

January 5, 2022

**Via Electronic Filing**

Public Utility Commission of Oregon  
Attn: Filing Center  
201 High Street SE, Suite 100  
Salem, Oregon 97301-3398

**Re: Waconda Solar, LLC v. Portland General Electric Company**  
**PUC Case No. UM 1971**

Dear Filing Center:

Enclosed for filing today in the above-named docket is Portland General Electric Company's Response to Waconda Solar, LLC's Notice of Intent to File Motion for Summary Judgment and Request for Postponement of Oral Argument.

Thank you for your assistance.

Very truly yours,

  
Jeffrey S. Lovinger

Enclosure

1231029

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON  
UM 1971**

WACONDA SOLAR, LLC,

Complainant,

vs.

PORTLAND GENERAL ELECTRIC  
COMPANY,

Defendant.

**PORTLAND GENERAL  
ELECTRIC COMPANY'S  
RESPONSE TO WACONDA  
SOLAR, LLC'S NOTICE OF  
INTENT TO FILE MOTION  
FOR SUMMARY JUDGMENT  
AND REQUEST FOR  
POSTPONEMENT OF ORAL  
ARGUMENT**

Portland General Electric Company ("PGE") requests that the Oregon Public Utility Commission ("Commission") or the Administrative Law Judge ("ALJ") deny Waconda Solar LLC's ("Waconda") December 30, 2021, Notice of Intent to File Motion for Summary Judgment and Request for Postponement of Oral Argument.

Waconda's December 30, 2021, filing is effectively a second Waconda motion to stay this proceeding. On October 5, 2021, Waconda moved to stay this proceeding pending resolution of a petition for declaratory ruling filed by three trade associations in Docket No. DR 57. Waconda argued the declaratory proceeding would resolve questions over what standard of review applies under OAR 860-082-0060(7)(h) when a public utility evaluates alternative findings contained in an independent System Impact Study ("iSIS").<sup>1</sup> PGE opposed Waconda's October 5, 2021, motion for stay and noted that the instant case does not require the Commission to decide what standard of review applies under OAR 860-082-0060(7)(h) because Waconda has not provided PGE with an iSIS and PGE has not been called upon to evaluate any

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<sup>1</sup> Waconda's Motion to Stay, or in the Alternative, to Extend the Filing Deadline of Waconda Solar's Response to PGE's Modified Second Motion for Summary Judgment at 11-19 (Oct. 5, 2021).

alternative findings under OAR 860-082-0060(7)(h).<sup>2</sup> On November 4, 2021, the ALJ issued a ruling denying Waconda's motion for stay.<sup>3</sup>

Now, after PGE's Modified Second Motion for Summary Judgment ("PGE's MSJ") has been fully briefed, Waconda has requested that the Commission or ALJ stay this proceeding (1) until after a final order in an unrelated case, *Zena Solar LLC v. PGE*, Docket No. UM 2164, and (2) until after Waconda files a motion for partial summary judgment in this proceeding. Waconda argues that a stay is warranted by judicial economy. Waconda argues that the issue of what standard of review applies under OAR 860-082-0060(7)(h) is raised in both the *Zena Solar* case and the instant case and may be decided in the *Zena Solar* case.<sup>4</sup> Waconda is incorrect. The Commission does not need to determine what standard of review applies under OAR 860-082-0060(7)(h) to resolve either the *Zena Solar* case (UM 2164) or the instant case (UM 1971).

The *Zena Solar* case is an action to enforce a fully executed interconnection agreement ("IA") and a related settlement agreement ("SA") entered into between Zena Solar LLC ("Zena") and PGE.<sup>5</sup> PGE and Zena agreed that Zena could perform an iSIS *after* the parties executed the IA and that PGE would evaluate and address the Zena iSIS consistent with Good Utility Practice.<sup>6</sup> In Docket No. UM 2164, there is no question about what standard of review applies to PGE's evaluation of Zena's iSIS, as that standard of review is unambiguously established by agreement between PGE and Zena. In fact, Zena Solar, with the same counsel as Waconda, does not allege in its complaint that a standard of review, if any, from OAR 860-082-0060(7)(h)

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<sup>2</sup> PGE's Response to Waconda's Motion to Stay at 8-10 (Oct. 12, 2021).

