

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

Docket No. UM 2009

MADRAS PV1, LLC,

Complainant,

v.

PORTLAND GENERAL ELECTRIC
COMPANY,

Respondent.

COMPLAINANT MADRAS SOLAR'S
RESPONSE TO PORTLAND GENERAL
ELECTRIC COMPANY'S MOTION TO
STRIKE OR, IN THE ALTERNATIVE,
REQUIRE AMENDMENT OF
COMPLAINT

I. INTRODUCTION

Pursuant to OAR 860-001-0420(4) and the Administrative Law Judge's ("ALJ's") November 21, 2019 Ruling, Madras PV1, LLC ("Madras Solar") hereby files this response to the portion of Portland General Electric Company's ("PGE") motion filed on November 15, 2019 that would result in either striking the interconnection-related portions of Madras Solar's Reply Testimony or requiring that Madras Solar amend its complaint to include such interconnection issues ("Motion to Strike").¹ Madras Solar requests that the ALJ deny PGE's Motion to Strike and allow for Madras Solar's unabridged Reply Testimony to remain in the record so that the Commission can consider it when determining whether the parties' disagreement over the project's interconnection unreasonably delayed the power purchase agreement ("PPA") negotiation process and, if so, how such delays may be relevant to the seminal issues in this case, which include: 1) the appropriate avoided cost prices; 2) whether PGE's or Madras Solar's

¹ PGE's motion also sought a stay of the proceeding, which was briefed separately and decided by the ALJ on November 21, 2019.

interconnection milestones should be included in the PPA; and 3) whether the PPA should include PGE's proposed contract provisions requiring that Madras Solar fund "all costs determined by PGE" to be required for the provision of Network Resource Interconnection Service ("NRIS"), as determined in PGE's Facilities Study. Not only should Madras Solar's Reply Testimony be allowed in the record because of its relevance to the key issues in dispute in this proceeding, but, moreover, because PGE has identified no valid reasons for excluding it. The evidence is neither unduly prejudicial to PGE nor confuses the issues in the case, and, furthermore, PGE has offered no legal basis upon which Madras Solar should be required to file a complaint about a dispute it is not now seeking Commission resolution.

II. PROCEDURAL BACKGROUND

On November 5, 2019, Madras Solar filed its Reply Testimony in this proceeding. In that testimony, Madras Solar described the reasons for the relief that it requested in its April 22, 2019 complaint. Madras Solar's Reply Testimony also responded to the relief requested by PGE in its counterclaim filed with PGE's answer on June 11, 2019.

A. Madras Solar's Reply Testimony Is Relevant to the Issue of the Appropriate Avoided Cost Price

In part, Madras Solar requests to be awarded an earlier vintage of avoided cost pricing, given that Madras Solar stood ready and willing to enter into a PPA prior to changes to PGE's avoided costs in April of 2019, but was unable to secure a PPA with PGE because of PGE's refusal to negotiate and the unreasonable, unjustified delays and obstacles it placed the way of formation of a contract with Madras Solar. Madras Solar offered testimony regarding the interconnection issues in order to provide context for why Madras Solar believes that PGE's delays in negotiating the PPA was wholly unjustified, and to further explain that, because of such

delays, Madras Solar should be entitled to the avoided cost pricing that existed prior to PGE's revision of those prices.

B. Madras Solar's Reply Testimony Is Relevant to the Issue of the Appropriate Interconnection Milestones

In its counter-claim, PGE requests, in part, that the Commission insert provisions into Madras Solar's PPA that would require it to execute an interconnection agreement by no later than September 1, 2020, or by September 1, 2021, if a dispute over the interconnection agreement is litigated.² The plain meaning of PGE's proposed PPA language would allow PGE to impose unreasonable or illegal interconnection costs on Madras Solar and then terminate the PPA if Madras Solar does not execute the interconnection agreement or otherwise seek to challenge PGE's interconnection costs. Madras Solar's Reply Testimony therefore responded to PGE's proposal by explaining why such a timeline was inappropriate, and why the Commission should instead allow Madras Solar to execute an interconnection agreement only after either reaching an agreement with PGE regarding what the appropriate costs are or resolving the disputed issues through litigation. In explaining its position, Madras Solar testified about how it will likely have to litigate the issues related to interconnection costs, and that these issues are significant. Madras Solar offered this testimony in order to provide the Commission with context as to why PGE's proposed interconnection agreement milestone is unreasonable.

