



ALISHA TILL
Direct (503) 290-3628
alisha@mrg-law.com

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VIA ELECTRONIC FILING

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

**Re: Docket UM 2009: In the Matter of the Complaint of Madras PV1, LLC, against
Portland General Electric Company.**

Attention Filing Center:

Attached for filing in the above-captioned docket is Portland General Electric Company's Combined Response to Madras Solar's Motion for Clarification and Reply in Support of Motion to Amend Counterclaim.

Please contact this office with any questions.

Sincerely,

A handwritten signature in blue ink that reads 'Alisha Till'.

Alisha Till
Paralegal

Attachment

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2009

Madras PVI, LLC,
Complainant,

v.

Portland General Electric Company,
Defendant.

**PORTLAND GENERAL ELECTRIC
COMPANY’S COMBINED RESPONSE
TO MADRAS SOLAR’S MOTION FOR
CLARIFICATION AND REPLY IN
SUPPORT OF MOTION TO AMEND
COUNTERCLAIM**

I. INTRODUCTION

1 Pursuant to the Administrative Law Judge (ALJ) Ruling of January 22, 2020, this
2 Combined Response and Reply jointly addresses two recent filings from Madras PVI, LLC
3 (Madras Solar),¹ both of which concern the appropriate scope of this case. Madras Solar styled its
4 Complaint as a narrow dispute with Portland General Electric Company (PGE or Company) over
5 a power purchase agreement (PPA). However, since filing the Complaint, Madras Solar’s
6 discovery requests and filed testimony have focused primarily on the parties’ underlying
7 interconnection dispute. In Madras Solar’s own words, the parties dispute “what upgrades are
8 legitimately required in order to interconnect the project,”² and “the legitimacy of [the] estimated
9 costs[.]”³ In particular, Madras Solar asserts that it should not be required to pay for the network
10 upgrades necessary to enable delivery of its output to PGE’s load, because Madras Solar believes
11 that PGE’s determination of the required network upgrades and estimation of costs are incorrect.

¹ Madras Solar is a Qualifying Facility (QF) being developed by Ecoplexus, Inc. For ease of review, this document uses “Madras Solar” to refer to both entities.

² Madras Solar’s Response to PGE’s Motion to Strike at 15-16.

³ Madras Solar’s Response to PGE’s Motion to Strike at 6.

1 Madras Solar also emphasizes that it fundamentally disagrees with the Public Utility Commission
2 of Oregon’s (Commission) policy of allocating deliverability-related network upgrade costs to
3 qualifying facilities (QFs) in the interconnection process.

4 In its pleadings and testimony, Madras Solar asks the Commission to fully litigate the
5 interconnection dispute in order to arrive at appropriate PPA terms and avoided cost pricing for
6 Madras Solar. However, Madras Solar also insists that the Commission *not* resolve the
7 interconnection dispute itself in this case,⁴ in order to preserve the question for later consideration
8 by the Federal Energy Regulatory Commission (FERC), the Commission, or both.⁵ As explained
9 in detail below, PGE initially attempted to exclude interconnection issues from this proceeding to
10 avoid unduly complicating and delaying the case,⁶ but Madras Solar objected. In the Ruling
11 clarifying the scope of this proceeding, the ALJ agreed in part with Madras Solar, finding that the
12 parties’ interconnection issues are relevant to this proceeding.⁷ However, the ALJ also made clear
13 that the parties should be prepared to not only discuss, but to “propose resolution” of the parties’
14 interconnection issues,⁸ including “the reasonableness of the [interconnection] studies.”⁹

15 In reliance on the ALJ’s Ruling, PGE proceeded to develop testimony and to retain an
16 outside expert in order to respond to Madras Solar’s interconnection-related claims. PGE
17 undertook these efforts with the understanding that the scope of this proceeding now includes the

⁴ Madras Solar’s Response to PGE’s Motion to Strike at 15-16.

⁵ *See, e.g.*, Madras Solar’s Motion for Clarification at 14 (“Clarification will also be needed in terms of state and federal jurisdiction. A number of the interconnection issues are likely subject to the Commission’s jurisdiction, while other PGE actions are under FERC jurisdiction.”); *see also* Madras Solar/300, Rogers/28-29 (“[T]here are strong arguments to be made that FERC, rather than the Commission, is the proper venue to adjudicate any potential interconnection-related dispute.”).

⁶ PGE’s Motion to Strike at 10.

⁷ ALJ Ruling at 3-5.

⁸ ALJ Ruling at 3.

⁹ ALJ Ruling at 3.

1 parties' interconnection dispute—namely, the need for and cost of deliverability-related network
2 upgrades to enable the project's interconnection using Network Resource Interconnection Service
3 (NRIS).

4 In recent weeks, PGE learned that Madras Solar disagrees with PGE's understanding of
5 the ALJ's Ruling, and will continue to advocate that the parties should comprehensively litigate
6 the interconnection dispute, while at the same time insisting that the Commission leave the dispute
7 unresolved. Given this fact, and to ensure complete clarity about the scope of this case as its
8 testimony deadline approached, PGE sought to conform its pleadings to the scope set forth in the
9 ALJ's Ruling, by filing a Motion to Amend PGE's Answer and Counterclaim (Motion to Amend).
10 In that Motion to Amend, PGE formally requests that the Commission resolve the validity of
11 PGE's interconnection studies and conclude that Madras Solar is obligated to pay for the costs of
12 NRIS identified in the studies.

13 In its Response to the Motion to Amend and in a separate Motion for Clarification, Madras
14 Solar asks the Commission to (1) clarify that this proceeding will *not* resolve those interconnection
15 issues that Madras Solar previously urged the Commission to consider; (2) reject PGE's Amended
16 Counterclaim as unrelated to this proceeding, prejudicial, belated, and meritless; and (3) impose
17 penalties on PGE for seeking to resolve the very interconnection dispute that Madras Solar
18 introduced into this proceeding.

19 The Commission should reject Madras Solar's Motion for Clarification, accept PGE's
20 Motion to Amend, and clarify that the interconnection dispute will be fully resolved in this case,
21 for the following reasons:

- 22 • ***First***, the interconnection dispute cannot be sub-divided into discrete components, with
23 some decided in this case, and others deferred to a future case. Madras Solar has described

1 the interconnection issues in this case as encompassing the question of what upgrades are
2 required and the legitimacy of PGE's estimated costs¹⁰—a description that encompasses
3 *all* potential interconnection issues. Indeed, application of Madras Solar's own framework
4 shows that nearly all the interconnection issues that Madras Solar identifies as in dispute
5 have already been addressed by Madras Solar's testimony and are therefore already at issue
6 in this case.

- 7 • **Second**, the avoided cost prices that will be included in the PPA cannot truly be finalized
8 until the interconnection dispute is resolved. The current PPA's avoided cost prices assume
9 that Madras Solar is paying for the interconnection costs separately, including the
10 deliverability-related network upgrades required for NRIS. If, in some future separate case,
11 Madras Solar contests the requirement that it receive NRIS or PGE's determination of the
12 required upgrades and costs, and in the unlikely event that Madras Solar was relieved of
13 the obligation to pay for the upgrades required to deliver its output to load, then the cost of
14 those upgrades would need to be incorporated into the avoided cost prices in Madras
15 Solar's PPA.¹¹ Thus, neither Madras Solar's avoided cost prices nor its PPA can be
16 finalized until the interconnection dispute is resolved.
- 17 • **Third**, further revision to the scope of this proceeding would prejudice PGE, because PGE

¹⁰ Madras Solar's Response to PGE's Motion to Strike at 6, 15-16.

¹¹ See *In the Matter of Public Utility Commission of Oregon, Community Solar Program Implementation*, Docket UM 1930, Order No. 19-122 at 19 (Apr. 11, 2019); see also PGE's Answer and Counterclaim, Attachment A at 4 ("***The prices contained in Exhibit C are expressly contingent on Seller paying for all interconnection costs, as required by Section 3.9, as necessary for the provision of Network Resource Interconnection service***, including any required network upgrades, as determined in the Facilities Study conducted by PGE pursuant to Large Generator Interconnection Procedures adopted by the Public Utility Commission of Oregon in Order No. 10-132.") (emphasis added).

1 has expended considerable time and resources preparing testimony in reliance on the ALJ's
2 Ruling concluding that the interconnection dispute is part of this proceeding. Madras Solar,
3 on the other hand, will not be prejudiced if the Commission resolves the interconnection
4 dispute that Madras Solar raised and comprehensively addressed in its testimony.

