

October 12, 2021

Via Electronic Filing

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

Re: UM 1971 - Waconda Solar, LLC v. Portland General Electric Company

Attention Filing Center:

Enclosed for filing today in the above-named docket is Portland General Electric Company' Response to Waconda Solar, LLC's Motion to Stay.

Thank you for your assistance.

Very truly yours,



Jeffrey S. Lovinger

Attachments

WACO\1200605

**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 MOTION TO
STAY**

Portland General Electric Company ("PGE") respectfully requests that the Administrative Law Judge ("ALJ") or the Public Utility Commission of Oregon ("Commission") deny Waconda Solar, LLC's ("Waconda") October 5, 2021, motion to stay or, in the alternative, to extend the filing deadline of Waconda's response to PGE's modified second motion for summary judgment ("Waconda's Motion").

I. INTRODUCTION

Waconda filed a complaint against PGE on September 28, 2018.¹ Waconda's complaint alleged four claims for relief and requested multiple forms of relief from the Commission. On July 31, 2019, Waconda filed an amended complaint and added new legal theories and claims to its existing claims for relief. PGE has filed a pending motion for summary judgment seeking dismissal of the complaint in its entirety. Waconda's response to the pending motion for summary judgment is due October 19, 2021. PGE has proposed an extension of this deadline until November 9, 2021, to provide time to complete briefing on Waconda's Motion before Waconda is required to respond to PGE's pending motion for summary judgment.

¹ Complaint at 23 (Sept. 28, 2018).

Waconda's Motion seeks a stay of this docket, and of the resolution of PGE's pending motion for summary judgment, to await a ruling in Docket No. DR 57. Docket No. DR 57 is a new action brought by certain interconnection trade associations. The trade associations seek a declaratory ruling that OAR 860-082-0060(7)(h) establishes a "right" of an interconnection customer to conduct an independent system impact study ("iSIS"). It also seeks to expand the utility's existing obligation under that regulation—to "evaluate and address" alternative findings in an applicant's iSIS—to also require the utility to do so reasonably, in a non-discriminatory manner, consistent with the utility's contractual duty of good faith and fair dealing, and consistent with Good Utility Practice.²

Waconda asserts that the Commission should stay this proceeding because "[i]t has become clearer that the substantive legal issue is actually a question of the appropriate legal standard under which a utility must review an iSIS pursuant to OAR 860-082-0060(7)(h)."³ But Waconda has asked the Commission to make no such determination in this docket, which Waconda initiated more than two years ago. PGE disagrees that the "substantive legal issue" in this case is the "question of the appropriate legal standard under which a utility must review an iSIS." Waconda's complaint does not raise this issue. Additionally, PGE's Modified Second Motion for Summary Judgment seeks rulings that will not be resolved by any declaratory ruling that may be forthcoming in Docket No. DR 57. The Commission should deny Waconda's Motion because it will create unnecessary delay and will not aid in resolving the claims in this docket.

² *In the Matter of Renewable Energy Coal., Community Renewable Energy Ass'n, and Oregon Solar + Storage Indus. Ass'n*, Docket No. DR 57, Petition for Declaratory Ruling at 3 (Oct. 5, 2021), available at <http://edocs.puc.state.or.us/efdocs/HAA/dr57haa17048.pdf>.

³ Waconda's Motion to Stay or, in the Alternative, to Extend the Filing Deadline of Waconda's Response to PGE's Modified Second Motion for Summary Judgment ("Waconda's Mot.") at 7 (Oct. 5, 2021).

Waconda's Motion is a procedural motion because it seeks to modify the schedule in this case and does not address the rights and duties of a party or seek summary determination of the issues in this proceeding.⁴ As discussed below, the petition for declaratory ruling filed in Docket No. DR 57 will not resolve the substantive issues in this case. Because Waconda's Motion is a procedural motion, PGE is responding to the motion in seven days as required by OAR 860-001-0420(4). The moving party is not permitted to file a reply to a response to a procedural motion unless permitted by the ALJ.⁵

II. FACTUAL BACKGROUND

Waconda filed its original complaint on September 28, 2018. That complaint asserted four claims for relief and sought:

- (1) To require PGE to issue a new feasibility study because its original and revised studies were allegedly incomplete and inaccurate (First Claim for Relief);
- (2) To require PGE to agree under ORS 860-082-0060(9) to allow Waconda to hire third-party consultants to conduct the remaining interconnection studies in lieu of PGE conducting those studies (Second Claim for Relief);
- (3) To require PGE to provide Waconda with PGE's system configuration so that Waconda could conduct an independent system impact study of the type referenced in OAR 860-082-0060(7)(h) (Second Claim for Relief);
- (4) To require PGE to agree to extend the commercial operation date ("COD") and the termination date of the parties' power purchase agreement ("PPA") because PGE allegedly missed interconnection deadlines (Third Claim for Relief); and
- (5) A finding that PGE discriminated against Waconda by missing deadlines, refusing to agree Waconda could hire consultants to complete the remaining interconnection studies, and allowing third parties to conduct studies in other interconnection applications (Fourth Claim for Relief).