C. Madras Solar's Reply Testimony Is Relevant to the Issue of the Appropriate Interconnection Funding Provisions

PGE also requests that the Commission adopt its proposed provisions requiring that Madras Solar fund "all costs determined by PGE" to be required for Network Resource Interconnection Service ("NRIS"), as determined in PGE's Facilities Study, which is intended by

² PGE Answer and Counterclaim at ¶ 170 and Confidential Attachment B at §2.1.

PGE to affirm that Madras Solar will pursue a state-jurisdictional interconnection.³ PGE is proposing contract language that would require Madras Solar to fund all interconnection costs determined by PGE – regardless of whether those costs are reasonable or even necessary. Madras Solar also offered Mr. Rogers’ and Dr. Yang’s testimony to give the Commission context for why Madras Solar’s PPA should not include a blanket provision that requires it to fund all interconnection costs as determined by PGE, but that Madras Solar should only be responsible for costs that are reasonable, justified, and necessary.

On November 21, 2019, PGE filed its Motion to Strike significant portions of Madras Solar’s Reply Testimony on these topics. PGE argues, among other things, that the testimony is not relevant and that it would be prejudicial and confusing to allow testimony on these topics.⁴ PGE argues that, if the testimony is not stricken, Madras Solar should be required to amend its complaint to include claims about the interconnection costs that PGE believes are required.⁵

III. FACTUAL BACKGROUND

The interconnection process for Madras Solar has already taken over two years. Not only is Madras Solar still not in possession of interconnection agreement after all that time, but it is unclear how much longer the process will require, whether the end result will be an irreconcilable disagreement over the necessity of certain network upgrades, and, if such a disagreement does occur, how long any associated litigation would last. Madras Solar’s testimony shows that “PGE’s interconnection studies have been characterized by a lack of diligence or care, and PGE has shown a reckless disregard of both interconnection standards and

³ *Id.* at ¶ 169.

⁴ Motion to Strike at 2-3.

⁵ Motion to Strike at 2.

policies as well as the consequences to Madras Solar.”⁶ This includes significant delays, grossly inflated cost estimates based on completely unnecessary upgrades, and either an inability to accurately understand, interpret, and apply its own interconnection rules.

The interconnection process generally consists of a three-stage process:

A Feasibility Study assesses project practicality and developer cost to interconnect and is the first study in the interconnection process. The Feasibility Study is often skipped. A System Impact Study provides a comprehensive and detailed system analysis that tests deliverability under peak load conditions and evaluates impacts on system stability. A Facilities Study encompasses the engineering and design work necessary to begin construction of required expansion plan upgrades identified to accommodate an interconnection request.⁷

Madras Solar began the interconnection process in October 2017,⁸ and PGE declined Madras Solar’s request to waive the Feasibility Study and proceed directly to the System Impact Study.⁹ The Feasibility Study process itself was riddled with delays and the report was not provided until nine months later on June 15, 2018.¹⁰ Madras Solar disputed the conclusions contained in the Feasibility Study, and PGE ended up providing a revised Feasibility Study on October 10, 2018.¹¹ This was one year after Madras Solar had started the interconnection process and about seven months after the first Feasibility Study should have been provided.¹² The most significant issue in dispute with the Feasibility Study was PGE’s finding that it would

⁶ Madras Solar/300, Rogers/3.

⁷ *Id.* at 22 n.37.

⁸ *Id.* at 3, 14.

⁹ *Id.* at 22.

¹⁰ *Id.* at 22-23.

¹¹ *Id.* at 34.

¹² *See id.* at 22 (the first notice of delay was issued in March 23, 2018 which was “18 days after the study was supposed to have been issued”).

cost \$341.41 million to interconnect under NRIS, largely due to the purported need to rebuild 99 miles of the PGE's Bethel-Round Butte transmission line from 230 kV to 500 kV.¹³

Madras Solar executed the System Impact Study Agreement in December of 2018 in a show of good faith, electing to reserve any further discussion about the estimated NRIS costs until after the System Impact Study was issued.¹⁴ PGE issued the first System Impact Study in February 2019, which showed a need for \$343.7 million in upgrades to interconnect under NRIS.¹⁵ Madras Solar continued to dispute the legitimacy of the approximately \$345 million in interconnection costs, and PGE provided a revised System Impact Study in July of 2019 in which it effectively admitted that its NRIS costs were off by over \$300 million and thusly lowered the estimate for NRIS to \$27 million,¹⁶ having apparently revised its interpretation of Section 3.2.2.2 of Attachment O to its Open Access Transmission Tariff ("OATT").¹⁷

Madras Solar continues to challenge the legitimacy of PGE's estimated costs:

Madras Solar believe[s] that installation of a series capacitor (which is estimated to cost approximately \$11 million) is not necessary, given that PGE has been unable to substantiate its claim of a contractual limitation on the operation of the Bethel – Round Butte 230 kV line, and that any contractual limitation, presuming that one does actually exist, could likely be remedied through contractual measures.¹⁸

Despite its ongoing disagreement with PGE's findings, Madras Solar executed the Facilities Study Agreement on September 11, 2019, in a show of good faith and elected to reserve any further discussion about the estimated NRIS costs until after the Facilities Study is

¹³ *Id.* at 34 (The original Feasibility Study showed \$341.41 million in NRIS, which was reduced to \$330.41 million in the revised Feasibility Study).

