

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**Docket No. UM 2009**

MADRAS PV1, LLC,

Complainant,

v.

PORTLAND GENERAL ELECTRIC  
COMPANY,

Respondent.

COMPLAINANT’S RESPONSE  
TO PORTLAND GENERAL  
ELECTRIC COMPANY’S  
MOTION FOR APPLICATION OF  
CONTESTED CASE  
PROCEDURES AND FOR  
DESIGNATION AS A MAJOR  
PROCEEDING

**I. INTRODUCTION**

On June 11, 2019, Portland General Electric Company (“PGE”) filed a motion in this case (“PGE’s Motion”) seeking to designate it as a “major proceeding” under the Commission’s rules or, in the alternative, seeking to have the Commission utilize full contested case procedures. On June 18, 2019, Madras Solar filed an unopposed motion, seeking to extend its time to file a response to PGE’s Motion until August 12, 2018, which was granted that same day. In accordance with that schedule, Madras Solar hereby files a response to PGE’s Motion.

As described further below, the Commission should deny PGE’s request to designate the case as a “major proceeding” under the Commission’s rules. Instead, the Commission should resolve the case through the Commission’s normal contested case procedures. The Commission should determine at a later date whether it would benefit from conducting oral argument in the case, and should not pre-determine whether other parties should be allowed to intervene.

Instead, any other parties' rights to intervene should be determined through reviewing any petitions to intervene.

## **II. RESPONSE**

### **A. This Case Should Not Be Designated a Major Proceeding Under the Commission's Rules.**

#### **1. The Case Need Not Address the Items PGE Characterizes as Novel Legal Questions**

ORS 756.518(2) states that a party to a "major proceeding" shall have the right for oral argument before a quorum of the Commission, before a final order is issued in the case. The Commission's rules further define a "major proceeding" as a proceeding that meets one of two standards. First, it must 1) be "expected to have a full procedural schedule with written testimony or written comments" and 2) have either a "substantial impact on utility rates or service quality" for the utility or have a "significant impact on utility customers or the operations" of the utility."<sup>1</sup> Or, in the alternative, the Commission may designate a case as a major proceeding if a moving party shows that the case 1) is likely to effect a "significant change in regulatory policy," or 2) "[r]aises novel questions of fact or law."<sup>2</sup>

In its Motion, PGE does not argue that the case should be deemed a major proceeding under the first option, presumably because the case would not be expected to have substantial impact "on utility rates or service quality," or to significantly impact "utility customers or the operations of the regulated utility." But, PGE argues that the case should be deemed a major

---

<sup>1</sup> OAR 860-001-0660(1).

<sup>2</sup> OAR 860-001-0660(2).

proceeding under the second option, because PGE argues that the case presents “three novel legal questions.”<sup>3</sup> PGE presents these questions as:

- 1) Whether a QF can insist on selling test energy to a third-party;
- 2) Whether the sale of test energy to a third-party affects the Commission’s jurisdiction over the project’s interconnection; and
- 3) How the utility should account for costs associated with a QF’s siting, in the event that FERC concludes that the QF can use an energy resource interconnection service, or obtain refunds from PGE’s customers for system upgrades.<sup>4</sup>

None of these questions, however, are intended to be litigated in this proceeding, given events that occurred after Madras Solar’s complaint was filed. This is because Madras Solar is willing to remove its request that the PPA contain provisions allowing it to exercise its right to sell test energy to a third-party.

Madras Solar has the legal right to sell some or all of its net output to PGE, and it is illegal for PGE to require Madras Solar to sell all of its net output to PGE. PURPA imposes a mandatory purchase obligation on PGE, but does not impose a mandatory sale requirement on a QF.

Madras Solar understands that PGE’s objection to the test energy provisions has nothing to do with whether or not such provisions were reasonable; rather, PGE is concerned that Madras Solar’s sale of test energy to a third party would provide the Federal Energy Regulatory Commission (“FERC”) with jurisdiction over the interconnection. Essentially, PGE is not, in principle, opposed to Madras Solar selling its test energy to a third party, but PGE wants to ensure that interconnection issues will be reviewed by this Commission rather than FERC. PGE

---

<sup>3</sup> PGE’s Motion at 5.

<sup>4</sup> *Id.* at 5-6. Madras Solar is repeating PGE’s description of the issue, but Madras Solar notes that it disagrees with the manner in which PGE has characterized these issues.

is correct that Madras Solar's position is that the test energy provisions would provide FERC with jurisdiction over the interconnection between PGE.

Madras Solar understands that PGE's insistence on the Oregon Commission having jurisdiction, rather than FERC, is based on the fact that PGE had been insisting, and was, until very recently, continuing to insist, that Madras Solar pay excessive system upgrade costs, to the tune of \$343.7 million. Madras Solar continuously disputed this assessment by PGE, finding that PGE's proposed costs were unnecessary, unjustified, and grossly exaggerated. PGE appears to have been interested in ensuring that the Oregon Commission would resolve any disputes regarding PGE's interconnection costs, rather than FERC.