⁴ OAR 860-001-0390(2) ("There are two types of motions. (a) Substantive motions address the rights or duties of a party or seek summary determination of any or all issues in the proceeding, such as a motion to dismiss. (b) Procedural motions address the means by which the Commission regulates its proceedings; for example, a motion to modify a schedule.")

⁵ OAR 860-001-0420(5).

PGE denied Waconda's claims in the original complaint.⁶ PGE moved for summary judgment on July 23, 2019.⁷ Waconda filed an amended complaint on July 31, 2019, alleging three new legal theories to support its claims, in addition to all its original claims.⁸ The three additional theories Waconda asserted in the amended complaint are:

- (6) Each of the original four claims for relief represented not only a violation of rules, but also a violation of the implied duty of good faith and fair dealing;
- (7) Each of the original four claims for relief represented not only a violation of rules, but also a violation of the Commission's enabling statutes; and
- (8) Waconda amended the first claim for relief to add an allegation that PGE's October 25, 2018, system impact study was incomplete and inaccurate.

In its second claim for relief under the amended complaint, Waconda alleges: (a) that it has a right to have an iSIS completed;⁹ (b) that PGE has an obligation to provide system information and system access so an iSIS can be performed;¹⁰ (c) that an iSIS cannot be performed without PGE's cooperation;¹¹ (d) that PGE violated its duty of good faith and fair dealing when it unreasonably withheld its consent to allow Waconda to hire a third-party consultant to conduct an iSIS;¹² (e) that PGE violated its duty to act reasonably with respect to its customers when it withheld its consent to allow Waconda to hire a third-party consultant to complete an iSIS;¹³ and (f) that PGE's failure to cooperate with Waconda, by providing the necessary information and access to PGE's system, violated Waconda's legal right to have an iSIS performed.¹⁴

⁶ Answer to the Compl. ¶¶ 88-140 (Nov. 1, 2018).

⁷ PGE's Motion for Summary Judgment (July 23, 2019); Declaration of Jason Zappe in Support of PGE's Motion for Summary Judgment (July 23, 2019); Declaration of Molly Honoré in Support of PGE's Motion for Summary Judgment (July 23, 2019).

⁸ See First Amended Complaint ("Am Compl.") (Jul. 31, 2019).

⁹ *Id.* ¶ 135.

¹⁰ *Id.* ¶ 144.

¹¹ *Id.* ¶ 145.

¹² *Id.* ¶ 147.

¹³ *Id.* ¶ 148.

¹⁴ *Id.* ¶ 164.

In short, Waconda has alleged it has a right to conduct an iSIS, that PGE has a duty to provide information and system access so Waconda can perform an iSIS, and that PGE has violated Waconda's rights by not cooperating to provide that information or system access. The amended complaint contains no allegation that PGE has violated the standard of review that applies when a public utility receives an iSIS and evaluates the iSIS. And the amended complaint contains no request that the Commission interpret OAR 860-082-0060(7)(h) and declare what standard of review applies when a utility evaluates an iSIS.

On August 20, 2019, PGE filed a second motion for summary judgment seeking dismissal of Waconda's claims.¹⁵ Over the course of the next two years, the parties jointly requested several extensions of Waconda's deadline to respond to the second motion for summary judgment while the parties discussed settlement of Waconda's claims. The parties requested the current summary judgment briefing schedule in a joint motion to modify the procedural schedule filed on August 4, 2021.¹⁶ The ALJ adopted the parties' modified procedural schedule, which provided that PGE would file a modified second motion for summary judgment on September 15, 2021; Waconda's response to PGE's motion for summary judgment is due on October 19, 2021; and PGE's reply to Waconda's response to the motion for summary judgment is due on November 8, 2021.¹⁷ PGE filed a modified second motion for summary judgment on September 15, 2021,¹⁸ as required by the current procedural schedule.