¹⁴ *Id.* at 35.

¹⁵ *Id.* at 44.

¹⁶ *Id.* at 48.

¹⁷ *Id.* at 49.

¹⁸ *Id.* at 66.

issued.¹⁹ The Facilities Study has not yet been issued, but Madras Solar does not expect PGE to drop its insistence that a series capacitor must be installed or that there are contractual limitations on the Bethel – Round Butte line. PGE has yet to explain the basis for, and it is unclear if PGE will ever provide an adequate justification for, its alleged contractual limitations.

Madras Solar does not know whether it will need to litigate any of the interconnection issues. Madras Solar's plans are to wait until PGE provides the Facilities Study, work with PGE's transmission function to understand the study and correct any errors, and, only then, if any disputes are left unresolved, decide if such issues need to be litigated. Madras Solar expects that the review and discussion regarding the Facilities Study may take a considerable amount of time. For example, PGE had to re-issue both the Feasibility and System Impact Studies, and the whole process has taken over two years, with PGE still not having yet completed the Facilities Study. Even after all the interconnection studies are completed, Madras Solar and PGE will still need to negotiate an interconnection agreement and a timeline for PGE's completion of whatever upgrades are legitimately required in order to interconnect the project, which could introduce yet further issues. Thus, Madras Solar has not yet reached the point in which it must decide whether to file an interconnection complaint, and does not expect to reach that point in the near future.

The facts regarding the interconnection process have directly impacted the PPA negotiation process. PGE refused to start the contract negotiation process by not providing indicative pricing because PGE claimed that Madras Solar had chosen an unacceptable delivery point.²⁰ PGE then insisted that Madras Solar commit to pay approximately \$340 million of

¹⁹ *Id.* at

²⁰ *Id.* at 10 (Madras Solar's point of delivery was "invalid due to a purported inability to accept deliveries there and that, until a 'valid' delivery point was provided, PGE would be unable to provide indicative prices.").

unnecessary interconnection costs.²¹ Madras Solar vigorously disputed the legitimacy of those costs, and PGE retracted its earlier claims about the need for Madras Solar to rebuild 99 miles of PGE's Bethel – Round Butte 230 kV line and revised the estimated interconnection costs all the way down to the current estimate of \$27 million.²² Madras Solar's Reply Testimony addressed these topics in detail, explaining both why PGE's \$340 million in required upgrades was unfounded and why Madras Solar continues to disagree with PGE's current estimate of interconnection costs including that \$11 million for installation of a series capacitor is unnecessary.²³ Madras Solar's Reply Testimony then directly connected these delays and disputed issues to the timing of the PPA negotiations as well as their substantive terms.²⁴

IV. RESPONSE

A. **Madras Solar's Testimony Is Relevant Under the Normal Standards for Determining Relevance and Should Not Be Stricken**

In its Motion to Strike, PGE claims that Madras Solar's Reply Testimony regarding the specific disputes it has with PGE over interconnection issues are not relevant.²⁵ PGE's position regarding the relevance of Madras Solar's testimony is unfounded, in light of the facts of the case, the context of the dispute, and the Commission's evidentiary rules with respect to what constitutes relevant evidence.

²¹ *Id.* at 32 (PGE concluded that it would cost. . . \$341.41 million for NRIS).

²² *Id.* at 44-48.

²³ *See, e.g.,* Madras Solar/400, Yang/36, 58-60.

²⁴ *See, e.g.,* Madras Solar/300, Rogers/1 ("Dr. Yang's testimony supports Madras Solar's position that PGE's interconnection milestones are unreasonable, and that PGE's interconnection delays, requirements, and incorrect cost estimates are a major cause for Madras Solar's inability to obtain a final, executable PPA").

²⁵ Motion to Strike at 2.

