



COLE ALBEE
Main (503) 595-3922
cole@mrg-law.com

April 26, 2024

VIA E-MAIL TO

Public Utility Commission of Oregon
Filing Center
201 High Street SE, Suite 100
Salem, Oregon 97301-3398

Re: Docket UM 2305 - In the Matter of Green Solar, LLC, vs. PacifiCorp, dba Pacific Power, Pursuant to ORS 756.500 and OAR 860-082-0085.

Attention Filing Center:

Attached, please find PacifiCorp's Response to Green Solar, LLC's Motion for Affirmative Relief.

Please contact this office with any questions.

Sincerely,

A handwritten signature in blue ink that reads "Cole Albee".

Cole Albee
Paralegal
McDowell Rackner Gibson PC

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2305

GREEN SOLAR LLC

Complainant

vs.

PACIFICORP dba PACIFIC POWER,

Defendant.

**PACIFICORP’S RESPONSE TO
GREEN SOLAR, LLC’S MOTION FOR
AFFIRMATIVE RELIEF**

I. INTRODUCTION

1
2 In accordance with OAR 860-082-0085(6), PacifiCorp submits this response to Green
3 Solar, LLC’s (Green Solar) Motion for Affirmative Relief (the Motion) filed on April 12, 2024.
4 The Motion seeks an Order from the Commission “enjoining PacifiCorp ... to complete its
5 contractual obligations” under the Interconnection Agreement (IA) between Green Solar and
6 PacifiCorp. In fact, PacifiCorp is taking all actions necessary to fulfill its obligations and has
7 informed Green Solar that, if there are no unforeseen construction problems, PacifiCorp will
8 complete Green Solar’s interconnection well before the date requested in Green Solar’s Complaint
9 and Motion.

10 Green Solar constructs a false narrative of improper actions by PacifiCorp to urge the
11 Commission to levy administrative penalties on PacifiCorp. Green Solar justifies this
12 extraordinary remedy by blaming PacifiCorp for business losses that Green Solar brought on itself,
13 and by omitting from its narrative the fact that Green Solar did not commence substantive work
14 on the interconnection with PacifiCorp until fourteen (14) months after the IA became effective.
15 Finally, Green Solar insists that, after it refused to sign amendments offered by PacifiCorp to
16 update the IA to reflect the new equipment configuration Green Solar is using and other changes

1 since the contract was executed, the Commission order PacifiCorp to sign an amended IA that
2 includes Green Solar’s preferred contractual terms.

3 There is no basis in law or fact for the Commission to impose injunctive relief or
4 administrative penalties in this matter, or to force PacifiCorp to sign a contract including business
5 terms that are to Green Solar’s liking. Green Solar’s Complaint and Motion for Affirmative Relief
6 both fail to “demonstrat[e] defendant’s failure to comply with the interconnection agreement and
7 complainant’s entitlement to relief,” as required by OAR 860-082-0085(3)(d).

8 **II. ARGUMENT**

9 The Motion for Affirmative Relief summarizes the recitation of facts included in Green
10 Solar’s Complaint in this docket. PacifiCorp disputes most of the material facts recited in the
11 Complaint. PacifiCorp refers the Commission to its Answer filed in this docket, along with the
12 supporting testimony of PacifiCorp witness Kris Bremer, for its detailed responses to Green Solar’s
13 allegations.¹

14 In summary, Green Solar signed an IA with PacifiCorp on April 22, 2021. The IA
15 contemplated that if both parties completed work on “critical milestones” identified in the IA, then
16 the “estimated in-service date” of the interconnection would be October 21, 2022. The IA thus
17 contemplated an 18-month timeline for completing the interconnection—from execution of the IA
18 to in-service date. The IA (and no IA of which PacifiCorp is aware) guarantees an in-service or
19 commercial operations date; interconnection projects involve design and construction activities
20 that may encounter delays resulting from supply chain constraints, site control issues,

¹ In the Motion, Green Solar LLC previews further elaboration of its arguments “in a Motion for Summary Judgment or legal briefing.” Motion at 3. Based on what PacifiCorp has seen in Green Solar’s Complaint, and the factual disputes PacifiCorp identifies in its Answer, it is difficult to imagine there will be “no genuine issue of material fact” regarding the truth and accuracy of Green Solar’s allegations. *See* ORCP 47(C). PacifiCorp does not agree that the issues Green Solar puts before the Commission can be appropriately addressed based on motions for summary judgment.

1 environmental challenges to construction, or other causes. That is why PacifiCorp cannot – and
2 certainly did not for Green Solar – guarantee a completion date for an interconnection project.

3 After Green Solar executed the IA, for the remainder of 2021 and much of 2022
4 (approximately 14 months), Green Solar met none of the “critical milestones” set forth in the IA
5 as necessary to complete the interconnection of its proposed facility. In fact, PacifiCorp sent
6 default notices to Green Solar in 2021 and 2022 due to its failure to make required payments under
7 the IA. PacifiCorp would have been within its rights to terminate the IA based on Green Solar’s
8 failure to make timely payments or take any other steps toward fulfilling its obligations under the
9 IA.

