

**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  
STAY

**I. BACKGROUND**

On April 22, 2019, Madras Solar PV1, LLC ("Madras Solar") filed its complaint under OAR 860-029-0100 "Resolution of Disputes for Proposed Negotiated Power Purchase Agreements", which allows for expedited processing of negotiated power purchase agreement ("PPA") disputes. On August 20, 2019, the parties to this proceeding filed a joint motion to set the schedule in this case under the normal dispute resolution procedures, which was granted by the Administrative Law Judge ("ALJ") on the same day, with only slight modification. Under that schedule, Madras Solar's Reply Testimony was to be filed (and was filed) on November 5, 2019. Portland General Electric Company's ("PGE's") Rebuttal Testimony was set for January 10, 2019.<sup>1</sup> The schedule then provides that briefing will occur through early July of 2020, with a decision expected sometime thereafter, likely in late 2020 or about a year and half after the complaint was filed.

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<sup>1</sup> ALJ Ruling of August 20, 2019.

On November 15, 2019, PGE filed a “Motion to Strike Testimony or in the Alternative Require Amendment of Complaint and Motion to Stay Testimony Deadline.” In it, PGE now seeks to suspend the date for its January 10, 2019 testimony, pending the ALJ’s or Commission’s disposition of its motion to strike certain portions of Madras Solar’s Reply Testimony. That testimony details Madras Solar’s experiences with PGE during the interconnection process, including the challenges it has had in the past and the disagreements that remain ongoing. That testimony was offered in order to give context to the Commission for the delays that Madras Solar has experienced in obtaining a PPA with PGE, and also to demonstrate: 1) Madras Solar’s entitlement to the avoided cost prices in effect at the time Madras Solar executed the PPAs; and 2) that PGE’s proposed PPA term that would require Madras Solar to move forward with interconnection by September 1, 2020 is unreasonable.

Pursuant to OAR 860-001-0420(4) and the ALJ’s November 19, 2019 Ruling, Madras Solar hereby files this response to the portion of PGE’s motion that would result in a stay of this proceeding (“Motion for Stay”). Madras Solar will respond to the remainder of PGE’s motion to strike at an appropriate time under the Commission’s rules, or in accordance with directions from the ALJ.

Madras Solar requests that the ALJ deny PGE’s Motion for Stay and, instead, maintain the current procedural schedule. The current schedule will result in Madras Solar finally gaining resolution regarding the PPA that it has been attempting to negotiate with PGE for what will be nearly three years, at that point.<sup>2</sup> Moreover, not only does PGE have adequate time to respond to Madras Solar’s testimony, but it waited for many weeks to raise its questions regarding the scope

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<sup>2</sup> Madras Solar formally requested indicative prices from PGE on October 17, 2017. Madras Solar/200, Rogers/4.

of this case. As such, PGE's requested stay is not only unwarranted, but would further delay the relief to which Madras Solar is entitled. Additionally, PGE's requested stay would be counter to the development of a full record for the Commission's review, and is founded upon a motion to strike that lacks merit.

## **II. RESPONSE**

### **A. PGE's Motion for Stay Should be Denied Because PGE Has Sufficient Time to Address Madras Solar's Testimony**

The schedule in this proceeding, which was set through agreement of the parties, reflects the fact that the case is complex, involves numerous issues, and requires a significant amount of discovery. Accordingly, the schedule was set in such a way as to provide substantial time between the various rounds of testimony. Under the schedule, PGE has until January 10, 2019 to file its testimony, giving it more than nine weeks to prepare what will be its second round of testimony in the form of a response to Madras Solar's Reply Testimony. PGE has presumably already addressed many of its positions in the case, it is not unreasonable to require that PGE's second round of testimony responding to Madras Solar's Reply Testimony regarding the interconnection process and related disputes be filed in nine weeks. Rather than seeking a stay of the case, PGE should prepare its testimony responding to Madras Solar's Reply Testimony, and seek an extension only if it determines that it needs additional time to complete it and can provide the appropriate justification for such a request at that time.

### **B. PGE's Motion for Stay Should be Denied Because PGE Knew Months Ago That Madras Solar Would Testify to the Interconnection Dispute in its Testimony, To Which PGE Now Objects**

PGE argues that the case should be stayed because PGE has now raised the question of whether portions of Madras Solar's testimony should be stricken as irrelevant. Specifically, PGE seeks to strike portions of the testimony describing the issues that Madras Solar has had with

PGE's interconnection studies to date and the ongoing disagreement related to certain conclusions contained therein.