The Commission’s rules of evidence confirm that written testimony is subject to the rules of admissibility,²⁶ i.e., that the evidence “[i]s of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs.”²⁷ Relevant evidence must be admissible and tend to make the existence of any fact at issue in the proceeding more or less probable than it would be without the evidence.²⁸

1. The Testimony PGE Seeks to Strike Relates to the Main Issues in the Case

PGE generally seeks to strike three categories of testimony filed by Madras Solar. First, it seeks to strike testimony describing Madras Solar’s experience with PGE during the interconnection process. For example, it seeks to strike Madras Solar’s testimony that PGE’s interconnection studies have reflected a lack of diligence and care and are inconsistent with the appropriate standards and policies.²⁹

Second, PGE seeks to strike the portions of Madras Solar’s testimony that demonstrate how PGE’s interconnection process and studies are technically deficient. For example, PGE seeks to strike discussions of how PGE has failed to properly substantiate the existence of “internal grandfathered transmission rights” that purportedly limit the Total Transfer Capability of the Bethel – Round Butte line,³⁰ summaries of the issues associated with PGE’s power flow analyses,³¹ and explanations regarding the wide variety of other problems with PGE’s System Impact Study.³² PGE also seeks to strike testimony regarding PGE’s erroneous interpretation of

²⁶ OAR 860-01-0480(10).

²⁷ OAR 860-01-0450(1)(b).

²⁸ OAR 860-01-0450(1)(a).

²⁹ *See, e.g.*, Motion to Strike, Attachment A, Madras Solar/300, Rogers/3 (describing Madras Solar’s view about this lack of diligence and care).

³⁰ *Id.* at 12.

³¹ *Id.* at 32-33.

³² *Id.* at 44-48.

OATT provisions in conducting its studies,³³ as well as testimony regarding the fact that PGE has insisted on Madras Solar paying for a series capacitor that is not actually needed in order to interconnect the project.³⁴ PGE even seeks to strike its own data responses on these topics,³⁵ including those relating to certain transmission agreements that Madras Solar believes are relevant to PGE's position regarding the alleged necessity of the series capacitor.³⁶

Third, PGE seeks to strike testimony explaining the rights that Madras Solar believes it has in the interconnection process. For example, PGE seeks to strike Madras Solar's position that it is entitled to credits for a portion of the network upgrades that PGE has identified as necessary to interconnect the Madras Solar project.³⁷

PGE seemingly asserts that all this testimony should be stricken simply because "Madras Solar has not asked the Public Utility Commission of Oregon [] to adjudicate the validity of Madras Solar's criticisms of PGE's interconnection studies" and such testimony is therefore irrelevant to this proceeding.³⁸ However, the question of relevance is not determined by whether the Commission must decide upon any interconnection disputes in this proceeding, but rather by whether the information regarding interconnection disputes *relates to* the issues in this proceeding that it *is* being called to decide upon.

³³ *Id.* at 50-61.

³⁴ *Id.* at 66.

³⁵ *See, e.g. Id.* at 50-60.

³⁶ *See Id.* Madras Solar Exhibits 308-311. PGE also seeks to strike major portions of Spencer Yang's testimony on these topics. *See, generally*, Motion to Strike, Attachment A, Madras Solar/400.

³⁷ Motion to Strike, Attachment A, Madras Solar/300, Rogers/25.

³⁸ Motion to Strike at 1-2 (emphasis removed).

As recognized even by PGE's own characterization two of the main issues are:

1. The applicable avoided cost prices, and
2. The appropriate timeline for a [Commercial Operations Date ("COD")] milestone related to entering an interconnection agreement.³⁹

The testimony that PGE seeks to strike relates directly to both of these issues.

Madras Solar's testimony relates to the first issue because, first and foremost, for over a year, PGE insisted that Madras Solar must pay for interconnection costs in the range of \$340 million, before finally being reducing its cost estimate to all the way down to \$27 million. The sheer magnitude of the cost decline demonstrates that PGE's initial estimate was, on its face, unreasonable, unfounded, lacking in due diligence, reckless, lacking good faith, and was the result of either negligence and an erroneous interpretation of PGE's own interconnection requirements, or willful misconduct on the part of PGE designed to weaponize the interconnection process against Madras Solar. Accordingly, Madras Solar should not be harmed by the delays associated with PGE's insistence that Madras Solar pay for these costs. This failure by PGE to process Madras Solar's interconnection request in a technically correct and non-discriminatory manner led Madras Solar to take certain actions designed to protect the sheer existence of its project while preserving its right to potentially seek redress for its grievances. PGE's merchant function then used those actions to delay the PPA negotiation process, which was a direct cause of the inability of PGE and Madras Solar to timely execute a PPA. As such, Madras Solar is entitled to the avoided cost prices that were in effect at the time when a PPA should have been able to be consummated.⁴⁰

³⁹ *Id.* at 5.