¹⁵ PGE's Second Motion for Summary Judgment ("PGE's 2d Mot. for Summ. J.") (Aug. 20, 2019); Declaration of Jason Zappe in Support of PGE's Second Motion for Summary Judgment (Aug. 20, 2019); Declaration of Molly Honoré in Support of PGE's Second Motion for Summary Judgment (Aug. 20, 2019).

¹⁶ Joint Motion to Modify Procedural Schedule (Aug. 4, 2021).

¹⁷ Ruling (Aug. 4, 2021).

¹⁸ PGE's Modified Second Motion for Summary Judgment ("PGE's Mod. 2d Mot. for Summ. J.") (Sept. 15, 2021); Declaration of Jason Zappe in Support of PGE's Modified Second Motion for Summary Judgment (Sept. 15, 2021); Declaration of Rebecca Dodd in Support of PGE's Modified Second Motion for Summary Judgment ("Dodd Decl.") (Sept. 15, 2021).

PGE's motion for summary judgment, as modified, asks the Commission to:

- (1) Deny Waconda's first claim for relief that the Feasibility Studies contained incomplete and inaccurate information because its Feasibility Studies contained the information required by the applicable rules and PGE corrected the identified errors in subsequent study reports;¹⁹
- (2) Deny Waconda's second claim for relief because PGE has no duty, as a matter of law, to agree to Waconda's request to allow a third party to conduct the remaining interconnection studies and PGE has agreed to provide Waconda the information necessary to conduct an iSIS if Waconda executes a non-disclosure agreement;²⁰
- (3) Deny Waconda's third claim for relief because there is no factual or legal basis for the Commission to modify the commercial operation date in Waconda's power purchase agreement;²¹
- (4) Deny Waconda's fourth claim because PGE did not subject Waconda to undue or unreasonable prejudice;²²
- (5) Deny Waconda's claims regarding the system impact study's contents as moot, irrelevant, and without merit;²³ and
- (6) Deny as moot all of Waconda's claims for relief because its small generator interconnection application was withdrawn by operation of law.²⁴

On October 5, 2021, three interconnection trade associations²⁵ filed a Petition for Declaratory Ruling with the Commission.²⁶ The trade associations seek a declaratory ruling interpreting OAR 860-082-0060(7)(h) and clarifying interconnection customers' and public utilities' obligations under that regulation.²⁷ Specifically, the Petition seeks a ruling that declares the following rights and duties under OAR 860-082-0060(7)(h):

¹⁹ PGE's Mod. 2d Mot. for Summ J. at 19-27.

²⁰ *Id.* at 28-42.

²¹ *Id.* at 42-53.

²² *Id.* at 54-56.

²³ *Id.* at 61-63.

²⁴ *Id.* at 64.

²⁵ Two of the three trade associations (Renewable Energy Coal. and Community Renewable Energy Ass'n) are represented by Waconda's counsel in this docket.

²⁶ Docket No. DR 57, Petition for Declaratory Ruling.

²⁷ *Id.* at 41-42.

- (1) Interconnection Customers have a unilateral right to conduct an iSIS;
- (2) A utility must provide the Interconnection Customer with sufficient information for an iSIS to be conducted to satisfy the Interconnection Customer's unilateral right to conduct an iSIS;
- (3) A utility must engage with the Interconnection Customer in information gathering;
- (4) A utility must provide the Interconnection Customer conducting the iSIS access to its systems sufficient to conduct the iSIS; and
- (5) A utility must review an Interconnection Customer's iSIS under a standard of Good Utility Practices, non-discrimination, and contractual good faith.²⁸

It is important to note that in this proceeding (Docket No. UM 1971): (1) PGE does not object to Waconda conducting an iSIS; (2) PGE has agreed to provide Waconda with sufficient information for Waconda to conduct an iSIS; (3) PGE has engaged with Waconda and offered to provide confidential system information if Waconda executes a non-disclosure agreement; and (4) the complaint does not include any claim that PGE has violated the standard of review for evaluating an iSIS (nor could it because PGE has not yet received an iSIS to evaluate). In short, the petition for declaratory ruling in Docket No. DR 57 will not resolve any of the allegations or claims in Waconda's amended complaint and will not address or resolve PGE's pending motion for summary judgment. There is no overlap of issues justifying a stay in Docket No. UM 1971.

Nevertheless, Waconda moved to stay this matter on October 5, 2021, the same day the trade associations filed the petition for declaratory ruling.²⁹ To date, the Commission has not opened a contested case to consider the trade associations' petition.