Since the filing of Madras Solar's complaint, PGE concluded that it had, indeed, been attempting to assess excessive and unreasonable interconnection costs on Madras Solar, and determined that it had, in fact, improperly conducted the System Impact Study ("SIS") that previously indicated the need for \$343.7 million of network upgrades.<sup>5</sup> PGE then developed and prepared a revised SIS, which reduced the costs to \$27 million.<sup>6</sup> Madras Solar continues to maintain that not all of these costs are not necessary.

Madras Solar's preference would be that PGE would agree to allow Madras Solar to sell its test energy to a third party. Madras Solar, however, does not object to the Oregon Commission resolving any interconnection related disputes, subject to the normal appellate and review processes that would govern any PURPA matter. Therefore, given PGE's jurisdictional concerns, Madras Solar is willing to agree to the removal of the test energy provisions, if that

---

<sup>5</sup> See Response Testimony of Shaun Foster and Sean Larson, PGE/200, Foster – Larson/13-14 (June 11, 2019).

<sup>6</sup> See Attachment A to Madras Solar Answer to PGE Counter-Claims at 19 (document filed concurrently with this response).

does not impact Madras Solar's right to a contract with all other terms and conditions, including the avoided cost prices in effect at the time Madras Solar legally obligated itself to sell its net output to PGE.

In light of the fact that Madras Solar is no longer requesting the right to sell test energy to a third-party, the issues that PGE identifies as "novel legal questions" are no longer salient, and thus PGE's request to designate the case as a major proceeding should not be granted.

## **2. The Case Is Not Likely to Result in a Significant Change in Regulatory Policy**

PGE argues that "[t]his proceeding concerns a qualifying facility [] that seeks to exclude the costs of network upgrades from both its avoided cost rates and the interconnection process, raising critical policy issues related to cost allocation under the Public Utility Regulatory Policies Act of 1978 (PURPA)."<sup>7</sup> PGE's characterization of Madras Solar's intent, however, is inaccurate, and the Commission should not grant PGE's motion to designate the case as a major proceeding based on it.

Madras Solar is not seeking to avoid the costs of network upgrades. Madras Solar already committed that, for purposes of the PPA, it would obtain Network Resource Interconnection Service ("NRIS") and fund, through the interconnection process, whatever upgrades are legitimately required for NRIS. Thus, Madras Solar will pay for network upgrades, to the extent that any reasonable, necessary, and justified network upgrades are actually identified.

Madras Solar is seeking to avoid paying for *unnecessary, unjustified, and excessive* network upgrades, and to have its costs assigned in a manner consistent with state and federal

---

<sup>7</sup> PGE's Motion at 2.

law.<sup>8</sup> As described above, and in its Answer to PGE’s counter-claims, Madras Solar objected to PGE’s charging it \$343.7 million of network upgrade costs, since those costs were, and have since proven to be, unnecessary, inappropriate, and wholly-unjustified. PGE has now amended its estimate of network upgrade costs and, although Madras Solar continues to dispute that all such costs are reasonable, necessary, and justified, Madras Solar will pay for all *reasonable*, *necessary*, and *justified* network upgrade costs.

In light of this, the case does not present “critical policy issues” for the Commission to decide. Rather, the Commission may, in the future, need to determine the appropriate and reasonable costs associated with PGE’s proposed network upgrades. This is a normal part of the Commission’s regulatory adjudicative process, however, and does not raise critical policy issues that would necessitate designating this case as a major proceeding.

Moreover, it is not clear that this case will require a Commission determination about what interconnection costs are reasonable. Given that PGE has already agreed that its original estimate of interconnection costs were off by a factor of ten, any continued disagreement over network upgrade costs may, in the end, turn out to no longer be an issue in this proceeding, and, if the issue is disputed, it is possible that it would be the subject of a separate complaint.

---

<sup>8</sup> Madras Solar is not required at this point to identify and explain all of its factual and legal arguments in this proceeding. For example, Commission Order No. 10-132 allows Madras Solar to seek to have the cost of certain network upgrades refunded to it, provided that it can demonstrate that such network upgrades provide quantifiable system-wide benefits. The extent and whether any network upgrades provide system-wide benefits is not known at this time (which is illustrated by the more than tenfold reduction in PGE’s estimated interconnection costs between the date of the filing of Madras Solar’s Complaint and Answer). Similarly, the Commission is currently considering whether to change its interconnection policies in UM 1930 and UM 2000. These policy changes could impact this proceeding.

**B. Madras Solar Does Not Dispute the Application of Contested Case Procedures to this Case.**

As PGE notes in its Motion, there are three potential paths for processing the case: 1) narrow dispute resolution procedures for a streamlined resolution of specific PPA terms; 2) generally applicable contested case procedures for complaints; and 3) major proceedings for consideration of particularly impactful issues or cases presenting novel questions of law and fact.<sup>9</sup> For the reasons described above, Madras Solar objects to the application of major proceeding processes. Instead, under the Commission's rules, the streamlined procedures applicable to disputes over PPA terms *could* apply. This is because all of the criteria of OAR 860-029-0100 are met with Madras Solar's complaint. For example, the complaint was accompanied by a proposed agreement, as well as supporting testimony, and Madras Solar's goal with its complaint is to have the Commission resolve unresolved PPA terms and conditions.