- 5 • **Fourth**, the parties' interconnection dispute is ripe for resolution. The dispute crystallized
6 many months ago, and the fundamental disagreement concerning the appropriate
7 deliverability-related network upgrades and cost responsibility for them is irreconcilable.
8 PGE issued the Facilities Study, which is the final study in the process, and it includes
9 essentially the same upgrades that PGE identified in the System Impact Study (SIS) and
10 that Madras Solar disputes at length in its Reply Testimony. Madras Solar cannot hide
11 behind the fact that the interconnection study process is not quite complete because Madras
12 Solar recently paused the process to allow time to resolve the dispute.

- 13 • **Fifth**, PGE's proposed Amended Counterclaim properly sought to conform the pleadings
14 to the ALJ's Ruling, which concluded that the interconnection dispute has been raised by
15 the parties and is now subject to resolution in this proceeding. Thus, the Amended
16 Counterclaim does not raise new issues. Moreover, even if the Commission were to regard
17 the issue raised by the Amended Counterclaim as "new", it is clearly related to Madras
18 Solar's Complaint, not prejudicial to Madras Solar, expeditiously filed, and adequately
19 supported by evidence in the proceeding. Therefore, the Amended Counterclaim is
20 properly filed and should be accepted.

- 21 • **Sixth**, having brought the interconnection dispute into this case, Madras Solar cannot now
22 claim that **PGE** bypassed the informal dispute resolution process set forth in the
23 Commission's QF large generator interconnection procedures (QF-LGIP) by insisting that

1 the interconnection dispute be resolved in this proceeding. There is no need for the
2 Commission to delay resolution of the dispute pending the informal dispute resolution
3 process because the parties will conclude that informal process in the near future.

4 Ultimately, the Commission will almost certainly need to resolve the parties' long-
5 standing, state-jurisdictional interconnection dispute, and the only question is whether resolution
6 occurs in this case—where the record is already being fully developed—or in a subsequent case.
7 Resolving the interconnection dispute in this case is the most efficient path forward for both parties
8 and for the Commission, and is the best way to conclude litigation between Madras Solar and PGE
9 so that the parties may move forward with both their interconnection and contracting
10 arrangements. And to the extent that Madras Solar is opposing Commission resolution of the
11 interconnection issues so that it may challenge PGE's interconnection studies and this
12 Commission's interconnection policies at FERC, PGE urges this Commission to fulfill its
13 jurisdictional mandate and to evaluate and resolve the dispute that is already before it in the first
14 instance.

II. PROCEDURAL AND INTERCONNECTION BACKGROUND

15 On April 22, 2019, Madras Solar filed a Complaint that it styled as a dispute over PPA
16 terms.¹² Madras Solar initially sought to utilize the Commission's specific dispute resolution
17 procedures for negotiated PPAs, but after PGE objected,¹³ Madras Solar agreed to the application
18 of normal contested case procedures, recognizing "that certain aspects of its complaint also go

¹² Madras Solar's Complaint at 24-25.

¹³ PGE's Motion for Contested Case at 4-5.

1 beyond seeking a determination of PPA terms, and relate to actions that PGE has taken that Madras
2 Solar contends are unlawful.”¹⁴

3 On July 12, 2019, PGE issued Madras Solar’s revised SIS.¹⁵ The SIS is the second study
4 in the interconnection-study process and includes a detailed engineering analysis to determine the
5 facilities required for interconnection.¹⁶ The SIS evaluated the requirements for Madras Solar to
6 receive NRIS,¹⁷ which the Commission requires for QFs.¹⁸ An NRIS study evaluates *both* the
7 upgrades necessary for the QF to “plug in” to the system *and* any upgrades necessary to reliably
8 deliver the QF’s output to the utility’s load. Madras Solar’s revised SIS determined that to
9 interconnect with NRIS, Madras Solar required a network upgrade (installation of a series
10 capacitor) to increase the capacity of the Bethel-to-Round Butte transmission line sufficiently to
11 enable delivery of Madras Solar’s full output to PGE’s load.¹⁹

12 After receiving the SIS, Madras Solar issued more than 50 data requests concerning
13 interconnection issues. Madras Solar then filed extensive Reply Testimony on November 5, 2019,
14 that focused heavily on the interconnection issues—including detailing Madras Solar’s
15 disagreement with the SIS methodology and results and with the Commission’s policy for
16 allocation of network upgrade costs. Approximately half of the 671 pages of Reply Testimony

¹⁴ Madras Solar’s Response to PGE’s Motion for Contested Case at 7.

¹⁵ Madras Solar/307.

¹⁶ QF-LGIP Article 7.3. The Commission adopted the QF-LGIP in Order No. 10-132. The QF-LGIP can be found in its entirety in Appendix A of that Order.

¹⁷ Madras Solar/307, Rogers/9.

¹⁸ QF-LGIP Article 3.2.

¹⁹ Madras Solar/307, Rogers/15.

1 and exhibits were devoted to the interconnection dispute.²⁰

2 On November 15, 2019, PGE filed a Motion to Strike those portions of Madras Solar's
3 Reply Testimony addressing interconnection issues, explaining that requiring PGE to respond to
4 extensive interconnection-related testimony would be inefficient and burdensome if the litigation
5 would not actually resolve the interconnection dispute.²¹ In response to PGE's Motion, Madras
6 Solar claimed that "what upgrades are legitimately required in order to interconnect the project"
7 should be "discussed and debated so that the Commission can then undertake an exhaustive review
8 of the record and arm itself with a holistic view of the parties' positions and perspectives
9 surrounding the interconnection dispute[.]"²² Madras Solar also argued in a related pleading that
10 PGE knew based on Madras Solar's data requests that Madras Solar "was asserting that the
11 disputes it has with PGE over its interconnection studies are relevant to this dispute,"²³ and urged
12 the Commission to develop "a full record" on "what is required to interconnect the project."²⁴

13 The ALJ denied PGE's Motion to Strike on December 9, 2019, clarifying that the scope of

²⁰ PGE's informal estimate is that one-quarter of Mr. Rogers's testimony, two-thirds of Dr. Yang's testimony, and one-half of Madras Solar's exhibits are devoted to interconnection issues. Madras Solar/300-311; Madras Solar/400. In Dr. Yang's own words, his testimony, "explains the current interconnection related disputes that will need to be adjudicated and resolved prior to Madras Solar executing an interconnection agreement." Both Dr. Yang's and Mr. Rogers's Reply Testimony describe in great detail Madras Solar's review of PGE's power flow analyses and conclusions based on the results, (Madras Solar/300, Rogers/32-33; Madras Solar/400, Yang/4, 7-8, 24, 27-32, 48-52) disagreement regarding the NRIS study methodology and resulting requirements, (Madras Solar/300, Rogers/44, 50-53, 59-60; Madras Solar/400, Yang/4-10, 17-20, 35-47, 52-57, 59-60) disagreement with the estimated costs of certain identified upgrades (Madras Solar/300, Rogers/66; Madras Solar/400, Yang/9-10, 58), disagreement with PGE's assertions regarding its current rights, obligations, and uses of capacity (Madras Solar/300, Rogers/12, 45-48, 52-61; Madras Solar/400, Yang/7-8, 32-34, 47, 60-62), and arguments regarding why it is entitled to refunds for any network upgrades that are required (Madras Solar/300, Rogers/25.).

²¹ PGE's Motion to Strike at 10-11.

²² Madras Solar's Response to PGE's Motion to Strike at 15-16.

²³ Madras Solar's Response to PGE's Motion to Stay at 4.

²⁴ Madras Solar's Response to PGE's Motion to Stay at 6.

1 this proceeding properly includes “the issue of interconnection in general, and the dispute over
2 interconnection costs specifically[.]”²⁵ The ALJ reasoned that “both parties have effectively,
3 through their claims, counterclaims, answers, and through their proposed and disputed PPA
4 terms[,] made interconnection issues part of this proceeding.”²⁶ Thus, the ALJ directed that
5 “[b]oth parties to this proceeding should be prepared to discuss, and propose resolution for any
6 interconnection-related issue that impacts disputed PPA terms, which are the subject of the
7 pending complaint and counterclaim.”²⁷

8 Meanwhile, on December 5, 2019, PGE issued Madras Solar’s draft Facilities Study, which
9 refined the interconnection-cost estimates and time required to construct the upgrades identified
10 in the SIS.²⁸ Pursuant to the QF-LGIP requirements, PGE and Madras Solar met on December 20,
11 2019, to discuss the Facilities Study, at which time PGE learned that Madras Solar did not interpret
12 the ALJ’s Ruling as having made the parties’ interconnection dispute part of this proceeding.
13 Therefore, on January 3, 2020, PGE filed its Motion to Amend to formally effectuate the ALJ’s
14 Ruling by aligning the parties’ pleadings to the stated scope of the dispute.²⁹

15 Under the QF-LGIP, the interconnection customer has 30 days after receiving the draft
16 Facilities Study to provide comments, and the utility then incorporates and responds to those
17 comments when it issues the final Facilities Study within 15 business days of receiving the

²⁵ ALJ Ruling at 5.

