF PPAs cost PGE and its ratepayers "approximately \$30/MWh more than market for solar QF output."

27. For example, on June 30, 2017, PGE asserted that QFs "locking in inaccurate standard prices for 15 years will result in substantial and irreparable harm to PGE's customers."

28. Section 9.5 does not apply to QFs participating in the CSP.

29. On January 7, 2020, Sulus Solar registered as a project manager in the CSP.

30. On January 7, 2020, the CSP Program Administrator approved Sulus Solar as a registered project manager.

31. On January 21, 2020, the CSP Program Administrator allowed project managers to submit applications for potential CSP projects.

32. On January 21, 2020, Sulus Solar submitted an application to the CSP for the Ashfield Solar project.

33. On January 21, 2020, the total number of applications to the CSP in PGE's service territory exceeded the available capacity.

34. On January 22, 2020, a lottery was run to determine queue order for the CSP in PGE's service territory.

35. On January 22, 2020, a queue order was established for the CSP in PGE's service territory.

36. On January 22, 2020, the CSP Program Administrator posted the queue order for the CSP in PGE's service territory on the CSP website (see <https://www.oregoncsp.org/p/ProjectQueue/>).

37. On January 22, 2020, the Ashfield Solar project was placed on the waitlist for the CSP in PGE's service territory.

38. PGE has taken the position that Section 9.5 of the standard PPA gives PGE the right to prevent QFs with executed PPAs, including terminated PPAs, from participating in the CSP.

39. On May 11, 2020, Ashfield Solar provided notice to PGE pursuant to Section 5 of the Termination Agreement that it intended to participate in the CSP and

asked PGE to confirm that PGE does not dispute Ashfield Solar's right to participate in the CSP.

40. As of this filing, PGE has not responded or acknowledged Ashfield Solar's notice and request.

41. As of the date of this filing, PGE has not confirmed that PGE does not dispute Ashfield Solar's right to participate in the CSP.

42. Ashfield Solar seeks relief so that it can participate in the CSP.

VII. LEGAL CLAIMS

43. Complainant re-alleges all the preceding paragraphs.

44. Ashfield Solar is entitled to relief because Section 9.5 does not apply to QFs in the CSP.

45. Ashfield Creek Solar is entitled to relief because Section 9.5 provides at most a discretionary right to PGE, and PGE exercising its discretion against QFs participating in the CSP is imprudent.

46. Ashfield Creek Solar is entitled to relief because Section 9.5 provides at most a discretionary right to PGE, and PGE exercising its discretion against QFs participating in the CSP is harmful to customers.

47. Ashfield Creek Solar is entitled to relief because Section 9.5 provides at most a discretionary right to PGE, and PGE exercising its discretion against QFs participating in the CSP is contrary to the legislative policy of having a CSP in PGE's service territory.

48. Ashfield Creek Solar is entitled to relief because Section 9.5 provides at most a discretionary right to PGE, and PGE exercising its discretion against QFs

participating in the CSP is contrary to the Commission's policy of having a CSP in PGE's service territory.

49. Ashfield Creek Solar is entitled to relief because Section 9.5 provides at most a discretionary right to PGE, and PGE exercising its discretion against QFs participating in the CSP is contrary to the Commission's policy and orders.

VIII. PRAYER FOR RELIEF

WHEREFORE, Complainant respectfully requests that the Commission issue an order:

50. Finding that Section 9.5 does not affect Ashfield Solar's eligibility to participate in the CSP.

51. Finding that Section 9.5 of the standard PPA does not apply to Ashfield Solar's participation in the CSP.

52. Finding that Section 9.5 of the standard PPA does not apply to QFs participating in the CSP.

53. Alternatively, finding that PGE forfeiting its alleged right under Section 9.5 for QFs participating in the CSP is the prudent course of action.

54. Alternatively, finding that PGE forfeiting its alleged right under Section 9.5 for QFs participating in the CSP is in the public interest.

55. Finding that PGE has not acted prudently.

56. Directing PGE to act prudently.

57. Finding that PGE has not acted in the public interest.

58. Directing PGE to act in the public interest.

59. Directing PGE to treat all established or aspiring CSP projects in a fair, just, and reasonable manner.

60. Instituting penalties up to \$10,000 pursuant to ORS 756.990 against PGE and paid by PGE's shareholders for each breach of the standard PPA's terms and for each violation of ORS 757.020, ORS 757.386, and ORS 758.525(2).

61. Granting any other such relief as the Commission deems necessary.

Dated this 14th day of May 2020.

Respectfully submitted,



Irion A. Sanger
Joni L. Sliger
Sanger Law, PC
1041 SE 58th Place
Portland, OR 97215
Telephone: 503-756-7533
Fax: 503-334-2235
irion@sanger-law.com

Of Attorneys for Ashfield Solar, LLC

CERTIFICATE OF FILING

I certify that on May 14th, 2020, I filed the foregoing Complaint on behalf of Ashfield Solar, LLC with the Oregon Public Utility Commission by electronic communication as consistent with OAR 860-001-0170.



Irion A. Sanger
Sanger Law, PC
1041 SE 58th Place
Portland, OR 97215
Telephone: 503-756-7533
Fax: 503-334-2235
irion@sanger-law.com