⁴⁰ *See In Re Public Utility Commission of Oregon Investigation into Qualifying Facility Contracting and Pricing*, Docket No. UM 1610, Order No. 16-174 at 3 (May 13, 2016)

The Commission has expressly held that qualifying facilities such as Madras Solar are *entitled* to present detailed evidence about utility-caused delays in order to gain a determination of what avoided cost pricing should apply to their contracts. In Order No. 16-174, the Commission explained:

We acknowledge. . . that problems may delay or obstruct progress towards a final draft of executable contract, such as failure by a utility to provide a QF with required information or documents on a timely basis. In the event of a dispute between a QF and a utility during the contracting process, we adopt Staff’s proposal that we determine, on a case-by-case basis, when a LEO [(legally enforceable obligation)] is formed for the purpose of establishing an avoided cost price. A QF should alert us of a dispute by filing a complaint. *Through the complaint process, the QF and the utility will have the opportunity to fully explain any concerns* and present arguments regarding the formation of a LEO and an avoided cost price to be applied.⁴¹

The testimony PGE seeks to strike is relevant to whether PGE delayed or obstructed progress towards a final, executable contract, and Madras Solar should be given the “opportunity to fully explain any concerns” it has regarding PGE’s actions with respect to this topic.

The testimony PGE seeks to strike also relates to the second issue in the case identified above (i.e., the appropriate timeline for a COD milestone related to execution of an interconnection agreement). If Madras Solar has significant and well-founded disputes with PGE over the interconnection process – disputes that may be determined to be the result of negligence or willful misconduct on the part of PGE – resolution of which would likely take longer than until September 1, 2021, then it would be unreasonable to impose PGE’s proposed PPA milestone related to execution of an interconnection agreement.

(“A LEO will be considered established once a QF signs the final draft of an executable contract”).

⁴¹ *Id.* at 27-28 (emphasis added).

Moreover, as recognized by PGE in its Motion for Stay, “[t]he purpose of testimony is to provide relevant evidence, which is defined as ‘evidence tending to make the existence of any fact at issue in the proceedings more or less probable than it would be without the evidence.’”⁴² The testimony that PGE seeks to strike certainly makes it “more or less probable” that PGE unreasonably or improperly delayed the PPA negotiation process, and more or less probable that PGE’s proposed required interconnection agreement timeline is reasonable. Thus, this testimony should be allowed unless PGE presents some compelling reason that it should be excluded.

2. PGE is Required to Respond to Relevant Evidence, Even if it Requires Substantial Effort

PGE asserts that Madras Solar’s testimony regarding interconnection should be stricken because “[i]f the testimony remains in the record, PGE will be required to prepare substantive responsive testimony regarding the myriad of technical and policy issues Madras Solar raises, which is likely to take significant time and effort.”⁴³ Even if PGE is correct, its need to spend significant time and effort is not a reason to strike Madras Solar’s testimony. If PGE wants to dispute the evidence, then PGE is required to respond to testimony that is relevant, topical, and important, and Madras Solar has roundly demonstrated that its testimony meets these criteria. (Alternatively, PGE could simply choose not to provide testimony on the issues and admit that Madras Solar’s testimony is largely beyond reproach – and a savvy observer of the case might reasonably infer that PGE’s desire to strike significant portions of Madras Solar’s testimony is a tacit admission of this fact.) If PGE was allowed not to respond, then, both in this case and in future matters, PGE and the other utilities subject to the Commission’s regulations could avoid

⁴² Motion to Strike at 7 (citing *Am. Can Co. v. Lobdell*, 55 Or App 451, 466 (1982) (upholding Commission’s exclusion of irrelevant evidence), OAR 860-001-0480(10) (“written testimony is subject to rules of admissibility,” and OAR 860-001-0450(1)(a).).

⁴³ *Id.* at 2.

the consequences of their actions simply by showing that it would require significant work to respond to inquiries and allegations regarding those actions. This would serve as a fundamental prejudice against complainants in the Commission's processes.