²⁶ ALJ Ruling at 3.

²⁷ ALJ Ruling at 3.

²⁸ PGE’s Motion to Amend, Attachment C at 14.

²⁹ PGE’s Motion to Amend at 3.

1 comments,³⁰ and provides the draft large generator interconnection agreement (LGIA) shortly
2 thereafter.³¹ However, on January 8, the day its comments were due, Madras Solar instead
3 submitted a Notice of Dispute, which it described as providing “a formal ‘time-out’” in the
4 interconnection study process.³² Under the QF-LGIP, tendering a Notice of Dispute initiates a 30-
5 day period for informal dispute resolution.³³

6 Madras Solar explained the basis for its Notice of Dispute in detailed comments provided
7 on January 17, 2020. The comments cataloged numerous criticisms of the SIS and the Facilities
8 Study—the vast majority of which simply repeated criticisms that had been fully described in
9 Madras Solar’s Reply Testimony. In addition, Madras Solar did raise two new concerns regarding
10 specific cost estimates in the Facilities Study and PGE’s failure to identify the Interconnection
11 Customer’s Interconnection Facilities that Madras Solar would need to construct. Despite PGE’s
12 understanding that the parties were already undertaking formal dispute resolution in this
13 proceeding, and PGE’s belief that “the parties have clearly reached an impasse regarding the
14 network upgrades contained in the SIS,” PGE nonetheless agreed to schedule an informal dispute
15 resolution meeting between the parties’ senior representatives, which is scheduled to take place on
16 February 6, 2020.³⁴

17 On January 17, Madras Solar also filed its own Motion for Clarification of the ALJ’s
18 Ruling, and pursuant to the ALJ Ruling Adopting Revised Procedural Schedule on January 22,
19 PGE’s Response to the Motion for Clarification and Reply to the Motion to Amend were combined

³⁰ QF-LGIP Article 8.3.

³¹ QF-LGIP Article 11.1.

³² Madras Solar’s Motion for Clarification, Attachment B at 1.

³³ QF-LGIP Article 13.5.1.

³⁴ Madras Solar’s Motion for Clarification, Attachment C at 3.

1 into the instant single filing.

2 III. RESPONSE TO MOTION FOR CLARIFICATION

3 Madras Solar’s efforts to parse the interconnection dispute into “subsets” of issues, some
4 of which must be resolved here and others that should be delayed, is unworkable, prejudicial to
5 PGE, and inconsistent with the nature of the underlying dispute. The fundamental dispute between
6 the parties has been, and remains, what network upgrades are required and whether Madras Solar
7 must pay for them. These twin issues constitute the full scope of the parties’ interconnection
8 dispute, and also underlie the parties’ disputes over the PPA terms. Both issues are already raised
9 in this case and both issues must be fully and finally resolved in order for the parties to efficiently
10 enter a final PPA with appropriate avoided cost pricing, and for Madras Solar to interconnect and
11 begin selling its output to PGE. The ALJ should therefore affirm the prior Ruling that
12 interconnection issues are part of this proceeding and reiterate that the state-jurisdictional
interconnection dispute placed at issue by Madras Solar will be decided in this case.

13 A. The interconnection dispute cannot be broken into discrete issues that can be 14 resolved in separate cases.

15 Madras Solar has stated repeatedly that the entirety of the interconnection issues raised in
16 its testimony and pleadings will need to be resolved at some point;³⁵ Madras Solar agrees that
17 *some* interconnection issues must be resolved in this case;³⁶ and Madras Solar concedes that its
18 interconnection is state-jurisdictional.³⁷ Accordingly, despite Madras Solar’s implications that it

³⁵ See, e.g., Madras Solar’s Response to Motion for Stay at 8 (“Madras Solar . . . 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.*”) (emphasis added).

³⁶ Madras Solar’s Motion for Clarification at 4.

³⁷ Madras Solar’s Motion for Clarification at 1 (agreeing Madras Solar is subject to the Commission’s interconnection framework).

1 plans to bring the interconnection dispute to FERC, it is this Commission that must ultimately
2 decide what interconnection costs Madras Solar must pay—a decision that will necessarily
3 encompass each and every possible interconnection-related issue that has or could be raised by
4 Madras Solar.³⁸ The interests of judicial economy and administrative efficiency weigh heavily in
5 favor of resolving the interconnection dispute in a single case based on a single record.

6 **1. Madras Solar effectively concedes that every interconnection issue**
7 **should be addressed in this case.**

8 Madras Solar’s attempt to sub-divide the issues demonstrates the impossibility of this
9 approach. Indeed, the application of Madras Solar’s own framework supports Commission
10 resolution of *all* interconnection issues in this case.

11 Madras Solar presents a total of 17 specific interconnection issues that it then breaks down
12 into three subsets: (1) those that Madras Solar agrees impact the disputed PPA terms and *must* be
13 resolved in this case;³⁹ (2) those that were raised by Madras Solar in the record and *could* be
14 resolved in this case;⁴⁰ and (3) those that “would inappropriately expand the scope to include issues
15 that are not fully developed . . .” and *must not* be resolved in this case.⁴¹ Each of Madras Solar’s
16 17 “issues” are simply specific criticisms Madras Solar has leveled at PGE’s SIS or the related
17 Facilities Study. Therefore, Madras Solar’s position amounts to a request that the Commission
18 review the interconnection studies piecemeal without considering the holistic nature of the studies,
19 PGE’s modeling, and the results. However, it makes no sense for the Commission to carve up the

³⁸ Madras Solar claims that some of its claims related to alleged flaws in PGE’s SIS modeling are FERC-jurisdictional. *See, e.g.*, Madras Solar’s Motion for Clarification at 16. The Company disagrees but the Commission need not address those questions now. The law is clear that the Commission has jurisdiction to determine the interconnection costs payable by Madras Solar and those costs are the crux of the dispute.

³⁹ Madras Solar’s Motion for Clarification at 3.

⁴⁰ Madras Solar’s Motion for Clarification at 3.

⁴¹ Madras Solar’s Motion for Clarification at 3.

1 interconnection studies and resolve disputes about some aspects of them here but not others.

2 Furthermore, several of the issues identified by Madras Solar fall into more than one subset.
3 Most obviously, Madras Solar acknowledges that the Commission could resolve whether the
4 Bethel-to-Round Butte transmission line is constrained because Madras Solar addresses that issue
5 in its testimony.⁴² But Madras Solar then turns around and argues that “[w]hether the Round Butte
6 – Bethel 230 kV line is unconstrained and what network upgrades, if any, are appropriate” is an
7 issue that is beyond the scope of this case.⁴³ And more significantly, Madras Solar appears to have
8 placed the central and ultimate questions in this case—the question of what interconnection
9 upgrades are required and their associated costs—in all three subsets.⁴⁴ The fact that Madras Solar
10 has arrived at many different ways to frame its objection does not transform a single dispute into
11 many.

12 Moreover, Madras Solar conveniently ignores the fact that the majority of those issues that
13 it characterizes as exceeding the scope of this dispute *have already been addressed in Madras*
14 *Solar’s Reply Testimony*. Madras Solar identified 13 issues that it claims would “inappropriately

⁴² Madras Solar’s Motion for Clarification at 4.

⁴³ Madras Solar’s Motion for Clarification at 6.

⁴⁴ Madras Solar’s Motion for Clarification at 4 (“The first subset of interconnection issues that the Commission needs to resolve . . . include: . . . PGE’s interconnection delays, requirements, and incorrect cost estimates . . . and their impact on the applicable avoided cost price[.]”); *id.* at 4 (“The second subset of interconnection issues that could be resolved in this proceeding extends only to issues raised by the pleadings and testimony . . . are: Whether any of the ‘grandfathered’ transmission agreements provided for review by PGE actually limit the capacity of the Round Butte – Bethel 230 kV line to the output of PGE’s Pelton Round Butte (“PRB”) generation[.]”) (one of the primary disagreements throughout the interconnection process has been whether PGE should consider in its NRIS analysis limitations on the Bethel-Round Butte line’s capacity when determining whether PGE would need to upgrade that line to deliver the output from Madras Solar); *id.* at 5 (“The[third set of] issues could include: . . . Whether it is appropriate for PGE to assign Madras certain network upgrades.”).