As described in PGE's affidavit, PGE knew since at least September 16, 2019 that Madras Solar was asserting that the disputes it has with PGE over its interconnection studies are relevant to this dispute.<sup>3</sup> In light of this, PGE could have raised to the ALJ, by motion, a determination of the scope of the proceeding, rather than waiting to receive Madras Solar's testimony and then seeking to strike it. By waiting to raise this issue until it received Madras Solar's testimony, PGE seeks to unnecessarily lengthen the amount of time that will pass before Madras Solar will receive the relief it requests through its complaint. Rather than stay this proceeding, the ALJ should allow the case to proceed under its current schedule, while PGE's motion to strike is resolved concurrently.

PGE may argue that it did not know the all the details of or length of Madras Solar's testimony on the topic of interconnection until it received Madras Solar's testimony on November 5, 2019. However, the length of the testimony is not dispositive of, or even insightful to, the question of whether the topic it addresses is relevant. A review of the breadth of the testimony that PGE is seeking to strike demonstrates that PGE would have stricken the testimony regardless of its length. Similarly, a review of only those data responses attached to Madras Solar's Reply Testimony shows that PGE had long taken the position that the issues that Madras Solar was investigating were "not relevant to the claims raised in Madras Solar's Complaint."<sup>4</sup>

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<sup>3</sup> Declaration of Lisa Rackner at 1-2.

<sup>4</sup> Madras Solar/301, Rogers/8-14, 16, 18, 20-21, 23-25, 26-28 (PGE Responses to Madras Solar Data Request Nos. 14-17, 19, 21, 28, 55, 56, 60, 62, 76). Madras Solar is not suggesting that PGE should not have fully responded to these data requests, but PGE should have raised an issue with the scope of the proceeding earlier, if it was concerned about needing more than nine weeks to respond to the issues that the majority of Madras Solar's discovery focused on.

Thus, PGE was not required to wait until the testimony was filed before seeking a determination of relevance, and Madras Solar should not be prejudiced by PGE's approach. PGE's failure to seek earlier guidance from the Commission should not be used against Madras Solar.

**C. PGE's Motion for a Stay Should be Denied Because It Will Unnecessarily Lengthen this Proceeding and Deprive Madras Solar of Timely Relief**

Madras Solar has sought a PPA with PGE for more than two years.<sup>5</sup> It eventually filed this complaint because PGE had delayed negotiations and refused to sign a PPA with Madras Solar; therefore, in Madras Solar's view, PGE had violated the Public Utility Regulatory Policies Act. Even under the current schedule in this case, Madras Solar may have to wait until late 2020 to gain resolution regarding its PPA. As explained in Madras Solar's testimony, much of this delay has come about because of PGE's approach to the interconnection process with Madras Solar, which was characterized by "a lack of diligence or care, and [...] disregard of both interconnection standards and policies as well as the consequences to Madras Solar."<sup>6</sup> Somewhat ironically, PGE again seeks to delay the process because of interconnection—this, time, asserting that the proceeding should be put on pause while the ALJ considers whether Madras Solar's testimony regarding the very delays it has experienced because of PGE's mishandling of the interconnection process are relevant.<sup>7</sup> PGE should not be allowed, through its motion, to further delay Madras Solar's requested relief, or ultimately to deprive Madras Solar of its right to explain its challenges to the Commission. Instead, the ALJ should allow this case to proceed on the current schedule.

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<sup>5</sup> Madras Solar/200, Rogers/4.

<sup>6</sup> Madras Solar/300, Rogers/3.

<sup>7</sup> See PGE's Motion for Stay, Attachment A, Madras Solar/300, Rogers/3 (seeking to strike the above-quoted testimony, among other content).