3. Testimony Is Not Irrelevant Simply Because It Refers to Issues that May be Resolved in a Separate Docket

As described above, PGE asserts that Madras Solar's testimony regarding interconnection is irrelevant because interconnection disputes are not the subject of Madras Solar's complaint. However, the Commission has not previously found that evidence is irrelevant merely because it refers to an issue that may be resolved in a separate docket. For example, in *In re Portland General Electric Company, Advice No. 17-05 (ADV 523), Schedule 134 Gresham Privilege Tax Payment Adjustment*, PGE filed a motion to dismiss the City of Gresham's testimony regarding actions that another utility had taken on the topic of the city's increased privilege tax. PGE argued that the other utility's facts were distinguishable from PGE's position, and that the information was irrelevant because that other utility was "not a party to this proceeding and its actions are not at issue in this case."⁴⁴ The Commission denied PGE's motion, noting that the actions of a similarly situated utility are relevant even if not at issue in the proceeding.⁴⁵

As in that case, PGE argues here that Madras Solar's testimony be stricken because it addresses actions of the utility that are not subject to review by the Commission in this case. But, as in the Gresham case, Madras Solar's testimony is indeed relevant, in that it bears upon facts that are in dispute in this case.

⁴⁴ Docket No. UE 324, Order No. 17-482 at 3 n.3 (Nov. 28, 2017).

⁴⁵ *Id.*

4. PGE’s Characterization of Issues Contrary to Madras Solar’s Views Does Not Render Madras Solar’s Testimony Irrelevant

In its Motion to Strike, PGE appears to acknowledge that the testimony it seeks to strike may be relevant to the determination of which avoided costs should apply to the PPA. PGE asks the Commission to simply adopt its characterization and find Madras Solar’s view irrelevant.

Specifically, PGE states that “[t]o the extent that delays in the interconnection process are relevant to that [avoided cost] analysis, the interconnection process timeline is fully reflected in the record.”⁴⁶ PGE then cites *its* own testimony recapping that history.⁴⁷ From this argument, it appears that PGE is asserting that, because *its* witnesses have provided *their* characterization the interconnection process, *Madras Solar’s* version of events is not needed in the record. The Commission should reject this view as contrary to the Commission’s processes, which allow for issues to be contested by the affected parties and for parties to submit evidence that may add color to the utility’s characterization of any particular event.

B. The ALJ Should Allow for a Full Record to Be Developed in this Case Regarding the Reasons Madras Solar’s PPA Has Been Delayed and Why PGE’s Proposed PPA Provisions Regarding Interconnection Are Not Reasonable

In addition to the standard rule that relevant evidence is admissible, the ALJ should admit Madras Solar’s testimony regarding the interconnection process in order to allow for the development of a complete record of the case so that the Commission has a comprehensive view of all of the developments that have occurred between the parties upon which to base its determination of an appropriate PPA for Madras Solar. Undoubtedly, one of these developments is the past and ongoing dispute between PGE and Madras Solar about what upgrades are

⁴⁶ Motion to Strike at 9.

⁴⁷ *Id.* n. 39 (citing PGE/200, Foster-Larson/3-14).

legitimately required in order to interconnect the project. In light of the prominence of that dispute in the history of the engagement between the parties, the ALJ should allow for these issues to be discussed and debated so that the Commission can then undertake an exhaustive review of the record and arm itself with a holistic view of the parties' positions and perspectives surrounding the interconnection dispute before making a determination in this proceeding.

The Commission previously found that it may be desirable to avoid using procedural motions to limit a record when the Commission would benefit from understanding the breadth of argument at the time it makes its decision. In *Blue Marmots V, LLC et al. v. PGE*, a qualifying facility developer asked the Commission for a stay of the proceeding in order to allow for the FERC to make a finding on some of the legal issues that would bear on the Commission's order. In that case, the ALJ agreed with PGE and found that a stay was not warranted and that it would be preferable to, instead, build a full record and allow the Commission to consider all evidence before later making a later determination about whether it would stay its decision. The ALJ explained, that "[b]y going forward with the evidentiary hearing, the Commission will have before it a complete record which it may then choose to act upon or hold in abeyance as the Commissioners decide the circumstances require."⁴⁸

Similar to the ALJ's decision in *Blue Marmots* to allow the Commission to decide a procedural matter after the development of the evidentiary record, the ALJ should, in this case, allow Madras Solar to present evidence that it believes shows how PGE's actions were unreasonable and caused the delays it experienced in attempting to obtain an executable PPA.

⁴⁸ *Blue Marmots V, LLC, et al. v. PGE*, Docket No. UM 1829, ALJ Ruling at 2 (Dec. 3, 2018).

The Commission can then consider that evidence, and PGE's response to it, before determining whether it is relevant and how the Commission will rely on it.