<sup>3</sup> ALJ Ruling at 3 (Nov. 4, 2021).

<sup>4</sup> Waconda's Notice of Intent to File Motion for Summary Judgment and Request for Postponement of Oral Argument ("Waconda Notice & Request") at 1-3 (Dec. 30, 2021).

<sup>5</sup> See *Zena Solar v. PGE*, Docket No. UM 2164, First Amended Complaint ("Zena's Complaint") at 1 (Oct. 21, 2021), redacted version available at <https://edocs.puc.state.or.us/efdocs/HAS/um2164has172622.pdf>.

<sup>6</sup> *Id.* at 4; Docket No. UM 2164, PGE's First Amended Answer, Affirmative Defenses, and Counterclaims at 1-2 (Nov. 2, 2021), redacted version available at <https://edocs.puc.state.or.us/efdocs/HAC/um2164hac14190.pdf>.

applies to the evaluation of Zena's iSIS.<sup>7</sup> Docket No. UM 2164 does not require the Commission to determine what standard of review applies to an iSIS performed under OAR 860-082-0060(7)(h) prior to the parties entering into an interconnection agreement.<sup>8</sup>

Likewise, resolution of Waconda's amended complaint and PGE's MSJ does not require the Commission to determine what standard of review applies to a public utility's evaluation of alternative findings in an iSIS conducted under OAR 860-082-0060(7)(h). The amended complaint asserts that PGE has refused to provide system information and system access so that Waconda can conduct an iSIS.<sup>9</sup> Waconda has not conducted an iSIS and PGE has not been called upon to evaluate the alternative findings under a Waconda iSIS. The question of what standard of review would apply to PGE's evaluation of the alternative findings in a Waconda iSIS is speculative and premature. It is not clear that Waconda will ever elect to conduct an iSIS, or that if it does, that PGE will disagree with any of the alternative findings in Waconda's iSIS. Simply put, there is no need to resolve what standard of review applies when PGE has not been provided with an iSIS and has not evaluated the iSIS as required by OAR 860-082-0060(7)(h).

The relevant claim under the amended complaint is not that PGE has applied the wrong standard of review to its evaluation of Waconda's iSIS, but rather that PGE has allegedly refused to cooperate in providing Waconda with the system information and system access required to

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<sup>7</sup> Zena's Complaint ¶¶ 108-84 (none of six claims referring to OAR 860-082-0060(7)(h)).

<sup>8</sup> Waconda also incorrectly states that "PGE does not want the Commission [in the *Zena Solar* case] to address the appropriate legal standard for its review of an iSIS." (Waconda Notice & Request at 2, n.3.) Waconda has the same counsel as Zena Solar and knows (or should know) that the statement is incorrect. PGE, in *Zena Solar*, moved for partial summary judgment against claims that were *not* in the Zena Solar iSIS and that were settled and released after dismissal of a previous Zena Solar complaint prior to Zena Solar even beginning its iSIS. (See Docket No. UM 2164, PGE's Motion for Partial Summary Judgment (Jul. 2, 2021), redacted version available at <https://edocs.puc.state.or.us/efdocs/HAO/um2164hao163456.pdf>.) 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 (*id.* at 1-2).