III. STANDARD

The Commission has considered the following factors when ruling on a motion to stay proceedings: (1) whether another proceeding addresses the same question of law; (2) whether a

²⁸ *Id.*

²⁹ Waconda's Mot. at 20.

stay would promote judicial economy; and (3) whether the question can be addressed in another proceeding with all interested parties.³⁰ In one case, the Commission also considered whether either party will suffer undue prejudice as a result of a stay.³¹

IV. ARGUMENT

A stay of the proceedings in this docket will not promote judicial economy or prevent duplicative rulings in multiple dockets, and a delay of this proceeding will unduly prejudice PGE. Crucially, even if the Commission opens a contested case and issues a declaratory ruling in Docket No. DR 57, the Commission still will need to rule on PGE's motion for summary judgment in its entirety. Consequently, a stay of this docket will unnecessarily delay the resolution of this docket and the pending motion for summary judgment. This docket can and should be resolved by a decision on PGE's motion for summary judgment. The Commission should thus deny Waconda's Motion.

A. WACONDA HAS FAILED TO ESTABLISH THAT A STAY OF THIS PROCEEDING IS WARRANTED.

Waconda asks the Commission to stay this docket to await a decision in Docket No. DR 57 because "this proceeding and the declaratory ruling proceeding both address the same core legal issues regarding iSISs."³² The only legal issue Waconda claims is present in both dockets is the standard under which a utility must "evaluate and address" any alternative findings in an iSIS under OAR 860-082-0060(7)(h).³³ But that question is not at issue in this docket. Waconda has asserted no claim that PGE used an improper standard to "evaluate and address" alternative findings in an iSIS. Nor could it, because no iSIS has occurred. Waconda has yet to identify the

³⁰ *In re PGE's Request to Update Schedule 201 and Standard PPAs*, Docket No. UM 1987, Ruling at 1, 3 (Dec. 23, 2019), available at <https://edocs.puc.state.or.us/efdocs/HDB/um1987hdb152751.pdf>.

³¹ *Threemile Canyon Wind I, LLC v. PacifiCorp*, Docket No. UM 1546, Order No. 12-475 at 3 (Dec. 10, 2012), available at <https://apps.puc.state.or.us/orders/2012ords/12-475.pdf>.

³² Waconda's Mot. at 11.

³³ *Id.*

information it deems necessary to conduct an iSIS, and it has not agreed to execute a non-disclosure agreement to protect that information.³⁴

Even if Waconda had raised in this docket the issue of what standard applies when a utility evaluates and addresses the alternative findings in an iSIS, it is not certain that the Commission will decide that question in Docket No. DR 57. The Commission has the discretion to decide whether it will substantively consider the petition for declaratory ruling, and it may decline to hear the petition.³⁵ Further, Docket No. DR 57 will not resolve any of the questions at issue in PGE's motion for summary judgment. As discussed above, Waconda's amended complaint asserts eight different claims or legal theories (four original claims, one of which alleged two separate claims, and the three additional claims or theories in the amended complaint). The question of whether PGE has violated any obligation related to an iSIS is only a sub-part of one of Waconda's eight claims or legal theories (the Second Claim for Relief). Docket No. DR 57 will not resolve any of the issues related to the remaining claims in the complaint and will not even resolve the iSIS issue raised by the complaint (which does not ask the Commission to determine the standard that applies under OAR 860-082-0060(7)(h)).

1. The legal questions at issue in this docket are not at issue in DR 57.

The primary question to be resolved in ruling on Waconda's Motion is whether the legal issues in this docket overlap with the issues in Docket No. DR 57. The issues in the two dockets do not overlap, so none of the factors that the Commission considers when determining whether to stay a docket weigh in favor of a stay.

Waconda argues there are three central questions in both this docket and DR 57: "[1] whether an interconnection customer has a right to an iSIS, [2] what information a utility must

³⁴ See PGE's Mod. 2d Mot. for Summ. J. at 36-42.

³⁵ OAR 860-001-0430(2).

provide to an interconnection customer for the customer to conduct the iSIS, and [3] what standards of review should apply when a utility evaluates and addresses the iSIS[.]”³⁶ That is incorrect. The first two questions are not in dispute in this case – PGE has offered to provide Waconda any system information and system access that is reasonably necessary for Waconda to conduct an iSIS, if Waconda executes a non-disclosure agreement to protect PGE’s confidential system information.³⁷ And Waconda has not alleged the third question—what standard applies under OAR 860-082-0060(7)(h)—as a claim in its pleadings in this case.