10 Although Green Solar was contractually required to provide its initial design package by
11 June 4, 2021, it was not until August 2022 that Green Solar (now under new ownership and
12 management) approached PacifiCorp with the initial facility design information that PacifiCorp
13 needed to begin the interconnection work contemplated in the IA. PacifiCorp began work on the
14 interconnection in August 2022, as soon as Green Solar indicated it was moving forward based on
15 what had been an otherwise dormant IA. As a practical matter, the 18-month interconnection
16 timeline estimated in the IA did not begin until Green Solar provided its facility design plans to
17 PacifiCorp in August 2022. Notably, Green Solar continued to miss critical deadlines for meeting
18 its obligations under the IA. For example, the IA required Green Solar to provide PacifiCorp with
19 a maintenance plan for the equipment associated with the interconnection by June 10, 2022. Green
20 Solar did not provide the maintenance plan until March 20, 2024—649 days late.

21 PacifiCorp has worked with Green Solar diligently and in good faith since Green Solar
22 indicated in August 2022 that it would actually build the solar facility identified in the IA. As is
23 often the case when a project moves into detailed design and construction, there have been

1 construction and scheduling challenges along the way. At every juncture, PacifiCorp has
2 communicated with Green Solar about potential problems, and has worked to mitigate or avoid
3 problems that threatened delay. Some of the alleged “delays” Green Solar complains about
4 delayed nothing, and in every case where problems arose in managing the project, PacifiCorp
5 worked with Green Solar to resolve them. As PacifiCorp’s Answer makes clear, there have been
6 regular and detailed communications between PacifiCorp’s project management team and
7 personnel from Green Solar. Those communications will continue until the facility’s
8 interconnection is completed.

9 Nevertheless, Green Solar threatened PacifiCorp with legal action as early as October
10 2023² – only 15 months into interconnection work that the IA estimated would take 18 months to
11 complete if everything went exactly to plan. In its Complaint, Green Solar tells the Commission
12 that PacifiCorp should be held to an estimated completion date that Green Solar’s inaction made
13 impossible to meet. Notably, while Green Solar seeks to hold PacifiCorp to the terms of the
14 original IA, Green Solar has built (and will soon interconnect) a solar facility that is vastly different
15 from the one they described in the IA. Green Solar is asking the Commission for strict enforcement
16 of an agreement to interconnect a project that is not even the project Green Solar built. Strict
17 enforcement of the IA as originally executed would no longer reflect reality.

18 In its Motion, Green Solar alleges that it “will have no revenue, be unable to recover sunk
19 costs, and the delay could impact the financial certainty of future projects.”³ Green Solar fails to
20 mention that its losses stem from constructing its solar facility on a schedule that was not
21 coordinated with PacifiCorp. It was Green Solar’s decision to sink funds into the facility on the
22 schedule it chose, with knowledge that completing the interconnection process (a process Green

² See Green Solar, LLC’s Complaint, Attachment A (Apr. 12, 2024).

³ Motion at 2.

1 Solar started 14 months late) would still take months to complete. PacifiCorp did not make these
2 business decisions, is not responsible for their consequences, and should not be required to pay
3 penalties based on them.

4 PacifiCorp is doing everything in its power to complete Green Solar’s interconnection and
5 has been working in good faith with Green Solar since the IA was signed. There is no sense in
6 which PacifiCorp requires an Order from the Commission to complete the work that is already
7 nearly done. Moreover, there is no basis for levying administrative penalties on PacifiCorp when
8 it has consistently complied with the IA and communicated potential interconnection design or
9 construction problems and worked to resolve them – even when it was waiting over a year-and-a-
10 half for its counterparty Green Solar to show up with plans for its project. Green Solar’s Complaint
11 and its various requests for relief lack factual basis and legal grounding and should be rejected by
12 the Commission.

13 Finally, Green Solar’s Complaint goes far beyond the scope of a complaint for enforcement
14 of its IA under OAR 860-082-0085. Indeed, rather than enforcing the existing IA, Green Solar
15 seeks to *amend* the existing IA and Green Solar also seeks administrative penalties for delays it
16 blames on PacifiCorp (without acknowledging its own role in delaying the project). Because the
17 proposed amendment and requested penalties are beyond the scope of a complaint for enforcement
18 of an IA, those requests for relief should be removed from the expedited process under OAR 860-
19 082-0085 and addressed in accordance with a conventional process for complaints under
20 ORS 756.500.


1

III. CONCLUSION

2 For all the reasons stated above and in PacifiCorp’s Answer filed in this docket, the

3 Commission should deny Green Solar’s Motion for Affirmative Relief.

Respectfully submitted, this 26th day of April 2024.

By: 

Adam Lowney
Bill Magness
McDowell Rackner Gibson PC
419 SW 11th Avenue, Suite 400
Portland, OR 97205
Phone: 503-595-3926
Email: adam@mrg-law.com
bill@mrg-law.com

Robert Eckenrod
PacifiCorp
825 N.E. Multnomah, Suite 2000
Portland, OR 97232
Phone: (503) 367-7259
Email: robert.eckenrod@pacificorp.com

Attorneys for PacifiCorp d/b/a Pacific
Power