

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2009

MADRAS PV1, LLC,

Complainant,

v.

PORTLAND GENERAL ELECTRIC
COMPANY,

Defendant.

MADRAS SOLAR’S REPLY IN
SUPPORT OF MOTION FOR
CLARIFICATION OF ALJ
RULING

I. INTRODUCTION

Pursuant to Administrative Law Judge (“ALJ”) Nolan Moser’s ruling dated January 22, 2020, Madras PV1, LLC (“Madras Solar”) hereby submits this reply to the Oregon Public Utility Commission (“Commission”) in support of its motion for clarification and in response to Portland General Electric Company’s (“PGE”) Combined Response to Madras Solar’s Motion for Clarification and Reply in Support of Motion to Amend Counterclaim.¹ Madras Solar does not dispute that it submitted testimony in this case regarding interconnection issues; however, its testimony was provided both to prove its case that PGE delayed the PPA negotiation process and in response to PGE’s proposed

¹ This reply is only in support of Madras Solar’s Motion for Clarification and not a sur-response to PGE’s Motion to Amend Answer and Counterclaim.

PPA terms.² There are two main power purchase agreement (“PPA”) provisions proposed by Madras Solar that touch on the interconnection process: 1) the vintage avoided cost price properly payable to Madras Solar; and 2) what milestones are appropriate. In addition, while it is unclear if PGE still stands behind it, PGE appears to have proposed language that would require Madras Solar to pay for all interconnection costs, regardless of whether those costs are assessed in the Oregon qualifying facility large generator interconnection agreement (“QF-LGIA”), and even if those costs violate Commission policy or other legal requirements.³ Interconnection issues are relevant to these proposed PPA terms, but the Commission need not adjudicate the reasonableness of PGE’s Facilities Study (which was not even complete at the time the complaint was filed) in order to adopt appropriate PPA provisions.

Interconnection issues are relevant to deciding the appropriate vintage of avoided cost pricing. In order to determine the avoided cost price, the Commission needs to review whether PGE’s actions in the interconnection process delayed progress towards a PPA. Regardless of whether PGE’s actions were justified, Madras Solar believes that the passage of time associated with interconnection delays should alone be sufficient to justify providing Madras Solar with its requested vintage of avoided cost prices.⁴

However, PGE claims that Madras Solar did not advance far enough through the PPA

² See, e.g., Madras Solar/300, Rogers/1 (“Dr. Yang’s testimony supports Madras Solar’s position that PGE’s interconnection milestones are unreasonable, and that PGE’s interconnection delays, requirements, and incorrect cost estimates are a major cause for Madras Solar’s inability to obtain a final, executable PPA.”).

³ Madras Solar/300, Rogers/5.

⁴ Note that Madras Solar includes two alternative requests for relief.

negotiation process to be entitled to those avoided cost prices; therefore, all of PGE's interconnection actions prior to Madras Solar filing its complaint are relevant.

In addition, PGE's disagreement with the Commission's long-standing policy, which requires the QF to pay for network interconnection upgrades through the interconnection process and not through an adjustment of the avoided cost prices, does not warrant adjudicating the Facilities Study. As discussed below, PGE proposes PPA terms that would require Madras Solar to pay all network upgrades PGE's determines, but also claims and if those PPA terms are rejected, it should get to adjust the avoided cost price. If the Commission wants to change its policy (which Madras Solar believes would be inappropriate and unlawful) to allow PGE unfettered discretion to charge Madras Solar for costs that are not assigned to Madras Solar in the QF-LGIA, it can do so by adopting PGE's contract terms and there is no need to resolve the unreasonableness of PGE's interconnection costs and proposed upgrades.

Interconnection issues are also relevant to deciding the appropriate milestones. PGE has proposed a September 1, 2020, milestone by which Madras Solar must execute an interconnection agreement or be in default under its PPA. The appropriateness of this milestone must be informed by the past factual circumstances associated with the interconnection process, as well as a review of the extent and specifics of the potentially disputed interconnection issues. The more complex and difficult the remaining interconnection issues, the more unreasonable a near term milestone is. Madras Solar did not introduce evidence regarding interconnection matters in order to ask the Commission to resolve any potential disputes (which such disputes did not formally exist at the time of

Madras Solar's testimony), but to provide overwhelming evidence that, if interconnection issues must be litigated, then there is no reasonable chance that they can be completed by September of this year as PGE is demanding.