1 expand the scope of issues” in this case.⁴⁵ Yet, 11 of these 13 issues are explicitly and fully
2 addressed in Madras Solar’s own testimony, as set forth in detail in Attachment A to this Response,
3 which lists each issue that Madras Solar claims is outside the scope side-by-side with excerpts
4 from Madras Solar’s own testimony on the very same issue. The fact that Madras Solar’s Reply
5 Testimony addresses most of the issues that it now claims are outside the scope is particularly
6 salient, given that Madras Solar concedes that issues raised in its testimony and pleadings could
7 be resolved in this case.⁴⁶

8 Thus, even using Madras Solar’s own framework, it has identified, at best, two issues
9 related to the Facilities Study that could possibly expand the scope of this case. Specifically,
10 Madras Solar challenges two specific cost estimates in the Facilities Study and also claims PGE
11 failed to identify the facilities and costs that ***Madras Solar*** would be required to construct to reach
12 PGE’s system.⁴⁷ Both issues relate to the Facilities Study, which Madras Solar argues should not
13 be addressed in this case because the draft study was provided to Madras Solar after it filed its
14 Reply Testimony.⁴⁸ This argument, however, ignores the interconnected nature of the SIS and the
15 Facilities Study.

16 As Madras Solar recognizes, the SIS “provides a comprehensive and detailed system
17 analysis that tests deliverability under peak load conditions and evaluates impacts on system
18 stability.”⁴⁹ The SIS therefore identifies the technical impact of interconnection and the facilities

⁴⁵ Madras Solar’s Motion for Clarification at 5-6.

⁴⁶ Madras Solar’s Motion for Clarification at 4 (“The second subset of interconnection issues that could be resolved in this proceeding extends only to issues raised by the pleadings and testimony.”).

⁴⁷ Madras Solar’s Motion for Clarification at 6.

⁴⁸ Madras Solar’s Motion for Clarification at 15.

⁴⁹ Madras Solar’s Response to PGE’s Motion to Strike at 5.

1 required for a safe and reliable interconnection.⁵⁰ The Facilities Study then builds on the SIS and
2 provides a more refined cost estimate of the interconnection facilities identified in the SIS;⁵¹ it
3 does not recreate or refine the system modeling performed in the SIS. The two studies are
4 inherently intertwined.

5 Because the dispute here is over both the network upgrades and the estimated cost
6 identified in the interconnection-study process, a Commission order on the SIS that ignores the
7 more recent Facilities Study would be incomplete. Given that the final study in the interconnection
8 process is now available, it makes no sense to litigate and resolve interconnection issues by
9 focusing only on the preceding study—and then litigating the Facilities Study in a subsequent
10 docket. To do so would be particularly inefficient because most of the issues already raised in
11 Madras Solar’s Reply Testimony remained after issuance of the Facilities Study and the conclusion
12 of the interconnection-study process. The Commission should evaluate the results of the
13 interconnection-study process as a whole, and the interconnectedness of the studies demonstrates
14 the futility of attempting to identify some interconnection issues that should be resolved here while
15 reserving others for another case.

16 **2. Bifurcating interconnection issues into separate proceedings is**
17 **administratively inefficient and unduly burdensome.**

18 Even if it were possible to cleanly divide the interconnection dispute into some issues that
19 could be resolved in this case and those that could be resolved later, it is wasteful to do so. The
20 most efficient process for resolving the interconnection dispute is to litigate the entire dispute in
21 this case. Madras Solar has already fully developed the record related to the SIS and its concerns

⁵⁰ QF-LGIP Article 7.3.

⁵¹ QF-LGIP Article 8.2.

1 over the Facilities Study largely overlap. Therefore, the current schedule likely allows sufficient
2 process to complete the record and present the interconnection dispute to the Commission for a
3 decision.

4 Notably, even if Madras Solar requires additional process to address the Facilities Study in
5 this case, this case still is likely to be resolved sooner than Madras Solar’s preferred approach of
6 litigating a second case (or cases) later to address the unresolved interconnection issues. If Madras
7 Solar’s goal is to expeditiously resolve its dispute with PGE—as it claims⁵²—then litigating *all*
8 the interconnection issues in this case is the most efficient approach to achieving that goal. And
9 given that the parties are currently compiling an extensive record regarding the interconnection
10 studies’ methodology and results, this resource-intensive process should yield a full and final
11 resolution of the parties’ dispute.

12 **B. The disputed PPA terms cannot be fully resolved until there is resolution of**
13 **the entirety of the interconnection dispute.**

14 Madras Solar agrees that any interconnection issue that affects the PPA terms must be
15 addressed in this case.⁵³ Madras Solar further agrees that a “core issue in this case is what avoided
16 cost rate applies.”⁵⁴ Consistent with that position, Madras Solar also concedes that this case *must*
17 resolve the impact of PGE’s “interconnection . . . requirements” on the avoided cost price.⁵⁵ PGE
18 agrees, as did the ALJ.⁵⁶ As discussed above, PGE’s “requirements” for interconnection

⁵² Madras Solar’s Response to PGE’s Motion to Amend at 2.

⁵³ Madras Solar’s Motion for Clarification at 4.

⁵⁴ Madras Solar’s Motion for Clarification at 23.

⁵⁵ Madras Solar’s Motion for Clarification at 4 (acknowledging that the Commission must determine the impact of “PGE’s interconnection delays, requirements, and incorrect cost estimates . . . on the applicable avoided cost price”).

⁵⁶ ALJ Ruling at 5.

1 encompass the entirety of the parties' dispute over interconnection—i.e., what network upgrades
2 are required and who must pay. If the Commission does not resolve the interconnection
3 requirements in this case, then, as Madras Solar concedes, there can be no final resolution of the
4 avoided cost prices and related PPA terms.⁵⁷

5 Moreover, Madras Solar's apparent intention to undermine the Commission's
6 interconnection policies at FERC makes resolution of the interconnection requirements critical
7 before the PPA is finalized.⁵⁸ The Commission requires QFs to obtain NRIS, which identifies
8 network upgrades required to deliver the QF's output to the purchasing utility's load.⁵⁹ The
9 Commission also requires QFs to pay for their interconnection costs, including network upgrades,
10 unless the QF can demonstrate that the upgrade provides quantifiable system-wide benefits.⁶⁰
11 Accordingly, the avoided cost prices included in the disputed PPA do not account for
12 interconnection costs—including deliverability-related network upgrades—because those
13 amounts are presumed to be addressed separately in the interconnection process, pursuant to the
14 Commission's policy.⁶¹

15 Madras Solar's twin positions that (1) the Commission's NRIS policy is incorrect, and (2)

⁵⁷ This fact is evident in PGE's original counterclaims, which requested PPA terms expressly stating that the avoided cost pricing is contingent on resolution of the interconnection dispute. PGE's Answer and Counterclaim at ¶ 167.

⁵⁸ See, e.g., Madras Solar's Motion for Clarification at 14; *see also* Madras Solar/300, Rogers/28-29 ("[T]here are strong arguments to be made that FERC, rather than the Commission, is the proper venue to adjudicate any potential interconnection-related dispute.").

⁵⁹ *In the Matter of the Public Utility Commission of Oregon Staff's Investigation into Interconnection of PURPA Qualifying Facilities with a Nameplate Capacity Larger than 10 Megawatts to a Public Utility's Transmission or Distribution System*, Docket UM 1401, Order No. 10-132, App. A at 15 (QF-LGIP Article 3.2) (Apr. 7, 2010).

⁶⁰ Order No. 10-132 at 3.

⁶¹ *In the Matter of Public Utility Commission of Oregon Staff's Investigation Relating to Electric Utility Purchases from Qualifying Facilities*, Docket UM 1129, Order No. 07-360, Appendix A at 4 (Aug. 20, 2007).

1 that FERC should decide some or all of the interconnection issues in this case, signal its apparent
2 litigation strategy to lock in avoided cost prices that presume it has paid for NRIS and then go to
3 FERC to challenge the Commission’s NRIS requirement.⁶² PGE believes the Commission’s NRIS
4 requirement is consistent with PURPA and will be upheld by FERC. However, in the unlikely
5 event that FERC were to find that Madras Solar need not pay for its deliverability-related upgrades
6 through the interconnection process, then PGE must calculate different avoided cost prices to
7 maintain customer indifference.⁶³

8 In its recent *Blue Marmot* order, the Commission made clear that PGE must exercise due
9 diligence ***before a PPA is executed*** to ensure that deliverability-related costs are appropriately
10 paid by the QF ***or incorporated into the avoided cost price***.⁶⁴ If the PPA is executed, even if it
11 has avoided cost prices that are expressly contingent on NRIS (as PGE’s counterclaim requests),
12 it will be much more difficult—and potentially impossible—to retroactively change the pricing in
13 the agreement. It is therefore critical that the avoided cost prices are set now—before the PPA is
14 executed—and that can only occur if the interconnection dispute is fully resolved.