<sup>9</sup> Waconda's First Amended Complaint ¶¶ 144 (Jul. 31, 2019) ("PGE has an obligation to provide reasonable information and reasonable access to its system so that an independent System Impact Study can be performed.") and 164 ("PGE's failure to cooperate with Waconda Solar, by providing the necessary information and access to PGE's system, violated Waconda Solar's legal right to have an independent System Impact Study performed.").

perform an iSIS.<sup>10</sup> However, PGE’s position is that it will provide Waconda with necessary system information and system access if and when Waconda executes a non-disclosure agreement (“NDA”) to protect the confidentiality of PGE’s non-public system information.<sup>11</sup> PGE has also clearly stated that it will evaluate any alternative findings contained in a Waconda iSIS in a manner that is consistent with applicable statutes and regulations.<sup>12</sup> And PGE has denied that it has any intent to evaluate the findings of an iSIS in bad faith, unreasonably, or inconsistent with general principals of good utility practice.<sup>13</sup> There is no claim stated in Waconda’s amended complaint alleging that PGE has evaluated a Waconda iSIS inconsistent with any applicable standards of review. And there is no need for the Commission to decide what standard of review applies under OAR 860-082-0060(7)(h) for the Commission to grant PGE’s MSJ and deny all claims for relief asserted in the amended complaint. Further, the Commission—under clear Oregon precedent—should not answer a purely hypothetical question such as the one that Waconda now wants to pose in its motion for summary judgment.<sup>14</sup>

Because neither the *Zena Solar* case nor the instant case require the Commission to decide the standard of review under OAR 860-082-0060(7)(h), there is no judicial economy to be had by staying the resolution of this case pending the resolution of the *Zena Solar* case. The instant case has been pending for over three years. PGE’s MSJ is fully briefed and if granted will resolve all claims in the first amended complaint. The existing procedural schedule provides

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<sup>10</sup> See *id.* ¶¶ 92-95, 144, 164.

<sup>11</sup> PGE’s Modified Motion for Summary Judgment at 13-16, 37-41 (“PGE’s MSJ”) (Sep. 15, 2021); see, e.g., Declaration of Rebecca Dodd in Support of PGE’s MSJ (“Dodd Decl.”) ¶ 4 and Ex. 3 at 8 (July 30, 2021, letter from PGE to Waconda) (Sep. 15, 2021); *id.* ¶ 6 and Ex. 5 at 2 (August 20, 2021, letter from PGE to Waconda).

<sup>12</sup> PGE’s Answer to the First Amended Complaint at 4 (Aug. 20, 2019); Dodd Decl. ¶ 6 and Ex. 5 at 2 (August 20, 2021, letter from PGE to Waconda).

<sup>13</sup> Dodd Decl. Ex. 7 at 3 (September 14, 2021, letter from PGE to Waconda).

<sup>14</sup> See, e.g., *Beck v. City of Portland*, 202 Or App 360, 365-66 (2005) (ripeness is both a constitutional requirement and, for a claim seeking a declaratory statement as relief, a statutory requirement).

for oral argument and a decision on PGE's MSJ, followed by a pre-hearing conference to determine the subsequent procedural schedule if any claims survive PGE's MSJ.<sup>15</sup>

There is no reason to delay resolution of PGE's MSJ simply because Waconda has indicated it may file a partial MSJ after Docket No. UM 2164 is resolved in March 2022. If any claims for relief in Waconda's first amended complaint survive PGE's pending and fully briefed MSJ, then Waconda will be free to file its own dispositive motion regarding those remaining claims.

PGE requested oral argument on its MSJ and remains ready and willing to participate in oral argument if the Commission or the ALJ determine that oral argument would be helpful to the Commission. However, PGE is also willing to proceed without oral argument. Because Waconda's December 30, 2021, request is inconsistent with the procedural schedule in this case, would needlessly delay resolution of PGE's fully briefed MSJ, and would not create judicial economy because the question of the standard of review under OAR 860-082-0060(7)(h) does not require resolution in either Docket No. UM 2164 or in the instant case, PGE respectfully requests that the Commission or the ALJ deny Waconda's December 30 request and resolve PGE's MSJ as soon as practicable either with or without oral argument.

DATED this 5th day of January, 2022.

Respectfully submitted,

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<sup>15</sup> See ALJ Ruling at 1 (Aug. 4, 2021) and ALJ Ruling at 3 (Nov. 4, 2021).