There is no reason to delay the proceedings in this docket—or further delay Waconda’s response to PGE’s modified second motion for summary judgment—because a decision in Docket No. DR 57 would not dispose of any of Waconda’s allegations in this docket, and the resulting delay would unduly prejudice PGE. Waconda’s amended complaint alleges (1) inaccuracies in the feasibility study and system impact study, (2) that PGE unreasonably withheld its agreement to allow a third party to conduct interconnection studies on its power system, (3) that interconnection customers have a “right” to conduct an iSIS, (4) that PGE was required to provide the information Waconda needed to conduct an iSIS, (5) that PGE failed to meet interconnection application deadlines, (6) that the COD and termination date of Waconda’s PPA should be extended, and (7) that PGE unduly prejudiced Waconda in the interconnection application process.³⁸ Waconda’s claims in this docket include no allegation that the Commission needs to decide the meaning of OAR 860-082-0060(7)(h) or the standard applicable under that rule.

There is no dispute regarding the remaining two issues Waconda argues are under consideration in this docket and in Docket No. DR 57. Waconda alleged in this docket that an

³⁶ Waconda’s Mot. at 11.

³⁷ PGE’s Mod. 2d Mot. for Summ. J. at 38-41; *see, e.g.*, Dodd Decl. Ex. 1 at 1-2, Ex. 3 at 7, Ex. 7 at 2.

³⁸ Am. Compl. ¶¶ 124-30, 134-47, 168-71.

interconnection customer has a “right” to conduct an iSIS.³⁹ Waconda also alleged that PGE interfered with its “right” to conduct an iSIS by failing to cooperate with Waconda and failing to provide Waconda the information about PGE’s electrical system that Waconda needs to complete an iSIS.⁴⁰ PGE does not take the position that Waconda cannot conduct an iSIS, and PGE has agreed to provide the information and access to its system that Waconda needs to conduct an iSIS, provided Waconda first executes a non-disclosure agreement. OAR 860-082-0020(1) provides that a “public utility may require a person to sign a confidentiality agreement if required to protect confidential or proprietary information.” PGE has even provided Waconda with an executable non-disclosure agreement. Waconda has not signed a non-disclosure agreement or advised PGE that it intends to do so without PGE’s agreement to be bound by a heightened standard of review of any alternative findings identified in Waconda’s iSIS.⁴¹

PGE’s offer to provide system information and system access if Waconda executes a non-disclosure agreement has been longstanding and repeated. In August 2019, PGE stated in writing in its second motion for summary judgment that PGE had not refused to provide system information and that PGE was willing to do so if Waconda identified the information it seeks and executed a confidentiality agreement to protect sensitive or confidential system information.⁴² PGE has repeatedly indicated to Waconda that PGE is willing to provide system information if Waconda executes a nondisclosure agreement, including in letters dated June 23, 2021,⁴³ July 30,

³⁹ *Id.* ¶ 135.

⁴⁰ *Id.* ¶ 164.

⁴¹ *See* PGE’s Mod. 2d Mot. for Summ. J. at 38-40; Dodd Decl. Exs. 1-7.

⁴² PGE’s 2d Mot. for Summ. J. at 31.

⁴³ Dodd Decl., Ex. 1 at 1-2 (“PGE has repeatedly indicated that it is willing to provide Waconda with system information and system access . . . if Waconda enters into an appropriate confidentiality agreement to protect PGE’s confidential or proprietary information. . . . PGE remains willing to provide reasonable system information and reasonable system access subject to an appropriate confidentiality agreement[.]”).

2021,⁴⁴ and September 14 2021.⁴⁵ PGE has even provided an executable non-disclosure agreement,⁴⁶ but Waconda has not taken PGE up on its offer and has not signed a non-disclosure agreement.

Further, the question of whether PGE interfered with *Waconda's* “right” to conduct an iSIS is not before the Commission in Docket No. DR 57. Even if the Commission decides that OAR 860-082-0060(7)(h) creates a “right” of an interconnection customer to conduct an iSIS, which Waconda has alleged in this docket, such a ruling will have no impact on this docket because PGE has already agreed to provide Waconda the information and access it needs to conduct an iSIS. No ruling in Docket DR 57 will affect Waconda’s ability to conduct an iSIS pertaining to the interconnection at issue in this docket.

