

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1971

In the Matter of

WACONDA SOLAR, LLC,
Complainant,

v.

PORTLAND GENERAL ELECTRIC
COMPANY,

Defendant.

WACONDA SOLAR’S REPLY IN
SUPPORT OF ITS NOTICE OF
INTENT TO FILE MOTION FOR
SUMMARY JUDGMENT AND
REQUEST FOR POSTPONEMENT
OF ORAL ARGUMENT

I. INTRODUCTION

Waconda Solar, LLC (“Waconda Solar”) respectfully files this Reply in support of its Notice of Intent to file Waconda Solar’s Motion for Summary Judgment. Waconda Solar is requesting that the Oregon Public Utility Commission (the “Commission”) and Administrative Law Judge (“ALJ”) not set a schedule for oral arguments on Portland General Electric Company’s (“PGE’s”) Modified Second Motion for Summary Judgment until after Waconda Solar files its own Motion for Summary Judgment. PGE’s Response to Waconda Solar’s Notice of Intent on January 5, 2022 requests that the request be denied.¹ Waconda Solar provides this Reply to explain its disagreement with PGE’s position and respectfully requests that the Commission postpone setting the schedule for oral argument until after Waconda Solar has filed its Motion.

¹ PGE’s Response to Waconda Solar’s Notice and Request at 1 (Jan. 5, 2022).

II. REPLY

A. Waconda Solar Is Not Requesting that the Case Be Stayed

PGE claims that Waconda Solar’s “filing is effectively a second Waconda motion to stay this proceeding.”² PGE’s statement is strange, and it may be that PGE is somehow confused. To clarify, Waconda Solar is not seeking a stay.

Waconda Solar intends to file a motion for summary judgment. That motion for summary judgment will address many of the same legal issues raised in PGE’s Motion for Summary Judgment as well as legal issues in the *Zena Solar, LLC v. PGE* complaint in UM 2164. Waconda Solar can file that motion for summary judgment now or after the Commission issues its order in *Zena Solar* in two months.³

Waconda Solar does not know if the Commission will schedule oral argument, when such oral argument will occur, or when the Commission will issue an order in this proceeding. Waconda Solar’s notice was primarily intended to inform the Commission that it intends to file a motion for summary judgment (on many of the same issues that PGE has sought summary judgment on), and the Commission should wait to schedule oral argument (or issue an order) until after such a motion has been filed. Waconda Solar’s notice was also intended to inform the Commission when it expected to file its motion and the reason for why that time was selected.

² PGE’s Response to Waconda Solar’s Notice and Request at 1.

³ There is a third option in which Waconda Solar files a motion for summary judgment on the legal issues not at issue in *Zena Solar*, and then files a second motion for summary judgment after the order in *Zena Solar*.

B. Waconda Solar's Request Is Consistent with the "Procedural Schedule"

PGE claims Waconda Solar's request should be denied because it is inconsistent with the procedural schedule in this case.⁴ This is incorrect.

The ALJ's ruling set the procedural schedule for the proceeding with oral argument dates to be determined.⁵ There are no other specific dates, and the ALJ has yet to set dates for oral argument. The ALJ granted PGE and Waconda Solar's Joint Motion to Modify the Procedural Schedule, in which Waconda Solar reserved the right to file a Motion for Summary Judgment.⁶ PGE reserved the right to argue that such a motion would not be appropriate,⁷ but it is disingenuous to argue that Waconda Solar is somehow violating a procedural schedule by doing exactly what it reserved the right to do.

Waconda Solar's notice and request is consistent with the ALJ ruling because it simply reserves the right to request oral arguments and requests the oral argument dates be pushed out. As no dates have been set yet, Waconda Solar's request is consistent with the procedural schedule.

⁴ PGE's Response to Waconda Solar's Notice and Request at 5.

⁵ ALJ Ruling at 1-2 (Aug. 4, 2021).

⁶ Joint Motion to Modify Procedural Schedule at 2, n.2.

⁷ Joint Motion to Modify Procedural Schedule at 2, n.2. Notably, PGE has not made any argument that it would be inappropriate for Waconda Solar to file a motion for summary judgment.

C. The Legal Issue of the Proper Review of an Independent System Impact Study Is at Issue in Both Waconda Solar and Zena Solar

PGE also claims Waconda Solar's request should be denied because PGE asserts what standard of review applies when a utility reviews and evaluates an independent System Impact Study ("iSIS") is not at issue in this proceeding.⁸ However, that is incorrect no matter how many times PGE repeats it.

The issue regarding what standard of review applies to a utility's review of an iSIS is at issue in this case because PGE's refusal to state it would review the iSIS in a reasonable, non-discriminatory manner consistent with Good Utility Practice and its contractual duty of good faith and fair dealing prevented Waconda Solar from conducting an iSIS.⁹ Numerous times PGE has refused to state how it will address and evaluate the iSIS, which is essential to Waconda Solar's right to conduct an iSIS under OAR 860-082-0060(7)(h).¹⁰ Thus, the appropriate standard of review of an iSIS is an issue in this proceeding.