15 **C. Equity favors resolution of the interconnection dispute in this case.**

16 **1. Narrowing the scope of this proceeding would prejudice PGE.**

17 PGE has relied on the ALJ’s Ruling—which PGE believed had fully resolved the parties’

⁶² Madras Solar/300, Rogers/28-29.

⁶³ *Blue Marmot V LLC vs Portland General Electric Company*, Docket UM 1829, Order No. 19-322 at 19 (Sept. 30, 2019).

⁶⁴ Order No. 19-322 at 19 (“Going forward, utilities should expect to use the due diligence period in the PURPA contracting process to identify and communicate major issues . . . If a QF wishes to deliver to a point at which PGE is not otherwise accepting delivery from off-system QFs, PGE and the QF have the option to negotiate a mutually acceptable non-standard contract that adjusts avoided cost values to incorporate additional transmission system costs that PGE cannot reasonably avoid, or allows the QF to fund upgrades to generate the necessary incremental transmission system capacity.”).

1 concerns about the scope of this proceeding—in preparing its Rebuttal Testimony, including
2 retaining an outside expert and preparing substantive analysis on the interconnection dispute.
3 Specifically, PGE has been preparing to explain (1) why Madras Solar is appropriately held
4 responsible for deliverability-related network upgrades, (2) why the upgrades identified in the
5 interconnection-study process are required to ensure deliverability of Madras Solar’s output, and
6 (3) why the refined cost estimates presented in the project’s Facilities Study are accurate and
7 necessary. PGE’s time- and resource-intensive efforts would be for nothing if the Commission
8 were to now narrow the scope of this case.

9 Moreover, PGE would be unduly burdened if the Commission failed to resolve the
10 underlying dispute and instead required the parties to litigate the matter again in a subsequent
11 docket. The record in this case will be fully developed, the litigation is focused squarely on the
12 interconnection dispute, and it would be prejudicial to deny PGE resolution of this issue and to
13 require additional litigation.

14 **2. Madras Solar is not prejudiced by resolving the dispute it raised in**
15 **this proceeding.**

16 Madras Solar argues that it would be prejudiced by resolving its interconnection dispute in
17 this proceeding because (1) doing so would distract from the PPA dispute, and (2) Madras Solar
18 may have additional contentions not yet raised.⁶⁵ Neither claim survives scrutiny.

19 ***First,*** Madras Solar’s argument that resolving the interconnection dispute “would so
20 distract from Madras Solar’s PPA concerns as to serve as an undue prejudice”⁶⁶ contrasts sharply

⁶⁵ Madras Solar’s Motion for Clarification at 2, 5.

⁶⁶ Madras Solar’s Motion for Clarification at 5.

1 with Madras Solar’s previous urging that the Commission “undertake an exhaustive review of the
2 record and arm itself with a holistic view of the parties’ positions and perspectives surrounding
3 the interconnection dispute[.]”⁶⁷ Far from a distraction, resolving the interconnection dispute is
4 critical to resolution of the PPA dispute.

5 ***Second***, Madras Solar’s contention it “has not had the opportunity to identify, fully raise,
6 seek discovery, or submit testimony on the vast majority of its concerns regarding PGE’s
7 interconnection studies”⁶⁸ overlooks two important facts: (a) Madras Solar has in fact engaged in
8 exhaustive discovery on the SIS, having served over 50 data requests on its methodology and
9 conclusions, and has filed hundreds of pages of testimony and exhibits criticizing its methodology
10 and conclusions, including the testimony of an expert witness; and (b) there is little new in the
11 Facilities Study that holds even the potential of raising new substantive issues in this case—indeed
12 Madras Solar’s Motion for Clarification identified just two additional issues.⁶⁹ Because Madras
13 Solar has made the validity of its interconnection studies a necessary component of this
14 proceeding—as the ALJ found—the Commission need not and should not delay resolving the
15 dispute.

16 Finally, Madras Solar will still have the opportunity to review and respond to any incidental
17 issues presented by the Facilities Study’s cost assessment. The time for conducting discovery and
18 supplementing the evidentiary record has not passed. Thus, even if there are minor additional
19 points that Madras Solar would like to make in light of the most up-to-date evidentiary record, this
20 opportunity remains. And PGE does not object to additional process that might be reasonably

⁶⁷ Madras Solar’s Response to PGE Motion to Strike at 15-16.

⁶⁸ Madras Solar’s Motion for Clarification at 2.

⁶⁹ Madras Solar’s Motion for Clarification at 6.

1 required to allow Madras Solar to do so.

2 **D. The interconnection dispute is ripe for Commission resolution.**

3 Madras Solar argues that this dispute cannot be resolved “because the interconnection
4 study process is still underway”⁷⁰ and because the necessary interconnection upgrades are
5 “currently undetermined[.]”⁷¹ This former point is a red herring and the latter is incorrect. First,
6 as noted above, the necessary interconnection upgrades were identified in the SIS that PGE
7 completed in July 2019, which is final. The Facilities Study simply refined the cost estimates for
8 the upgrades identified in the SIS, and though Madras Solar may dispute some of the cost
9 estimates, its claim that the necessary upgrades are undetermined is plainly inaccurate. Given that
10 the parties’ central dispute is whether Madras Solar is responsible for deliverability-related
11 network upgrades identified in Madras Solar’s SIS and whether PGE correctly determined such
12 upgrades, and given that the SIS was finalized more than six months ago, the parties’ dispute has
13 clearly crystallized.

14 With respect to Madras Solar’s assertion that the interconnection process is ongoing, PGE
15 notes that the process is very near its conclusion and the only reason the final Facilities Study has
16 not yet been issued and a draft LGIA provided is because Madras Solar recently submitted a formal
17 Notice of Dispute in the interconnection process. In the Notice of Dispute, Madras Solar claims
18 that it is entitled to a “time out” in the QF-LGIP process,⁷² so that the parties may informally
19 resolve the very same interconnection disputes that Madras Solar has already placed at issue in

⁷⁰ Madras Solar’s Motion for Clarification at 1.

⁷¹ Madras Solar’s Motion for Clarification at 5.

⁷² Madras Solar’s Motion for Clarification, Attachment B at 1.

1 this case.⁷³ Madras Solar cannot in good faith claim that the dispute is not ripe for resolution when
2 it specifically paused the final stages of the interconnection process purportedly to seek dispute
3 resolution.

4 Moreover, Madras Solar’s suggestion that the parties’ interconnection dispute could yet be
5 resolved informally, without formal litigation “if PGE acts in good faith”⁷⁴ is disingenuous. As
6 evidenced by Madras Solar’s data requests and Reply Testimony in this case, the parties
7 consistently and fundamentally disagree on what network upgrades are required and whether
8 Madras Solar—or PGE’s customers—are responsible for funding the upgrades. PGE is confident
9 that it correctly determined the required upgrades—and indeed will soon file expert testimony to
10 confirm the same. And PGE will not waiver from its position that the Commission’s
11 interconnection policy applies to Madras Solar, and therefore Madras Solar must pay for the
12 required network upgrades. Thus, the parties’ fundamental and long-standing interconnection
13 disputes are very unlikely to be resolved through informal means, and the Commission should not
14 exclude the interconnection issues from this case on that basis.

IV. REPLY IN SUPPORT OF MOTION TO AMEND

15 Madras Solar urges the Commission to (1) reject PGE’s Motion to Amend on the basis that
16 the SIS—but not the Facilities Study—is relevant to resolving the parties’ interconnection dispute;
17 and (2) impose sanctions on PGE for seeking to resolve the interconnection dispute in this
18 proceeding.⁷⁵ However, as explained above, the parties’ interconnection dispute necessarily

⁷³ Madras Solar’s Motion for Clarification, Attachment B at 1 (“[T]he purpose of invoking dispute resolution is to ensure that there is a formal ‘time out’ and delay in moving toward the next step in the QF-LGIP sufficient to allow PGET and Ecoplexus to focus on resolving Ecoplexus’ concerns with the draft Facilities Study.”)

⁷⁴ Madras Solar’s Motion for Clarification at 8.

⁷⁵ Madras Solar’s Response to PGE’s Motion to Amend at 3.

1 involves both studies because the Facilities Study simply refines the cost of the upgrades identified
2 in the SIS. Moreover, Madras Solar’s position ignores the fact that *Madras Solar* is responsible
3 for including the interconnection disputes in this proceeding, over PGE’s specific objection, and
4 that *Madras Solar* itself defines the scope of this proceeding as encompassing required
5 interconnection upgrades and costs.⁷⁶ Given that the ALJ’s Ruling found that this proceeding
6 includes the parties’ dispute over the type and cost of network upgrades necessary to interconnect
7 the project, PGE appropriately reconciled this expanded scope with PGE’s pleadings in this case.