**D. The ALJ Should Allow for a Full Record in this Case and a Stay Would Unnecessarily Disturb the Process of Creating that Record**

The ALJ should allow a full record to be developed in this case, so that the Commission can determine an appropriate PPA for Madras Solar with a full view of all of the developments that have occurred between the parties. Undoubtedly, one of these developments is the past and ongoing dispute between PGE and Madras Solar about what is required to interconnect the project. Rather than staying the case and taking up PGE's contention that some of the history and current status between the parties is irrelevant, the ALJ should instead allow for the timely development of a full record on these topics, and the Commission itself can then determine what information it will base its decision on after review of that record, with a full view of the evidence and a complete ability to judge its relevance. Keep in mind that one key decision that the Commission must make is what should the interconnection milestone be, and that PGE is seeking to prevent the Commission from understanding Madras Solar's position that it should not be required under the PPA to sign an interconnection agreement by September 2020.

The Commission previously found that a stay was not desirable where one was requested by a qualifying facility developer in order to see if a pending legal finding from another forum would limit the scope of the proceeding going forward. In *Blue Marmots V, LLC et al. v. PGE*, the developer asked the Commission for a stay of a proceeding in order to allow for the Federal Energy Regulatory Commission 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, as it would be preferable to, instead, build a full record, allow the Commission to consider all evidence, and to then make 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.”<sup>8</sup>

Similar to the ALJ’s decision there 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 why certain of PGE’s requests are unreasonable and that explains the delays it has experienced in getting an executable PPA. The Commission can then consider that evidence, and PGE’s response to it, before determining whether it is relevant and whether the Commission will rely on it. If the ALJ, instead, grants a stay in the proceeding, the creation of such a record will be delayed, extending unnecessarily the time by which a full record could be created for the Commission’s consideration. The ALJ should allow this case to proceed under its current schedule, so that a record can be created in a timely manner addressing each issue raised by the parties.

**E. PGE’s Motion for Stay Should be Denied Because PGE’s Motion to Strike Lacks Merit**

PGE’s Motion for Stay is based upon its view that the Commission should strike portions of Madras Solar’s testimony, and that resources will be saved by PGE and the Commission if the case is stayed until its motion is granted.<sup>9</sup> In other words, PGE’s requested stay presumes that its motion to strike (or, its alternative motion to require Madras Solar to amend its complaint) is meritorious. PGE’s underlying motion, however, lacks merit, and thus the motion for stay only serves to delay the proceeding and should be denied.

Although Madras Solar will provide a full response to PGE’s motion to strike in the future, in accordance with the Commission’s rules regarding substantive motions or any order of

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<sup>8</sup> *Blue Marmots V, LLC, et al. v. PGE*, Docket No. UM 1829, ALJ Ruling (Dec. 3, 2018).

<sup>9</sup> Motion for Stay at 4.

the ALJ, Madras Solar briefly explains below some of the reasons why PGE’s motion to strike lacks merit, given its connection to PGE’s Motion for Stay.

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

PGE claims, in its motion to strike, that Madras Solar’s testimony addressing the disputes it has with PGE regarding interconnection are not relevant. Yet, the standards for determining whether evidence is relevant show that the testimony meets the definition.

As PGE recognizes in its motion, “[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.’”<sup>10</sup> One of the issues in this case is whether PGE’s insistence that the PPA should contain a deadline of September 1, 2020, by which Madras Solar should be required to sign an Interconnection Agreement, is reasonable.<sup>11</sup>

Madras Solar argues that it is not reasonable, specifically because it is currently in disagreement with PGE over what system upgrades are needed as part of that interconnection, and believes it likely but not certain that it will need to litigate an interconnection dispute with PGE.<sup>12</sup> Testimony on these topics makes it “more or less probable” that PGE’s proposed PPA restrictions and timeline are reasonable. Specifically, the testimony is appropriate and necessary to allow the Commission to understand the important context in which it is being asked, by PGE, to determine that Madras Solar be in breach of its PPA, if it fails to sign an Interconnection

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<sup>10</sup> Motion for Stay at 7.

<sup>11</sup> PGE’s Answer at 33 (June 11, 2019).

<sup>12</sup> Complainant’s Answer to PGE’s Counter-Claim at 7-8 (Aug. 12, 2019).



Agreement. If Madras Solar were not allowed to testify to these topics, the Commission will lack the basis upon which it should judge the reasonableness of PGE's request.