Interconnection issues are additionally relevant in determining whether it is appropriate to include certain PPA provisions regarding Madras Solar's to pay for interconnection costs. The interconnection testimony in the record is clearly relevant in showing that it is unreasonable to include a term in the PPA that requires a qualifying facility ("QF") to pay for *all* costs determined by the utility to be required, when there is an abundance of evidence to suggest that PGE's estimated costs, which have historically been unjust and unreasonable, will continue to be unjust and unreasonable, or that Madras Solar may be entitled to credits for some of those upgrades. Consistent with Commission policy, Madras Solar has agreed to pay for all reasonable, justified, and necessary network upgrade costs that do not provide quantifiable system wide benefits. PGE, however, proposes to change Commission policy to allow it to unilaterally determine what network upgrades Madras Solar will be required to pay regardless of the lawfulness of those costs. Madras Solar introduced extensive evidence regarding the past and potential future interconnection issues to show that PGE has trouble accurately estimating its interconnection costs (including missing the mark by hundreds of millions of dollars), and it would not be reasonable to provide PGE with carte blanche to charge whatever interconnection costs it deems fit.

Madras Solar's extensive evidence regarding the history of the interconnection process for Madras Solar demonstrates that: 1) PGE's actions have been, in the most

charitable interpretation, grossly negligent, and, at worst, indicative of undue discrimination towards Madras Solar; and 2) in either case, the Commission should not allow Madras Solar's ability to achieve commercial operation to be held hostage by PGE.

II. DISCUSSION

A. The Commission Does Not Need to Resolve All Interconnection Issues in Order to Set an Avoided Cost Price

1. Interconnection Issues Are Relevant Because Interconnection Delays and Unreasonable Cost Estimates Obstructed Progress Toward PGE Providing an Executable PPA

To determine the applicable avoided cost price, the Commission needs to decide whether and when Madras Solar formed a legally enforceable obligation ("LEO"). The LEO formation date may be impacted if there was utility delay and/or obstruction, not only in the PPA negotiation process, but in the interconnection process as well.⁵ In this case, the ways in which PGE delayed or obstructed progress towards a LEO include:

- Refusing to provide a PPA or indicative prices because of PGE unsupported claims that Madras Solar picked a location to interconnect in which deliveries were not acceptable, and then backing down from that position.⁶
- Requiring that interconnection studies be complete before providing indicative pricing, and then backing down from that position;⁷

⁵ *Re Investigation Into QF Contracting and Pricing*, Docket No. UM 1610, Order No. 16-174 at 27 (May 13, 2016).

⁶ PGE/101, Morton/4-6; Madras Solar/200, Rogers 4-5.

⁷ Madras Solar/200, Rogers/5.

- Refusing to allow Madras Solar to skip the feasibility study step and proceed directly to a system impact study;⁸
- Withholding indicative pricing due to a concern about the chosen point of delivery, and then backing down from that position;⁹
- Failing to timely complete interconnection studies, and requiring Madras Solar to wait close to a year for while PGE revised both the Feasibility and System Impact studies;¹⁰
- Failing to timely respond;¹¹
- Taking the position that Madras Solar would need to pay for \$343.7 million in unnecessary network upgrades, and then backing down from that position;¹² and
- Making errors in interconnection studies, issuing revised interconnection studies, or otherwise “further analyz[ing]” the interconnection.¹³

If there is one consistent theme across all of Madras Solar’s interactions with PGE, it is that of PGE making mistakes (sometimes severe ones) or failing to correctly interpret its own policies and procedures, taking excessively long to respond to requests and provide

⁸ *Id.* at 6; Madras Solar/300, Rogers/13, 22.

⁹ Madras Solar/200, Rogers/5; Madras Solar/300, Rogers/10-11.

¹⁰ Madras Solar/200, Rogers/6-7; Madras Solar/300, Rogers/22-23.

¹¹ Madras Solar/200, Rogers/9; Madras Solar/300, Rogers/40, 48; PGE/201, Foster-Larson/18 (Letter from Shaun Foster of PGE to Jacob Pundyk of Ecoplexus, dated June 3, 2019).

¹² Madras Solar/300, Rogers/6, 31-33, 48.

¹³ PGE/200, Foster-Larson/8 (“PGET discovered an error in the Feasibility Study and reissued the Study on October 2, 2018.”).

required information and studies, and seeking to impose unreasonable conditions or costs, only to then back down and change its position after being challenged by Madras Solar.