8 Madras Solar also seeks penalties against PGE for violating “the Commission’s established
9 process for resolving utility-QF disputes in the interconnection process[.]”⁷⁷ This request borders
10 on the hypocritical. Over PGE’s objection,⁷⁸ it was Madras Solar that urged the Commission to
11 “undertake an exhaustive review of the record and arm itself with a holistic view of the parties’
12 positions and perspectives surrounding the interconnection dispute[.]” and specifically to allow
13 issues including “what upgrades are legitimately required in order to interconnect the project . . .
14 to be discussed and debated[.]”⁷⁹ The ALJ agreed, concluding that “both parties have
15 effectively . . . made interconnection issues part of this proceeding.”⁸⁰ Only now, when PGE
16 attempts to ensure that the expense and effort of litigating these issues ultimately results in the
17 issues being *resolved*, does Madras Solar object to including them in this proceeding.⁸¹

⁷⁶ Madras Solar’s Response to PGE’s Motion to Strike at 6, 15-16.

⁷⁷ Madras Solar’s Response to PGE’s Motion to Amend at 3.

⁷⁸ PGE’s Motion to Strike.

⁷⁹ Madras Solar’s Response to PGE’s Motion to Strike at 15-16.

⁸⁰ ALJ Ruling at 3.

⁸¹ Madras Solar’s Response to PGE’s Motion to Amend at 3; *see also* Madras Solar’s Motion for Clarification at 24 (acknowledging that “[s]ome [i]ssues [r]elated to [i]nterconnection” have been raised, but asserting that “Madras Solar [o]bjects to their [i]nclusion in this [p]roceeding”).

1 **A. PGE has satisfied the requirements in ORCP 23B to amend its counterclaim.**

2 Madras Solar argues that PGE’s Motion to Amend should be denied under ORCP 23B
3 because PGE’s First Amended Answer and Counterclaim proposes to include a final determination
4 of the costs identified *in the Facilities Study*, in addition to the upgrades and preliminary cost
5 assessments identified in the SIS.⁸² Madras Solar is mistaken. Incorporating the Facilities Study
6 into the record does not broaden the issues beyond those raised by Madras Solar in this case, but
7 simply *provides the latest evidence on precisely the same set of issues*.

8 ORCP 23B provides that pleadings may be amended “to cause them to conform to the
9 evidence” presented, where issues not raised in the pleadings are nonetheless “tried by express or
10 implied consent of the parties[.]” Such amendment may be made by “motion of any party at any
11 time, even after judgment.”⁸³ Amendment to conform to the evidence is appropriate when doing
12 so would facilitate “presentation of the merits of the action,” and where “the objecting party fails
13 to satisfy the court that the admission of such evidence would prejudice [the objecting] party in
14 maintaining an action or defense upon the merits.”⁸⁴

15 Here, Madras Solar recognizes that there is already “interconnection-related evidence in
16 the record . . . related to the SIS.”⁸⁵ The ALJ ruled that such issues *raised by Madras Solar* have
17 been made part of this proceeding. As described above, the Facilities Study does not provide a
18 wholly new analysis, but instead refines the cost estimates for those upgrades already identified in

⁸² Madras Solar’s Response to PGE’s Motion to Amend at 14.

⁸³ ORCP 23B.

⁸⁴ ORCP 23B.

⁸⁵ Madras Solar’s Response to PGE’s Motion to Amend at 14.

1 the SIS. Thus, it is appropriate to include the most up-to-date cost assessments provided by the
2 Facilities Study.

3 Madras Solar further argues that, regardless of any testimony it may have filed or issues it
4 may have raised, “Madras Solar does not consent to litigating the entire universe of interconnection
5 issues in this case, but only those issues which impact the PPA terms.”⁸⁶ This is a distinction
6 without a difference. Madras Solar has defined those issues impacting the PPA terms as “what
7 upgrades are legitimately required in order to interconnect the project”⁸⁷ and “the legitimacy of
8 PGE[T]’s estimated costs.”⁸⁸ Despite Madras Solar’s resistance to *resolving* the parties’
9 interconnection dispute in this proceeding, Madras Solar successfully insisted on *litigating* the
10 dispute.

11 **B. PGE has satisfied the requirements in ORCP 23A to amend its counterclaim.**

12 Madras Solar further argues that PGE’s Motion to Amend should be denied under
13 ORCP 23A because the Amended Counterclaim (1) introduces a new unrelated claim;
14 (2) prejudices Madras Solar by resulting in “wasted work” and by causing delay; (3) is proposed
15 too late in the proceeding; and (4) lacks merit in the form of substantial evidence. Madras Solar
16 is transparently mistaken on all four counts.

17 As a preliminary matter, Madras Solar asserts that the first of the above four factors is
18 dispositive, and claims that prejudice need *not* be shown “where a proposed amendment changes

⁸⁶ Madras Solar’s Response to PGE’s Motion to Amend at 14.

⁸⁷ Madras Solar’s Response to PGE’s Motion to Strike at 15-16.

⁸⁸ Madras Solar’s Response to PGE’s Motion to Strike at 6.

1 a claim to an entirely different legal claim.”⁸⁹ Madras Solar cites the Court of Appeals’ decision
2 in *Navas v. City of Springfield*⁹⁰ for its position that prejudice need not be shown. That case found
3 that the trial court abused its discretion in allowing amendment of a claim from equitable relief to
4 one for breach of contract, but the Court of Appeals did not consider prejudice.⁹¹ However, a
5 subsequent Court of Appeals opinion explained that, while “the issue of prejudice was not directly
6 raised” in *Navas*, the *Navas* court’s “silence . . . does not mean that we intended to alter or deviate
7 from our longstanding rule that an *amendment should normally be allowed unless the other party*
8 *is prejudiced*.”⁹² In sum, while all four factors are applied, prejudice remains the touchstone of an
9 analysis into whether a Motion to Amend should be granted.

10 **1. PGE’s Amended Counterclaim is related to its original**
11 **counterclaim.**

12 Madras Solar argues that PGE’s Motion to Amend improperly expands the scope of this
13 proceeding because it is “beyond the scope contemplated by the Commission’s rules for negotiated
14 PPA dispute resolution.”⁹³ Madras Solar goes on to explain that, under the rules for resolving
15 disputes concerning negotiated PPAs, the Commission’s review “is limited to the open issues
16 identified in the complaint and in the response,” as necessary to “determine whether each term or
17 provision proposed by each of the parties is just, fair, and reasonable[.]”⁹⁴ Madras Solar describes
18 its own Complaint as “ask[ing] the Commission to make a reasonableness finding on a handful of

⁸⁹ Madras Solar’s Response to PGE’s Motion to Amend at 6.

⁹⁰ 122 Or App. 196 (1993).

⁹¹ 122 Or App. 196, 201 (1993).

⁹² *Reeves v. Reeves*, 203 Or App 80, 85 (2005) (emphasis added).

⁹³ Madras Solar’s Response to PGE’s Motion to Amend at 7.

⁹⁴ Madras Solar’s Response to PGE’s Motion to Amend at 8.

1 PPA terms on which the parties have reached an impasse in their negotiations.”⁹⁵

2 Madras Solar appears to have ignored its previous filings in this docket in which it *agreed*
3 that the Commission’s streamlined dispute resolution procedures for PPA disputes “should not
4 apply to this case.”⁹⁶ Indeed, Madras Solar recognized “that certain aspects of its complaint also
5 go beyond seeking a determination of PPA terms, and relate to actions that PGE has taken that
6 Madras Solar contends are unlawful.”⁹⁷ Specifically, Madras Solar’s Complaint included claims
7 of bad faith, alleged delays, and multiple assertions of having established LEOs—for which
8 Madras Solar seeks declaratory relief and financial penalties of up to \$10,000 for each purported
9 violation. Clearly, Madras Solar has already agreed that the parties’ dispute in this proceeding is
10 not confined to the narrow contours of a PPA dispute resolution proceeding.

11 Despite Madras Solar’s contention that PGE’s proposed Counterclaim is unrelated to the
12 central claim in this dispute, PGE sought to include the validity of the identified network upgrades
13 and associated cost estimates only *after* Madras Solar prevailed in its position that it was necessary
14 to litigate, among other things, Madras Solar’s allegations of the interconnection process’s
15 “grossly inflated cost estimates based on completely unnecessary upgrades”⁹⁸ The ALJ’s Ruling
16 concluded that “both parties have effectively, through their claims, counterclaims, answers, and
17 through their proposed and disputed PPA terms[,] made interconnection issues part of this
18 proceeding.”⁹⁹ Thus, the ALJ has already found, consistent with Madras Solar’s prior contention,
19 that whether Madras Solar is responsible for deliverability-related network upgrades is a dispute

⁹⁵ Madras Solar’s Response to PGE’s Motion to Amend at 9.