C. The Probative Value of the Contested Testimony Is Not Outweighed by a Risk of Unfair Prejudice, Confusion of the Issues, or Undue Delay

PGE asserts that allowing Madras Solar's testimony into the record would be prejudicial to PGE, significantly complicate the case, and cause confusion.⁴⁹ PGE's reasons for this assertion are unclear, except for noting that much of the testimony constitutes technical information.⁵⁰

Madras Solar does not believe that the testimony it has provided is so complicated that the Commission cannot address it. Further, Madras Solar does not believe that its presentation of the information will confuse the issues in the case. Madras Solar has been clear that it is *not* asking the Commission to resolve an interconnection dispute in the case. Dr. Yang explained, for example,

While I understand that the Commission will not issue an order resolving these interconnection disputes in this proceeding, the Commission should be aware of these outstanding issues when deciding whether PGE's milestone is reasonable.⁵¹

To the extent this was not clear from the testimony, it should be clear from this Response.

Therefore, admission of Madras Solar's testimony should not cause any confusion about what Madras Solar is seeking or the context in which its testimony regarding the interconnection process is offered.

PGE claims that it is not necessary for the Commission to review the evidence regarding "the substance of the disputes to determine a reasonable PPA term that accounts for the possible

⁴⁹ Motion to Strike at 10.

⁵⁰ *Id.*

⁵¹ Madras Solar/400, Yang/3.

need to resolve an interconnection dispute.”⁵² In addition, PGE believes that the Commission does not need to “understand or evaluate the details of the interconnection disputes to determine the appropriate avoided cost vintage from which the parties should begin price negotiations.”⁵³ The Commission is not being asked to weigh in on the substance of the disputes. It is merely being asked to acknowledge the significance of the dispute in terms of its relationship to the interconnection milestone and how the dispute – which Madras Solar was wholly justified in raising, given’s PGE dramatic reduction in estimated interconnection costs – materially impaired Madras Solar’s ability to obtain an executed PPA with PGE. It is not PGE’s place to decide the relevance of Madras Solar’s evidence to the Commission’s determination of these questions, but if PGE believes that certain evidence is irrelevant, then it is free to state as much and submit evidence and legal arguments to support its case. PGE will not be unduly prejudiced by the testimony, because it can decide how to respond to it. PGE may choose to offer the view that the testimony is of no relevance or, alternatively, that it is only relevant in some limited context. For example, PGE seems to acknowledge that the *existence* of a dispute may be relevant,⁵⁴ but argues that the details of it are not. Therefore, PGE could simply respond by acknowledging the dispute but choose not to contest the details of it, if it believes the substance of the dispute will be adjudicated through a separate proceeding. On the other hand, if PGE believes the dispute is indeed relevant but that Madras Solar has somehow mischaracterized it, it is free to put forward its case on that topic.

⁵² Motion to Strike at 9.

⁵³ *Id.*

⁵⁴ *Id.* (offering to stipulate that a dispute exists).

D. Madras Solar Should Not Be Forced to Revise Its Complaint to Litigate an Interconnection Dispute

PGE's request to strike portions of Madras Solar's testimony contains a request for alternative relief that Madras Solar be required to amend its complaint to add an interconnection dispute.⁵⁵ This request is inappropriate and lacks any basis in law. PGE has wholly failed to explain why or provide any valid basis upon which it is entitled to insist that Madras Solar should litigate an interconnection dispute that it has not chosen to bring forth and that may be premature, in any event. Madras Solar clearly admits and has even asked the Commission to affirm the existence of an interconnection dispute and the likelihood of Madras Solar having to have to seek an adjudication of that dispute in the future, given PGE's behavior to date. However, Madras Solar does *not yet know* if it will indeed be required to formally litigate such a dispute, or if it and PGE will be able to informally resolve the dispute through the remainder of the interconnection process.

Importantly, if, in the future, Madras Solar decides to litigate the interconnection issues, such litigation would be based on the facts that prevail at the time, which would be different than the facts that prevail today. Additionally, Madras Solar may elect to pursue processes other than those available in this proceeding – and has, in fact, argued that other processes may be more relevant, given the substance of the issues at hand – such as the dispute resolution processes under PGE's OATT.

Moreover, PGE offers no reason why it should be able to decide whether Madras Solar litigates an interconnection dispute or to dictate the timing of any potential decision to do so. PGE argues, in conclusory fashion, that:

⁵⁵ *Id.* at 3.