Madras Solar recognizes, however, that this case involves a significant amount of facts, and various legal claims. And, it also recognizes that additional rounds of filed testimony and legal briefing will be helpful to the Commission's resolution of this case. Thus, Madras Solar does not object to the application of contested case procedures to this case. Madras Solar also recognizes that certain aspects of its complaint also go beyond seeking a determination of PPA terms, and relate to actions that PGE has taken that Madras Solar contends are unlawful.<sup>10</sup>

In its Motion, PGE notes that Madras Solar cited that its complaint was being filed pursuant to both OAR 860-029-0100(3) (streamlined procedures) and OAR 860-001-0400

---

<sup>9</sup> PGE's Motion at 3.

<sup>10</sup> See, e.g. Complaint at 20, 22-24 (Apr. 22, 2019)(providing examples, such as Madras Solar's contention that PGE is not entitled to apply current avoided costs rates to Madras Solar's PPA, and that PGE delayed negotiations and did not consider Madras Solar's modifications in good faith).

(general complaint procedures), and asserted that Madras Solar’s proposal for what process should be used is unclear.<sup>11</sup> Madras Solar cited these provisions because OAR 860-029-0100(1) specifies that the rule “applies to a complaint, filed pursuant to ORS 756.500, regarding the negotiation of a Qualifying Facility power purchase agreement for facilities with a capacity greater than the eligibility threshold for a standard contract for the Qualifying Facility’s resource group.” Because the Madras Solar facility is larger than the standard contract eligibility threshold, these rules, by their terms, apply. Additionally, the rules go on to state that “[t]hese provisions supplement the generally applicable filing and contested case procedures contained in OAR chapter 860, division 001.” Thus, Madras Solar cited both rules in filing its complaint, because the Commission’s rules tie those two provisions together, and they apply, by their terms. This citation of the Commission’s rules was not meant to ensure that only streamlined procedures should be used.

**C. Contested Case Procedures are Adequate to Process this Case, and the Commission Can Determine Later Whether Oral Argument Should be Conducted**

Madras Solar notes that the only significant concrete difference between a major proceeding and a contested case is that oral argument is mandatory in a major proceeding, but permitted in a contested case. Given the early stage of this case, and the Commission’s interest in ensuring that an appropriate amount of process is provided for in the proceeding, Madras Solar believes that the Commission should simply designate this case as a contested case, and reserve for later decision whether oral argument is necessary and beneficial.

---

<sup>11</sup> PGE’s Motion at 1.



**D. Other Parties Should Not Be Given the Right to Intervene, and in Any Event, A Party's Right to Intervene Should be Determined Based on the Merits of Their Request**

In its Motion, PGE argues that the issues raised in this case are not unique to PGE, and that other utilities will have an interest in them.<sup>12</sup> PGE does not specifically explain its proposed consequence of its view, but seems to imply that the Commission should, for that reason, allow other parties (presumably other utilities) to intervene. Madras Solar notes that allowing other parties to intervene in a case that essentially is determining the PPA terms that should be allowed is not consistent with the Commission's streamlined procedures to addressing disputes over large QF PPA terms.<sup>13</sup> Limiting parties to signatories is appropriate under the streamlined procedures because it ensures that the parties with an interest are allowed to participate, but that other interested parties do not prolong or enlarge the scope of the case unnecessarily. Madras Solar recognizes that it is agreeing that the streamlined procedures should not apply in this case, but notes that the same rationale for limiting parties to signatories applies here. Madras Solar's litigation over its disputes should not be drawn out by allowing other parties into the case that do not have an interest in the terms of its PPA. This is especially true, given the elimination of many of the issues that PGE identifies as novel legal questions, or regulatory policy issues.

Madras Solar asks that the Commission not make any special provisions for allowing other parties to intervene in the case. If other parties seek to participate, then any petition to intervene should be judged on its own merits, rather than allowed as a matter of right in the case.

---

<sup>12</sup> *Id.* at 2, 6.

<sup>13</sup> See OAR 860-029-0100(10) (specifying that only signatories to contract will be parties to the dispute).

Respectfully submitted this 12<sup>th</sup> day of August, 2019.

A handwritten signature in blue ink, reading "Irion Sanger". The signature is fluid and cursive, with the first name "Irion" and last name "Sanger" clearly distinguishable.

Irion A. Sanger  
Mark R. Thompson  
Sanger Thompson PC  
1041 SE 58th Place  
Portland, Oregon 97215  
503-756-7533 (tel.)  
503-334-2235 (fax)  
irion@sanger-law.com  
mark@sanger-law.com