The facts and circumstances surrounding each of PGE's above actions are relevant in determining whether PGE sufficiently delayed and/or obstructed the process enough to warrant an earlier LEO date. In regards to the avoided cost price, the technical interconnection issues are only relevant to the extent that they show the unreasonableness of PGE's claim that it did not actually delay or obstruct progress towards a LEO, and whether Madras Solar is entitled to the avoided cost prices in effect when Madras Solar executed a PPA.

Madras Solar's position regarding the relevance of interconnection costs to the avoided cost prices is:

- That the mere passage of time to address interconnection issues is sufficient to warrant granting Madras Solar's request for the avoided costs in effect when Madras Solar executed its PPAs.
- Alternatively, the fact that PGE raised certain issues and then changed its mind is evidence that its initial positions were incorrect or unreasonable. This alone should be sufficient for the Commission to conclude that Madras Solar's LEO would have been formed at an earlier date with an earlier applicable avoided cost price, but for PGE not initially taking its incorrect and unsupported positions.
- Again, in the alternative, if the Commission determines that such delays are not sufficient in and of themselves for higher avoided cost prices, then the question is whether PGE's numerous concerns were, from a technical perspective, legitimate

or whether PGE raised illegitimate issues that delayed the process may also be relevant in determining the avoided cost prices.

The issue, then, is whether, under the facts and circumstances known at the time, it was reasonable for PGE to take the actions that delayed or obstructed progress during its earlier interconnection studies. PGE, however, *does not* assert that it properly completed the initial Feasibility Study or the initial System Impact Study. Rather, PGE would have this Commission find that it properly conducted the later *Revised* System Impact Study (or as PGE calls it the System Impact Re-Study) and the Facilities Study.¹⁴ At least for the purposes of setting the avoided cost prices, the Revised System Impact Study and the Facilities Study are only relevant to the extent that they bear upon the reasonableness of the earlier delays.

Madras Solar's testimony regarding what network upgrades are required was offered within the context of PGE's initial Feasibility Study and its Revised Feasibility Study,¹⁵ along with its initial System Impact Study and its Revised System Impact Study.¹⁶ The testimony generally explains how PGE issued initial studies that purported to be final and upon which Madras Solar could rely in making its own business decisions; however, the testimony goes on to describe how issues with each of the studies surfaced and how the parties addressed the concerns. Finally, the testimony describes how PGE then issued revised studies that eliminated certain requirements. Simultaneously, PGE, on the PPA negotiation side, asserted that certain interconnection milestones be met and

¹⁴ PGE's Motion to Amend Answer and Counterclaim at Attachment 1, ¶¶ 177-178.

¹⁵ Madras Solar/300, Rogers/31-34.

¹⁶ Madras Solar/300, Rogers/44-48.

that certain terms be included in the PPA that would potentially subject Madras Solar to yet further delays — delays that, in the worst case scenario, could result in Madras Solar defaulting under its PPA and project financing agreements simply by virtue of the fact that its ability to declare commercial operation under the PPA would be held hostage by an entity that has proven time and again to be, at best, grossly negligent and, at worst, unduly discriminatory bordering on outright hostile and belligerent. This pattern of behavior is indicative of a process that is intentionally designed to delay or obstruct progress towards Madras Solar exercising its rights under the Public Utility Regulatory Policies Act (“PURPA”) or, at the very least, is reckless or negligent in its disregard of PURPA for the Commission’s requirements that PGE not delay or obstruct the contracting process.

The testimony describing technical aspects of the Feasibility and System Impact studies is intended to provide the Commission with a basis upon which to conclude that PGE improperly delayed and/or obstructed progress. Raising a series of illegitimate concerns and continually making negligent mistakes throughout the interconnection process — all in conjunction with numerous delays in both the interconnection and the PPA negotiation processes — would appear to be sufficient evidence for the Commission to conclude that Madras Solar desired LEO date is warranted. However, in order to conclude whether PGE’s concerns or mistakes were legitimate, the Commission may need some underlying information regarding the technical nature of the studies based on the information that was known at the time. For example, this testimony explains that PGE’s initial Feasibility Study illegitimately concluded that certain interconnection

facilities and upgrades were required.¹⁷ It discusses further that Madras Solar believed there were still a number of issues even with PGE’s revised Feasibility Study.¹⁸ It then explains that PGE’s overestimate of interconnection costs by over \$300 million as shown by its Revised System Impact Study (and its current insistence on the installation of a series capacitor by Madras Solar) resulted from two equally-flawed premises: 1) that the output of Madras Solar must be “deliverable” to PGE’s native load in the Willamette Valley (as opposed to being deliverable, along with the aggregate of generation in the local area, to the aggregate of load); and 2) that the only “path” to PGE’s native load, the Round Butte - Bethel 230 kV line, is somehow contractually limited by certain grandfathered agreements.¹⁹ Therefore, Madras Solar’s testimony regarding the technical nature of the interconnection studies is probative evidence that PGE improperly issued the studies simply in order to delay or obstruct progress towards an executable PPA and the formation of a LEO. However, in order to determine that PGE acted inappropriately in issuing the first System Impact Study, the Commission does not need to examine whether PGE’s currently-proposed requirements are appropriate.