⁹⁶ Madras Solar’s Response to PGE’s Motion for Contested Case at 9.

⁹⁷ Madras Solar’s Response to PGE’s Motion for Contested Case at 7.

⁹⁸ Madras Solar’s Response to PGE’s Motion to Strike at 5.

⁹⁹ ALJ Ruling at 3.

1 necessarily related to this proceeding.

2 **2. PGE will be prejudiced if the Amended Counterclaim is disallowed,**
3 **while Madras Solar will not.**

4 Madras Solar argues that PGE’s Motion to Amend is prejudicial to Madras Solar because
5 considering the parties’ interconnection dispute would “effectively diminish the value of Madras
6 Solar’s work product” and cause undue delay, inconsistent with obtaining “a speedy Commission
7 resolution in compliance with Commission rules.”¹⁰⁰ Again, Madras Solar appears to contend that
8 any departure from the Commission’s expedited dispute resolution procedures is prejudice
9 attributable to PGE¹⁰¹—despite already having conceded that such procedures do not apply to this
10 proceeding.¹⁰² Far from diminishing the value of Madras Solar’s work product, ensuring that this
11 case leads to full and final resolution of the parties’ interconnection dispute—as opposed to mere
12 debate and discussion—would serve to *increase* the value of Madras Solar’s Reply Testimony.

13 **3. PGE’s Motion to Amend was not filed late in the process.**

14 Madras Solar argues that PGE’s Motion to Amend should be rejected “because it comes at
15 a late stage in the proceeding[.]”¹⁰³ Madras Solar claims that PGE should have filed its Motion to
16 Amend earlier, thereby allowing Madras Solar to have “presented completely different
17 evidence.”¹⁰⁴ Madras Solar’s argument again ignores the procedural posture of this case, in which
18 PGE’s Motion to Amend was made necessary by Madras Solar’s insistence on broadening the

¹⁰⁰ Madras Solar’s Response to PGE’s Motion to Amend at 9-10.

¹⁰¹ Madras Solar’s Response to PGE’s Motion to Amend at 9 (arguing that Madras Solar will be prejudiced because “Madras Solar filed this Complaint to seek resolution under the Commission’s process for adjudication of PPA disputes”); *id.* at 10 (“Madras Solar expended considerable time and energy early on in this dispute resolution process in order to queue-up the PPA issues for a speedy Commission resolution in compliance with Commission rules.”).

¹⁰² Madras Solar’s Response to PGE’s Motion for Contested Case at 9.

¹⁰³ Madras Solar’s Response to PGE’s Motion to Amend at 10.

¹⁰⁴ Madras Solar’s Response to PGE’s Motion to Amend at 11.

1 scope of the proceeding, six months after the original Complaint was filed.

2 To briefly recap, Madras Solar filed its Complaint in April 2019. Following Madras
3 Solar’s Reply Testimony being filed on November 5, PGE sought clarification of the scope of this
4 proceeding in its Motion to Strike, filed on November 15. After the ALJ’s Ruling of December 9,
5 2019, PGE believed it was clear that “interconnection issues” had become “part of this
6 proceeding.”¹⁰⁵ However, once PGE learned in a meeting with Madras Solar on December 20,
7 2019, that the scope of the issues in the proceeding were still disputed, PGE swiftly sought to
8 resolve any residual uncertainty by filing its Motion to Amend on January 3, 2020.

9 Moreover, regardless of this case’s extraordinary procedural history, amendment of the
10 pleadings would still be appropriate because the evidentiary record remains open, Madras Solar
11 will have another opportunity to offer testimony, and more than two months remain before the
12 hearing in this case.¹⁰⁶

13 **4. PGE’s counterclaim has colorable merit.**

14 As an initial matter, the merit of PGE’s counterclaim contained in the Motion to Amend is
15 not relevant to whether the Motion should be granted, as Madras Solar has already openly and
16 repeatedly challenged the validity of PGE’s interconnection studies—such that Madras Solar has
17 effectively drawn the project’s interconnection issues into this proceeding. Nonetheless, the
18 evidence necessary to support PGE’s Amended Counterclaim was provided by Madras Solar
19 through the attachment of the SIS, by PGE through the attachment of the Facilities Study, and will

¹⁰⁵ ALJ Ruling at 3.

¹⁰⁶ See *Franke v. Oregon Dep’t of Fish & Wildlife*, 166 Or. App. 660, 670 (2000) (reversing a trial court’s denial of a motion to amend because, among other things, the opposing party “had almost two full months before trial to prepare any opposition to the” amended pleading).

1 be further supported by PGE’s Rebuttal Testimony.

2 **C. Madras Solar cannot in good faith claim that PGE has violated the**
3 **Commission’s interconnection dispute resolution process.**

4 Madras Solar argues that this proceeding cannot encompass the parties’ interconnection
5 dispute because the parties are obliged to follow the QF-LGIP process for informal dispute
6 resolution.¹⁰⁷ Madras Solar goes so far as to claim that PGE has violated this requirement by
7 raising the interconnection dispute in this case before engaging in the informal dispute resolution
8 process.¹⁰⁸ These claims cannot be squared with the facts.

9 Madras Solar bypassed the informal dispute resolution process under the QF-LGIP by
10 filing a Complaint and testimony that placed the interconnection dispute squarely before the
11 Commission in this case. Madras Solar then demanded that the interconnection dispute remain at
12 issue in this case—over PGE’s objection—when it opposed the Motion to Strike. Even now
13 Madras Solar concedes that the requirements for interconnection are relevant to the avoided cost
14 prices, which it claims are a core dispute in this case. Given these facts, it is completely
15 disingenuous for Madras Solar to claim *PGE* bypassed the informal dispute resolution process by
16 requesting resolution of the dispute in this case. And even if there were any merit to this argument,
17 the argument will likely become moot within the next week once the parties complete the informal
18 dispute resolution process.

¹⁰⁷ Madras Solar’s Motion for Clarification at 10.

¹⁰⁸ Madras Solar’s Response to PGE’s Motion to Amend at 3.

1 **D. Even if PGE’s Amended Counterclaim is denied, the Company can still**
2 **request Commission resolution of the interconnection dispute.**

3 Contrary to Madras Solar’s arguments,¹⁰⁹ PGE has an equal right to insist that the
4 Commission resolve the interconnection dispute. Therefore, if the Amended Counterclaim were
5 rejected and the Commission chose not to resolve the interconnection dispute in this case,
6 Commission resolution would simply be delayed rather than precluded. PGE would retain the
7 right to bring a separate action before the Commission to obtain resolution of the interconnection
8 dispute.

9 Madras Solar argues repeatedly that it does not want the Commission resolving the
10 interconnection dispute and that PGE cannot force it to litigate the dispute before the
11 Commission.¹¹⁰ This argument is contrary to Oregon law and clear Commission precedent. The
12 Commission has jurisdiction over QFs, like Madras Solar, “under ORS 756.500(1) as they relate
13 to state and federal PURPA statutes for which jurisdiction for enforcement or regulation is
14 conferred upon the Commission.”¹¹¹ The Commission also has personal jurisdiction over QFs
15 “under ORS 756.500(5), because this matter is a complaint from a public utility concerning a
16 matter affecting its own rates or service[.]”¹¹² Indeed, when it adopted the QF-LGIP in Order No.
17 10-132, the Commission made clear that interconnection disputes could be resolved by the
18 Commission.¹¹³

¹⁰⁹ Madras Solar’s Response to PGE’s Motion to Amend at 14 (“Madras Solar does not consent to litigating the entire universe of interconnection issues in this case, but only those issues which impact the PPA terms.”).

¹¹⁰ See, e.g., Madras Solar’s Response to PGE’s Motion to Amend at 14.

¹¹¹ *Portland General Electric vs Pacific Northwest Solar LLC*, Docket UM 1894, Order No. 18-025 at 4 (internal quotations omitted) (Jan. 25, 2018).

¹¹² Order No. 18-025 at 4 (internal quotations omitted).

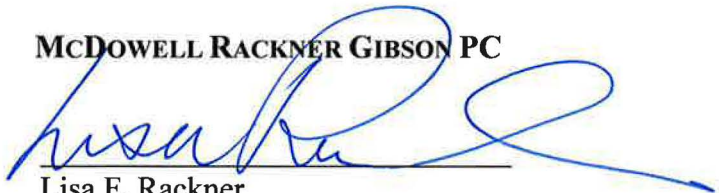
¹¹³ Order No. 10-132 at 7.