PGE may disagree with Waconda Solar's position and it may not want it to be an issue, but that does not mean it is not an issue in this proceeding. Waconda Solar intends to file its own motion for partial summary judgment and PGE can raise its arguments in

⁸ PGE's Response to Waconda Solar's Notice and Request at 3.

⁹ See Waconda Solar's Response to PGE's Modified Second Motion for Summary Judgment at 25-29 (Nov. 22, 2021).

¹⁰ See, e.g., PGE's Declaration of Rebecca Dodd in Support of PGE's Motion, Exhibit 7 at 2- 3 (Sept. 15, 2021); See also, PGE's Modified Second Motion for Summary Judgment at 40-41.

response, but arguing it is not an issue in this proceeding is incorrect. The Commission may ultimately agree with PGE, but the Commission will still need to address the “issue.”

D. Zena Solar Has Raised the Issue of What Is the Standard of Review of an iSIS Under Oregon’s Administrative Rules

Finally, PGE also claims Waconda Solar’s request should be denied because PGE asserts what standard of review applies under OAR 860-082-0060(7)(h) is not at issue in *Zena Solar, LLC v. PGE* because the standard of review was established by a settlement agreement not Commission rules.¹¹ Once again, PGE is incorrect no matter how many times PGE repeats it.

Zena Solar has raised the issue regarding what standard of review applies from Commission rules when a utility evaluates and addresses an iSIS.¹² Thus, the standard of review of an iSIS under the Commission’s rules is at issue in *Zena Solar*.

PGE does not want the issue of what the legal standard is under OAR 860-082-0060(7)(h) to be resolved in *Zena Solar, LLC v. PGE*. PGE is creatively attempting to confuse the Commission regarding what its actual position is in *Zena Solar, LLC v. PGE*. PGE asserts that “PGE’s motion for partial summary judgment in *Zena Solar* specifically stated that by granting the motion, the only issue remaining in that case would be PGE’s evaluation of the alternative findings stated in the iSIS.”¹³ PGE leaves out the most important part of this statement. Yes, PGE is seeking that the Commission make a

¹¹ PGE’s Response to Waconda Solar’s Notice and Request at 3, n.8.

¹² *Zena Solar, LLC v. PGE*, Docket No. UM 2164, First Amended Complaint at ¶¶ 148, 152, 159 (Oct. 21, 2021); Docket No. UM 2164, Consolidated Closing Brief of Complainant Zena Solar at 3-4, 6-14 (Dec. 30, 2021).

¹³ PGE’s Response to Waconda Solar’s Notice and Request at 3, n.8.

determination of PGE's evaluation of the iSIS. However, PGE wants that evaluation to occur under only the legal standard under a Settlement Agreement between Zena Solar and PGE. PGE has attempted to dismiss and does not want the Commission to review PGE's evaluation of the alternative findings under the legal standards adopted in Oregon statute and administrative rules.

As a Commission order is expected on this issue in March¹⁴ and this issue is an issue in this proceeding, judicial economy could be served by the postponement of scheduling oral arguments until after an order is issued and determines if Waconda Solar will need to include the issue in its motion for summary judgment. However, if the Commission indicates that it wants to issue an order or schedule oral argument earlier, then Waconda Solar will file its motion for summary judgment prior to oral argument or an order.

E. PGE Wants the Commission to Resolve the Legal Issues Without Hearing from Waconda Solar

Ultimately, PGE wants the Commission to issue an order only on its Motion for Summary Judgment without hearing from Waconda Solar on its Motion for Summary Judgment.¹⁵ It would be highly inappropriate for the Commission to issue an order resolving core legal issues when one party has stated that it intends to file a legal pleading on those same legal issues.

¹⁴ Docket No. UM 2164, ALJ Ruling at 2 (Dec. 29, 2021).

¹⁵ PGE's Response to Waconda Solar's Notice and Request at 5.

Waconda Solar urges the Commission not to take PGE's invitation to effectively preclude Waconda Solar from filing a motion for summary judgment. In the end, Waconda Solar requests clarification regarding when it should file its motion for summary judgment.

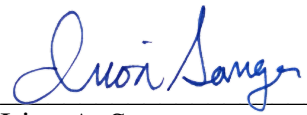
III. CONCLUSION

For all the reasons herein, Waconda Solar requests the Commission accept Waconda Solar's Notice of Intent to file its own Motion for Summary Judgment and postpone scheduling oral arguments until an order is issued in UM 2164 and Waconda Solar files its own motion.

Dated this 10th day of January 2022.

Respectfully submitted,

Sanger Law, PC



Irion A. Sanger
Ellie Hardwick
Sanger Law, PC
4031 SE Hawthorne Blvd.
Portland, Oregon 97214
Telephone: 503-756-7533
Fax: 503-334-2235
irion@sanger-law.com

Of Attorneys for Waconda Solar, LLC