2. Interconnection Issues Regarding the Final Facilities Study Costs, Are Not Relevant to the PPA Terms or Avoided Cost Prices

The Commission does not need to resolve the interconnection issues in order to finalize the vintage of avoided cost price. First, PGE does not argue that the technical issues regarding the appropriate interconnection facilities and network upgrades, and how

¹⁷ Madras Solar/300, Rogers/32-34.

¹⁸ *Id.* at 34-35.

¹⁹ *Id.* at 44-48.

much those facilities and upgrades should cost, have no bearing on the avoided cost price policies. Instead, PGE argues that “[i]f, in some future separate case, Madras Solar contests . . . PGE’s determination of the required upgrades and costs, and in the unlikely event that Madras Solar was relieved of the obligation to pay . . . then the cost of those upgrades would need to be incorporated into the avoided cost prices in Madras Solar’s PPA.”²⁰ This shows that PGE is attempting to convince the Commission to abandon its interconnection and avoided cost price policies and procedures.

The Commission’s policy is that an interconnection study is not required prior to entering into a PPA.²¹ This policy is consistent with the Federal Energy Regulatory Commission’s (“FERC’s”) requirement that delays in the interconnection process and the execution of an interconnection agreement cannot prevent a QF from forming a legally enforceable obligation and locking in the then current avoided cost prices.²² Even more relevant, the Commission has already determined “that transmission upgrades should be separately charged as part of the interconnection process, not included in avoided costs.”²³

²⁰ PGE’s Combined Response to Madras Solar’s Motion for Clarification and Reply in Support of Motion to Amend Counterclaim at 4.

²¹ *Re Commission Staff’s Investigation Relating to Electric Utility Purchases from Qualifying Facilities*, Docket No. UM 1129, Order No. 07-360 at 8 (Aug. 20, 2007).

²² *FLS Energy*, 157 FERC ¶ 61,211 at P. 20 (Dec. 15, 2016) (“finding that a requirement for a facilities study or an interconnection agreement, given that the utility can delay the facilities study or delay tendering an executable interconnection agreement, as a predicate for a legally enforceable obligation is inconsistent with PURPA and the Commission’s regulation under PURPA.”).

²³ Docket No. UM 1129, Order No. 07-360 at 27.

In this case, Madras Solar and PGE disagree about the need for and the costs of a subset of network upgrades on PGE's transmission system.²⁴ PGE's filing makes it abundantly clear that: 1) PGE does not like this policy; 2) is recommending that the Commission change its policy; and 3) wants the Commission to adjust Madras Solar's avoided cost rates for interconnection costs that PGE Transmission Services does not assess to Madras Solar in the QF-LGIA. PGE is free to make whatever legal and policy arguments it wishes, but Madras Solar should not be required to obtain a Commission resolution on the potential myriad of issues related to PGE's interconnection studies simply in order to obtain an avoided cost price.

Second, should it be found that any of the proposed network upgrades provide quantifiable system-wide benefits,²⁵ then any associated costs should be credited to Madras Solar. PGE seems to think that it would need to adjust avoided costs if there is such a finding, and uses this as justification for resolving all interconnection issues in this proceeding, including asking the Commission to determine what upgrades are required, the cost of those upgrades, and who should pay for them.²⁶ However, the adjustments can easily be made in the form of credits to Madras Solar in accordance with standard FERC policy, and, therefore, these interconnection questions regarding technical requirements and cost responsibility do not need to be resolved prior to setting an avoided cost.

²⁴ Madras Solar/300, Rogers/3-4.

²⁵ *See Re Commission Staff Investigation into Interconnection of PURPA QF Larger than 10 Megawatts*, Docket No. UM 1401, Order No. 10-132 at 3 (Apr. 7, 2010).

²⁶ PGE's Combined Response to Madras Solar's Motion for Clarification and Reply in Support of Motion to Amend Counterclaim at 4.