V. CONCLUSION

1 The primary dispute between the parties is a fundamental disagreement about the
2 interconnection requirements and costs. That disagreement dominates the record in this case and
3 will require resolution before a PPA can be finalized and before Madras Solar can interconnect
4 and begin selling its output to PGE as a QF. The ALJ has already determined that the
5 interconnection dispute is part of this case, and there is no reasonable way to sub-divide the dispute
6 into discrete issues such that it can be partially resolved here and partially in later proceedings.
7 Instead, the totality of the dispute must be resolved in a single case based on a single record. For
8 these reasons, the Commission should allow PGE's Amended Counterclaim and confirm that it
9 will fully resolve the parties' interconnection dispute in this case.

Dated January 31, 2020

MCDOWELL RACKNER GIBSON PC



Lisa F. Rackner

Jordan R. Schoonover
419 SW 11th Avenue, Suite 400
Portland, Oregon 97205
Telephone: (503) 595-3925
Facsimile: (503) 595-3928
dockets@mrg-law.com

PORTLAND GENERAL ELECTRIC COMPANY

Donald J. Light
Assistant General Counsel
121 SW Salmon Street, 1WTC1301
Portland, Oregon 97204
Telephone: (503) 464-8315
donald.light@pgn.com

Attorneys for Portland General Electric
Company

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2009

Portland General Electric Company

**Attachment A to
PGE's Combined Response**

January 31, 2020

ATTACHMENT A

The table below describes each issue, consideration of which Madras Solar claims “would inappropriately expand the scope of this case,”¹ and then identifies where Madras Solar’s own testimony expressly addressed the issue.

Issue That Madras Solar Claims is Beyond Scope	Excerpt from Madras Solar’s Testimony on Issue
1. Whether PGE’s Total Transfer Capability (“TTC”)/Available Transfer Capability (“ATC”) analysis is discriminatory.	“[I]f PGE has reserved the entire Round Butte to PGE load path transmission capacity for the exclusive use of its PRB generation facilities, which have been PGE Network Resources since 2001, and Madras Solar, which will be a new PGE Network Resource, must increase the path TTC to enable delivery of its output – this provides strong evidence that PGE is engaged in undue discrimination against Madras Solar (and non-affiliated third-party generators) in favor of its merchant generating facilities.” Madras Solar/400, Yang/34.
2. Whether PGE acted properly regarding its Round Butte/Cove Interconnection and Operation Agreement.	Arguing that PGE has load in Central Oregon: “Despite this statement, PGE provided, as an attachment, a copy of the Round Butte/Cove Interconnection and Operation Agreement between Portland General Electric Company and PacifiCorp, dated July 8, 1993 (the ‘Round Butte/Cove Interconnection and Operation Agreement’). . . . I’m not an attorney, but the plain text of this section leads one to conclude that PGE has a ‘firm transmission obligation’ to serve an

¹ Madras Solar’s Motion for Clarification at 5.

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	‘Eligible Customer’ in Central Oregon.” Madras Solar/300, Rogers/52.
3. Whether it is appropriate for PGE to assign Madras certain network upgrades.	<p>“Q. Does Madras Solar believe that it is entitled to a credit in accordance with Order No. 10-132 for all or a portion of the network upgrades currently required for the project’s interconnection?</p> <p>“A. Yes. As will be discussed later on in this testimony, PGE is currently requiring that Madras Solar install a series capacitor in order to increase the Total Transfer Capability (“TTC”) on the Bethel – Round Butte 230 kV line by 57 MW in order to accommodate the interconnection of Madras Solar. Increasing the TTC on PGE’s main east to west transmission line is a ‘system-wide benefit.’ Not only will the additional TTC allow PGE greater operational flexibility and ability to optimally dispatch resources, the additional TTC will remain on the system even after the conclusion of the useful life of Madras Solar to either be utilized by PGE’s merchant function or sold to third parties, in either case benefiting system users. Moreover, ‘57 MW’ is a discrete, quantifiable amount. Therefore, installation of the series capacitor provides a ‘quantifiable, system-wide benefit’ and any costs associated therewith should be credited.” Madras Solar/300, Rogers/25.</p>
4. Whether the costs for the “POI Substation” and “Transmission Line Modification” identified in the draft	This issue relates to the Facilities Study and therefore was not addressed in Madras Solar’s Reply Testimony.

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Facilities Study are reasonable and appropriate.	
5. Whether PGE properly identified and coordinated with Affected Systems, as is required in Sections 3.5 and 7.4 of the OATT and QF-LGIP.	“I also note that PGE stated that the Madras Solar SIS would document any other provider's systems that were affected by the interconnection of Madras Solar and identify those Affected Systems. The Restudy SIS Report delivered to Madras Solar did not identify any Affected Systems.” Madras Solar/400, Yang/59.
6. Whether PGE should submit a revised Facilities Study that includes all the required facilities, including both the transmission provider's (i.e., PGE) interconnection facilities and the interconnection customer's (i.e., Madras Solar) interconnection facilities.	This issue relates to the Facilities Study and therefore was not addressed in Madras Solar's Reply Testimony.
7. What network upgrades, if any, are appropriate, given PGE's conclusions related to a lack of reliability violations.	“As a threshold matter, the issue of what network upgrades are needed should be moot in this case. PGE determined that there were no contingencies that caused any transmission element to overload when the output of Madras Solar was injected to the PGE's system. Moreover, PGE's interconnection studies did not show any evidence where adding Madras Solar would impair the reliable operation of any element of the transmission system, including neighboring systems.” Madras Solar/400, Yang/59; see also Madras Solar/400, Yang/4, 7; Madras Solar/300, Rogers/33.

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8. Whether PGE has any load or obligations to provide energy and capacity in central Oregon.	<p>“PGE’s claim can be rebutted simply by virtue of the fact that the full capacity of PRB generation exceeds TTC as calculated by PGE, as well as observation of how the line has historically been underutilized, given that most of the output from PRB generation actually flows to BPA and PACW BAAs in Central Oregon. My power flow analysis using the PGE-provided revised SIS power flow models show that only 13% and 19% of the PRB’s output would flow to the Bethel substation while the remaining 87% and 81% of the output would flow to the BPA’s Redmond and PACW’s Cove substations in 2020 summer and 2020-2021 winter peak system conditions, respectively.” Madras Solar/400, Yang/47; see also Madras Solar/300, Rogers/52.</p>
9. Whether the Round Butte – Bethel 230 kV line is unconstrained and what network upgrades, if any, are appropriate given the conclusions about the amount of power that can be imported over that line.	<p>“[T]he Round Butte – Bethel line at issue is neither fully utilized nor physically constrained.” Madras Solar/400, Yang/27; see also Madras Solar/400, Yang/28-29, 51-52.</p>
10. Whether PGE application of a TTC/ATC was appropriate relative to applicable interconnection procedures.	<p>“Therefore, the central dispute with respect to the Madras SIS at issue concerns whether a path-specific TTC/ATC analysis is needed to assess the ‘deliverability’ of the facility’s output.” Madras Solar/400, Yang/5; see also Madras Solar/400, Yang/53-54.</p> <p>“PGE’s estimated path TTC values are irrelevant for reliable delivery of...Madras</p>

Issue That Madras Solar Claims is Beyond Scope	Excerpt from Madras Solar’s Testimony on Issue
	Solar at full output.” Madras Solar/400, Yang/56.
11. Whether PGE reached the appropriate TTC and ATC conclusions, notwithstanding the appropriateness of the analysis.	“PGE’s full path TTC calculation (which is unnecessary) is based on unrealistic generation dispatch and power flow assumptions (e.g., assuming PGE’s on-system generation resources produce <i>negative</i> 85 MW during winter on-peak system conditions to maximize the path transfers), and thus the resulting TTC amount is unlikely to be realizable in actual system operation.” Madras Solar/400, Yang/7-8; see also Madras Solar/400, Yang/47, 52, 54-56.
12. Whether PGE’s cost estimates and planned network upgrades have appropriate support.	“PGE’s SIS study is unreliable. Moreover, this erratic swing in PGE’s NRIS cost estimate for Madras Solar warrants a ‘searching inquiry’ by the Commission into PGE’s Interconnection NRIS SIS methodology and assumptions.” Madras Solar/400, Yang/37; see also Madras Solar/400, Yang/19, 22-23, 58.
13. Why PGE delivered highly-overestimated Remedial Action Scheme (“RAS”) costs.	“PGE’s \$10 million cost estimate to incorporate Madras Solar in the existing Round Butte Remedial Action Schemes (“RAS”) is unsupported and appears to be overblown.” Madras Solar/400, Yang/58; see also Madras Solar/400, Yang/19.