In response to PGE’s agreement to provide information and access to PGE’s system so that Waconda can conduct an iSIS, Waconda asked for more. Waconda asked PGE to provide additional assurances—assurances that are not required by OAR 860-082-0060(7)(h)—about how PGE should “evaluate and address” any alternative findings in the iSIS after it has been completed.⁴⁷ PGE agreed to evaluate and address any alternative findings as required by the rule, but declined to agree to the additional assurances Waconda demanded.⁴⁸ PGE agreed to comply with its obligation under OAR 860-082-0060(7)(h) to “evaluate and address” any alternative findings in the iSIS.⁴⁹ Waconda now insists that PGE has prevented Waconda from conducting an iSIS because PGE will not agree to evaluate and address any alternative findings in the iSIS

⁴⁴ Dodd Decl. Ex. 3 at 7 (noting PGE has stated it is willing to provide Waconda with reasonable system information and system access to facilitate an iSIS if Waconda wants to conduct an iSIS and enters not an appropriate confidentiality agreement).

⁴⁵ Dodd Decl., Ex. 7 at 2 (“As explained in prior PGE letters, if Waconda returns an executed non-disclosure agreement to PGE, then PGE will provide Waconda with Standard System Information.”).

⁴⁶ Dodd Decl., Ex. 3 at 10-16 (executable non-disclosure agreement enclosed with letter).

⁴⁷ PGE’s Mod. 2d Mot for Summ. J. at 40; *see* Dodd Decl. Exs. 2, 4, and 6.

⁴⁸ Dodd Decl. Ex. 3 at 3, Ex. 5 at 2, Ex. 7 at 2-3.

⁴⁹ *Id.*

under the higher standard Waconda has proposed.⁵⁰ Waconda's argument represents nothing more than an attempt to place the blame on PGE for its own failure to move forward with an iSIS. PGE is not obligated to agree to a heightened standard under which to evaluate and address any alternative findings in the iSIS, and its refusal to agree to do more than the law and the Commission's rules require creates no impediment to Waconda's ability to conduct the iSIS.

Waconda has demanded that PGE agree that PGE's review of a Waconda iSIS must be reasonable, conducted in good-faith, and consistent with Good Utility Practice (a defined term with a specific meaning).⁵¹ PGE's position is that it will evaluate any iSIS provided by Waconda consistent with all applicable laws and regulations, but it will not agree to specific standards of review that are not stated in the rule.⁵² PGE has explained to Waconda that "[t]his does not mean PGE intends to operate in bad faith or in an unreasonable fashion or inconsistent with general principles of good utility practice."⁵³ Rather, it means that PGE will not agree to expand the requirements of the Commission's rules by agreeing to standards of review not stated or defined in the rules. Waconda is effectively assuming that PGE will evaluate its iSIS in bad faith, unreasonably, or inconsistent with general principles of good utility practice and taking the position that Waconda is being prevented from conducting an iSIS. PGE is willing to provide system information to facilitate an iSIS if Waconda signs a non-disclosure agreement, and PGE is willing to evaluate any iSIS it receives as required by the Commission's rule. PGE is not willing, or required, to agree to standards of review that are not stated or defined in the Commission's rules.

⁵⁰ Dodd Decl. Exs. 2, 4, and 6.

⁵¹ Dodd Decl. Ex. 2 at 3, Ex. 4 at 1.

⁵² Dodd Decl. Ex. 7 at 3.

⁵³ *Id.*

Waconda relies on *Threemile Canyon Wind I, LLC v. PacifiCorp*⁵⁴ to support its argument that the Commission should stay this docket. In *Threemile Canyon*, the Commission affirmed the ALJ's denial of the complainant's motion to lift a stay.⁵⁵ The Commission explained that a continued stay of the docket was proper for three reasons. First, the Commission agreed with the ALJ's conclusion that another proceeding would "likely resolve the third-party transmission issue raised in [that] complaint."⁵⁶ Second, the Commission found that a continued stay pending resolution of the other proceeding was appropriate because the transmission cost issue affected other utilities and qualifying facilities that could be heard in the other proceeding but could not be effectively heard in the current proceeding.⁵⁷ Finally, the Commission found that the complainant had failed to establish that it was unduly prejudiced by a continued stay because PacifiCorp had agreed to maintain the status quo during the pendency of the stay.⁵⁸

None of those circumstances are present here. The question of what standard applies under OAR 860-082-0060(7)(h) is at issue only in Docket No. DR 57. Resolving that question in Docket No. DR 57 would not resolve any of the issues in dispute in this docket. It would not resolve Waconda's claim that PGE's feasibility study and system impact study are inadequate and incomplete. It would not resolve Waconda's claim that PGE must agree to allow Waconda to hire third-party consultants to complete the remaining interconnection studies in lieu of PGE conducting those studies. It would not resolve Waconda's claim that the COD and termination date under the PPA should be extended because PGE has allegedly missed interconnection deadlines. It would not resolve Waconda's claim that PGE discriminated against Waconda. And

⁵⁴ Docket No. UM 1546, docket is available at <https://apps.puc.state.or.us/edockets/docket.asp?DocketID=16906>.