The testimony PGE seeks to strike is also relevant to the Commission's understanding of why Madras Solar has not yet been able to sign a PPA with PGE—which is because PGE delayed the PPA process through what, at times, seemed to be a never-ending back and forth over questions related to the interconnection process. Madras Solar believes that the interconnection process was faulty from the outset and continues to be faulty today. PGE has made a series of erroneous determinations as to what is required of Madras Solar in order to interconnect its project mischaracterizing the nature of its Central Oregon transmission and how generation in the area is delivered to load. Specifically, PGE first simply refused to accept power at the point of interconnection, then attempted to require Madras Solar to pay for hundreds of millions of dollars of network upgrades that PGE has since admitted were not necessary, and continues to claim that there are “grandfathered” contractual transmission arrangements that require the installation of a \$10 million series capacitor (without identifying what those contractual arrangements are). The Commission cannot understand the history of the interconnection related disputes, without a comprehensive understanding of their current status and what issues remain unresolved. Because of these delays, Madras Solar is entitled to both its proposed interconnection milestone language and the avoided cost prices in effect at the time Madras Solar executed the PPA.

**2. PGE Offers No Rationale for Its Assertion that Madras Solar Should Be Forced to Litigate Its Interconnection, Either Separately or Within this Docket**

PGE's request to strike portions of Madras Solar's testimony also lacks merit because PGE has wholly failed to provide any valid basis upon which it is entitled to insist that Madras

Solar either litigate its interconnection dispute in this proceeding or concurrently with this proceeding. Madras Solar clearly admits, and even urges the Commission to find, that there has been a dispute to date regarding interconnection of the project, and that it is likely to have to seek an adjudication of a dispute regarding interconnection in the future. However, Madras Solar does *not yet know* if it will indeed be required to litigate such a dispute, or if it and PGE will come to a resolution during the interconnection process.

Importantly, if Madras Solar does, in the future, decide to litigate the interconnection issues, such litigation would be based on the facts that prevail at the time, which could be different than the current facts. Additionally, processes other than those available in this proceeding may apply. For example, Madras Solar and PGE may decide to, or be required to, engage in informal dispute resolution first, or use procedures that apply under PGE's Open Access Transmission Tariff.

As a practical matter, PGE offers no reason why it should be able to decide whether Madras Solar litigates an interconnection dispute, or to dictate the timing of Madras Solar's rights to do so. PGE argues, in conclusory fashion, that

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.<sup>13</sup>

But PGE does not explain why it is "entitled" to a Commission determination about the interconnection disputes referenced by Madras Solar within this case. As described above, the testimony on this topic is provided in order to give context about why PGE's proposed PPA provisions regarding the interconnection timeline are not reasonable. PGE is not entitled to

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<sup>13</sup> Motion for Stay at 3.

require an immediate adjudication of any dispute simply because it exists. Rather, it is Madras Solar that is entitled, under the law and Commission processes, to determine whether and how it seeks to resolve those disputes. Finally, if Madras Solar indeed litigates an interconnection dispute, it would be entitled to raise the issues it deems appropriate and file testimony that completely addresses its claim, rather than providing the summary and details provided in its testimony in this case.

### **3. 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 instead strike that testimony, and PGE could simply stipulate that a dispute exists between the parties on the topic of interconnection.<sup>14</sup> PGE made such an offer to Madras Solar previously, but Madras Solar rejected it for good reason. A simple 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 set a tight timeline for Madras Solar to sign an interconnection agreement. If all the Commission knew was that a dispute existed, it would still not be in a position to judge whether it was reasonable that such a dispute should be resolved by September 1, 2020, or if Madras Solar's dispute was colorable. The testimony offered by Madras Solar is necessary in order to provide such information to the Commission. Additionally, a simple stipulation about the existence of a dispute would not provide necessary information to the Commission about the seriousness of the dispute, and would not provide the context needed to understand the delays that Madras Solar has encountered in dealing with PGE through the interconnection and PPA negotiation process.

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<sup>14</sup> Motion for Stay at 9.

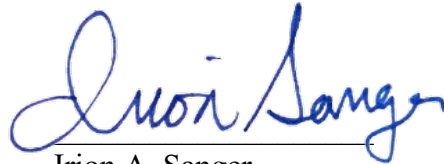
### III. CONCLUSION

For all of the reasons described above, the ALJ should deny PGE's Motion for Stay and leave the current procedural schedule in place in this proceeding.

Dated this 20th day of November, 2019.

Respectfully submitted,

Sanger Thompson, PC

A handwritten signature in blue ink, reading "Irion Sanger". The signature is written in a cursive style with a horizontal line underneath the name.

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