If the testimony remains in the record such that PGE must respond to it and the Commission must review these issues, PGE is entitled to a Commission determination of all of the issues raised in Madras Solar's testimony in this case, including the interconnection dispute.⁵⁶

But PGE does not explain why it is "entitled" to a Commission determination about the interconnection disputes referenced by Madras Solar within this case, and a mere assertion of entitlement to a ruling is not tantamount to actually being entitled to one. As described above, the testimony on this topic is presented solely in order to provide the Commission with the context necessary to understand why PGE's proposed PPA provision regarding the interconnection agreement is unreasonable and how PGE's delays of the PPA negotiation process, *which it used a fully-legitimate interconnection dispute on the part of Madras Solar to justify*, materially prevented Madras Solar from being able to obtain an executed PPA prior to this last April's avoided cost reduction. PGE is not entitled to an immediate adjudication of the dispute simply by virtue of its existence and the fact that it was referred to by Madras Solar. Rather, Madras Solar is entitled under the law and Commission processes to determine whether, when, and how it seeks to resolve those disputes. The Commission does need not resolve the specific interconnection dispute and has not been called on to do so, but it does need to review and understand the complete history between the parties, which the interconnection dispute is an inextricable part of, in order to decide what the appropriate prices are and whether it is reasonable to adopt Madras Solar's or PGE's interconnection milestones.

E. PGE's Offer to Stipulate to the Existence of a Dispute Does Not Alleviate the Need for Madras Solar's Testimony

PGE argues that, instead of being required to respond to Madras Solar's testimony regarding interconnection, the Commission should strike that testimony, and PGE would simply

⁵⁶ *Id.*

stipulate that a dispute exists between the parties on the topic of interconnection.⁵⁷ Agreement as to the existence of a dispute is necessary, but not sufficient. Mere agreement that a dispute exists does not provide the Commission with the evidence necessary to judge the reasonableness of PGE's insistence that the PPA contain a narrow timeline for Madras Solar to sign an interconnection agreement, as it would not be in a position to judge whether future litigation over such dispute could be reasonably expected to be resolved by September 1, 2021, or if Madras Solar's dispute was, in fact, colorable. The Commission should be aware of the entire history of the case in which PGE used a legitimate disagreement over interconnection on the part Madras Solar to delay the PPA negotiations. And, only the testimony offered by Madras Solar can provide that necessary context to the Commission.

Rather than having PGE stipulate that a dispute exists, a stipulation would only be helpful in eliminating the need for testimony if PGE were willing to stipulate that PGE's willful misconduct or gross negligence in the interconnection process *caused* the delay in the PPA negotiations, and that PGE's continuing willful misconduct or gross negligence make it unlikely that the interconnection issues can be resolved in time for it to enter into an interconnection agreement within the timeframe required by PGE's proposed PPA language. Madras Solar assumes that PGE will not make such a concession in its testimony, however, and thus Madras Solar opposes PGE's motion to strike.

F. PGE's Views on the Effect of the Interconnection Agreement Milestone Do Not Render Madras Solar's Testimony Unnecessary

From PGE's motion, it appears that PGE may be implying that the PPA cannot be terminated if Madras Solar misses the milestone related to signing an interconnection agreement,

⁵⁷ *Id.* at 9.

and therefore it is not important that the Commission determine whether PGE's proposed milestone is reasonable.⁵⁸ Presumably, this would be because PGE views the Commission's policy as not allowing it to terminate the PPA if it is resource sufficient, even if Madras Solar breaches the PPA term that PGE insists should be inserted.

To the extent PGE makes this argument, Madras Solar responds that it is unreasonable for PGE to insist on including a provision in Madras Solar's PPA that it believes cannot be enforced due to Commission policy. Madras Solar should be allowed a PPA that contains only enforceable provisions, or at least should be allowed to submit testimony that argues in favor of that outcome. Including such a provision would only cause confusion for anyone administering the contract and cast doubt on Madras Solar's rights.

In addition, PGE has made it clear that it disagrees with the Commission's rule and policies,⁵⁹ and is likely intending to recommend that the Commission change its rule. If the rule is revised, then PGE will then seek terminate the contract if Madras Solar challenges PGE's interconnection studies and does not execute an interconnection agreement.

⁵⁸ See *id.* at 8 (explaining that PGE disagrees with Madras Solar's characterization that the PPA could be terminated for missing the milestone, but explaining that it will take up this issue in its Reply Testimony).

⁵⁹ Madras Solar/301, Rogers/2 ("To the extent this request seeks PGE's opinion regarding what Commission policy should be, PGE does not believe that the utility's resource sufficiency status should impact its ability to terminate a QF PPA for failure to timely achieve commercial operation.").

V. CONCLUSION

For all of the reasons described above, the ALJ should deny PGE's Motion to Strike, and instead allow Madras Solar's Reply Testimony into the record as filed.

Dated this 26th day of November, 2019.

Respectfully submitted,

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