⁵⁵ Docket No. UM 1546, Order No. 12-475 at 1.

⁵⁶ *Id.* at 2-3.

⁵⁷ *Id.* at 3.

⁵⁸ *Id.*

it would not resolve Waconda's claim that PGE has violated Waconda's right to an iSIS by not cooperating in providing system information and system access.

Further, there is no policy question raised by Waconda's amended complaint that should be resolved in a declaratory proceeding where other parties can be heard. Waconda's complaint alleges that PGE has failed to cooperate to provide information and access needed for an iSIS. This is a case-specific and fact-specific allegation. Finally, as discussed below, Waconda will suffer no undue prejudice if this docket proceeds. Rather than support Waconda's position, *Threemile Canyon* underscores Waconda's failure to meet its burden.

2. Staying this docket will not promote judicial economy.

Staying this case will result in unnecessary delay. The proceedings in Docket No. DR 57 will not resolve the question of whether PGE refused to provide Waconda with the information and the access that it needs to conduct an iSIS. Docket No. DR 57 will not address Waconda's claim that PGE unreasonably withheld its agreement to allow a third party to conduct interconnection studies. Nor will Docket No. DR 57 determine whether PGE provided Waconda incomplete or inaccurate information in its feasibility study or system impact study. Awaiting a decision in Docket No. DR 57, if the Commission decides to hear it, will only delay resolution of the legal questions in this case. PGE's motion for summary judgment will resolve those questions. And, determining whether OAR 860-082-0060(7)(h) requires a utility to "evaluate and address" any alternate findings in the iSIS using a particular standard not articulated in the rule is not before the Commission in this docket. As a result, a stay of this docket is unwarranted.

Waconda also relies on the Commission's decision *PGE's Request to Update Schedule 201 and Standard Power Purchase Agreements*.⁵⁹ In that docket, the Commission stayed proceedings

⁵⁹ Docket No. UM 1987, docket available at <https://apps.puc.state.or.us/edockets/docket.asp?DocketID=21721>.

for substantially the same reasons the Commission declined to lift the stay in *Threemile Canyon*. PGE initiated *PGE's Request to Update* to propose updates to its Schedule 201 and standard power purchase agreements ("PPAs").⁶⁰ The Commission found that judicial economy would be best served by addressing changes to PGE's Schedule 201 and PPAs in a rulemaking proceeding that the Commission had initiated to address the procedures, terms, and conditions used by all utilities in standard contracts with qualifying facilities.⁶¹ The Commission reasoned that "[i]ntroducing a possible myriad of unknown issues within the newly-proposed PGE Schedule 201 and PPAs would not best serve [the Commission's] goal of uniformity for standard contracts across utilities" as promptly as would be possible in a rulemaking docket.⁶²

Waconda seeks no similar broadly applicable ruling in this docket. Unlike the question at issue in *PGE's Request to Update Schedule 201 and Standard Power Purchase Agreements*, which would impact other utilities and qualifying facilities, the Commission's rulings on Waconda's claims in this docket will affect only PGE and Waconda. *PGE's Request to Update* does not support Waconda's request for a stay.

3. A declaratory ruling docket is not a more favorable proceeding in which to resolve Waconda's claims.

Waconda argues that the Commission should stay this docket so the Commission can address the standard a utility should employ under OAR 860-082-0060(7)(h) in Docket No. DR 57 because a declaratory ruling docket will allow all interested parties to intervene and comment on the proposed standard. That is true. But because the question of what standard a utility should employ under OAR 860-082-0060(7)(h) is not before the Commission in this docket, it is not a

⁶⁰ Docket No. UM 1987, Ruling at 1, 3.

⁶¹ *Id.* at 1.

⁶² *Id.* at 3.

reasonable basis to stay this docket. Both dockets can proceed in tandem (if the Commission decides to proceed with DR 57) without harming either party here.⁶³

4. PGE will be unduly prejudiced by a stay of this docket because a stay will create unnecessary delay and prolong PGE's obligation to pay now-stale rates.