B. Madras Solar's Interconnection Testimony Responds to PGE's Proposed PPA Terms and Shows that the Commission Should Reject PGE's Milestones

Madras Solar's interconnection testimony details the delays to-date in the interconnection process, and, regardless of whether those delays were legitimate or not, it raises concerns over the propriety of PGE's proposed PPA terms regarding when the interconnection agreement should be signed. It would be unreasonable for any contracting party to require a milestone that it knows the other party cannot meet, or that it knows has a high likelihood of being missed. The testimony in the record detailing the interconnection difficulties and process to-date weighs on this issue, and it should appropriately be resolved within this docket. PGE is attempting to impose a milestone requirement that pressures Madras Solar to compromise its position in this case because of the risk that the Commission may issue an order that agrees with Madras Solar on avoided cost prices or other PPA terms; however, that relief would be illusory if Madras Solar cannot meet its milestones due to actions by PGE Transmission Services.

PGE does not even attempt to argue that the Commission needs to resolve disputed issues regarding the reasonableness of the Facilities Study to set the appropriate milestones; thus, Madras Solar assumes that PGE has conceded this point.

PGE's Counterclaim asks that the Commission include language in the PPA "specifically requiring [Madras Solar] to obtain and pay for NRIS" including that "[s]eller is obligated to pay in full all costs determined by PGE to be required for the provision of [NRIS]."²⁷ Madras Solar disputes that such a term should be included in the

²⁷ PGE's Answer and Counterclaim at ¶169.

PPA because there is a chance that it will not be required to pay for *all* costs determined by PGE to be required. PGE has no right to demand that Madras Solar pay for any and all costs it seeks to impose, no matter how unreasonable, unnecessary, or unduly discriminatory they may be. The appropriate interconnection costs must be determined based on applicable rules, regulations, and technical criteria as clearly identified in the QF-LGIA, and if Madras Solar and PGE are unable to mutually agree as to what the appropriate cost determination is, then the Commission, FERC, or a court should be the ultimate arbiter of Madras Solar's cost responsibility. Therefore, the interconnection testimony helps show that PGE's proposed term would unreasonably serve to further obstruct Madras Solar's progress towards obtaining an executable PPA and exercising its rights under PURPA.

Moreover, PGE repeatedly claims that Madras Solar is attempting to challenge the Commission's cost allocation policies. Regardless of Madras Solar may believe regarding certain aspects of the Commission's cost allocation policies, Madras Solar has no interest in litigating those issues in this proceeding. In fact, far from challenging the Commission's cost allocation policies as suggested numerous times by PGE, what Madras Solar is *actually* trying to do is attempting to *avail itself* of the Commission's cost allocation policies by raising the notion that it should only be required to pay for costs allocated to Madras Solar by contract in a QF-LGIA, potentially adjusted for any credits for network upgrades under OPUC Order No. 10-132.²⁸ In addition, Madras Solar's testimony surrounding cost responsibility was also provided in the context of

²⁸ Complainant's Answer to PGE's Counterclaim at 6.

another PPA term that Madras Solar included in the PPA it signed on May 4, 2018, which contemplated the possibility of such credits for network upgrades.²⁹ This testimony explains that Madras Solar believes it may be entitled to such a credit in accordance with the Commission's cost allocation policies, and therefore helps to prove Madras Solar's assertion that PGE's proposed PPA term requiring that Madras Solar pay for *all* costs determined by PGE to be required for NRIS is unreasonable. Rather than accept PGE's blanket provision that Madras Solar be responsible for *all* costs determined by PGE in its unilateral discretion, the Commission should reject that PPA term and leave issues regarding interconnection cost responsibility to the interconnection agreement. PGE may attempt to claim that its ratepayers are potentially subject to harm if Madras Solar's PPA somehow "relieves" it of its responsibility to pay for required network upgrades; however, that argument is red herring, given that PGE's ratepayers are protected by virtue of the fact that Madras Solar would be unable to ever obtain an interconnection agreement if it refused to agree to pay for the costs contained therein.

III. CONCLUSION

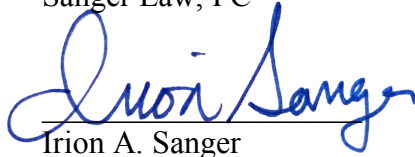
For the foregoing reasons, the ALJ should clarify the scope of this proceeding and resolve only the issues that are necessary to decide set the avoided cost price and the disputed PPA terms.

Dated this 4th day of February 2020.

²⁹ Madras Solar/300, Rogers/25-26.

Respectfully submitted,

Sanger Law, PC

A handwritten signature in blue ink, appearing to read "Irion Sanger", is written over a horizontal line.

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