PGE will be unduly prejudiced by a stay of this docket for two reasons. First, a stay of this docket will significantly delay the resolution of PGE's motion for summary judgment and will create additional unnecessary litigation expenses for PGE. Waconda argues that PGE will not be unduly prejudiced by further delay because it agreed to several postponements of the summary judgment briefing while the parties explored settlement negotiations. PGE agreed to that delay because PGE determined that pursuing a settlement was in PGE's best interest at that time. That circumstance is no longer present. The parties have been unable to resolve Waconda's claims despite two years of negotiations, and it is now apparent that a ruling on PGE's motion for summary judgment is the only way to resolve Waconda's claims. A stay of this matter would thus prejudice PGE by delaying the most efficient way to resolve Waconda's claims.

Second, a stay of this case would unduly prejudice PGE by prolonging the time in which PGE would be obligated to pay above-market rates to Waconda if Waconda prevails on its argument that the Commission should extend its COD.⁶⁴ In its 2018 PPA with PGE, Waconda locked in fixed prices that are now stale and significantly above current avoided cost rates.⁶⁵

⁶³ PGE reserves its right to take the position that the petition for declaratory ruling in Docket No. DR 57 should not be taken up substantively by the Commission and that the issues raised by the petition should be addressed, if at all, as part of one of the Commission's existing policy dockets on interconnection issues.

⁶⁴ PGE provided Waconda with a notice default under the PPA on February 9, 2021, and reserves the right to terminate the PPA on February 9, 2022, if Waconda has not cured by that date regardless of whether a stay has been granted in this case and regardless of whether PGE's pending motion for summary judgment has been granted, denied, or is still under consideration.

⁶⁵ See *PGE Informational Filing of QF Agreements*, Docket No. RE 143, Waconda PPA at 6, 8, 9 (Schedule 201 at Sections 2.3, 3.1.11, 4.1, 4.2) (Jul. 2, 2018), available at <https://edocs.puc.state.or.us/efdocs/HAQ/re143haq164533.pdf><https://edocs.puc.state.or.us/efdocs/HAQ/re143haq164533.pdf>.

A delay of this docket could extend the time during which PGE is obligated under the PPA to pay stale rates to purchase Waconda's net output if Waconda ultimately prevails on its claim in this docket that the Commission should extend its COD. Such a delay would unduly prejudice PGE because a stay of this case could prolong PGE's obligation to pay stale rates that are significantly higher than current avoided cost rates.

On the other hand, Waconda will not suffer undue prejudice if the Commission denies its motion to stay. Waconda argues that it will be prejudiced if the Commission does not stay this docket because Waconda will have to perform a substantial amount of work to pursue its claim that a utility has additional obligations not enumerated within OAR 860-082-0060(7)(h) in both dockets. However, as explained above, a ruling in Docket No. DR 57 will not result in the resolution of any legal question in this docket. Because the two dockets call into question different principles, Waconda will suffer no undue prejudice if the Commission denies its motion to stay.

The Commission should deny Waconda's Motion because Waconda has failed to establish that a stay of this docket would resolve common legal questions across multiple dockets, promote judicial economy, or that either party would be prejudiced without a stay.

B. THE COMMISSION SHOULD NOT FURTHER EXTEND THE DEADLINE FOR WACONDA TO RESPOND TO PGE'S MOTION FOR SUMMARY JUDGMENT.

Waconda seeks an extension of its deadline to respond to PGE's modified second motion for summary judgment at least until the Commission decides whether to stay this docket. PGE agreed, in its October 6, 2021, letter to ALJ Allwein, to an extension of time until November 9, 2021, for Waconda to respond to PGE's motion for summary judgment.⁶⁶ Any further delay will not aid the Commission in deciding the motion and could prejudice PGE by extending its risk of obligation under the PPA to pay stale rates for the power that may eventually be supplied to PGE's

⁶⁶ PGE's Response to Waconda's Mot. at 1 (Oct. 6, 2021).

power grid by Waconda and will generate additional and prolonged litigation expenses for PGE. Additionally, as Waconda has acknowledged, PGE's modified second motion for summary judgment is nearly identical in substance to its August 20, 2019, second motion for summary judgment. Waconda has thus had notice of PGE's arguments for more than two years and should be prepared to respond to them. As a result, the Commission should not further delay Waconda's response to the motion, so the Commission can decide the motion and the parties can progress toward resolution of Waconda's claims in this case.

V. CONCLUSION

For the reasons described above, PGE asks that the ALJ or the Commission deny Waconda's Motion.

DATED this 12th day of October, 2021.

Respectfully submitted,

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