



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

May 8, 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.

Attached for filing in the above-referenced docket, please find PacifiCorp's Written Statement of Issues.

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 WRITTEN
STATEMENT OF ISSUES**

I. INTERCONNECTION PROJECT UPDATE AND SUMMARY OF ARGUMENT

In the “Memorandum on Conference Pursuant to OAR 860-082-0085(10)” issued in this proceeding on April 30, 2024, Administrative Law Judge (ALJ) Sarah Spruce invited parties to file written statements regarding their “positions on the issues and the need for further process ... or bifurcation of any issues.”¹ In addition, the ALJ ordered PacifiCorp to file “an update ... as soon as possible after it has completed interconnection.”² PacifiCorp appreciates the opportunity to file this written statement in addition to its testimony and arguments presented at the conference held on May 2, 2024 (the Conference).

PacifiCorp first provides an update on the completion of the Green Solar interconnection.³ Since the Conference on May 2, 2024, PacifiCorp has continued to complete the work necessary to meet its obligations under the parties’ Interconnection Agreement (IA):

¹*Green Solar LLC v. PacifiCorp, dba Pacific Power*, Docket No. UM 2305, Memorandum on Conference Pursuant to OAR 860-082-0085(10) (April 30, 2024).

² *Id.*, Memorandum on Update Regarding Interconnection (May 6, 2024).

³ PacifiCorp witness Mr. Kris Bremer testified at the Conference and submitted an affidavit verifying facts in PacifiCorp’s Answer. PacifiCorp has filed an additional affidavit executed by Mr. Bremer affirming the facts in the interconnection project update provided here.

- 1 • On May 2, 2024, PacifiCorp closed the switch connecting PacifiCorp’s system to Green
2 Solar’s facility, meaning the project is energized. This action completed the Backfeed
3 milestone in the IA.⁴
- 4 • On May 3, 2024, PacifiCorp finalized construction of all required upgrades on its system
5 and commenced testing and Commissioning of the new equipment.
- 6 • As of May 8, 2024, PacifiCorp has Commissioned all equipment except for the
7 communication equipment used to monitor and send signals to the Green Solar facility.
8 The equipment was procured from third-party vendors, is installed, and is undergoing
9 testing.
- 10 • Once testing is complete, the communications equipment can be Commissioned, and
11 PacifiCorp will complete the Commissioning Document Review.
- 12 • The next step would be for PacifiCorp to receive Green Solar’s request to conduct Initial
13 Synchronization and Generation Testing (this testing requires participation by personnel
14 from both parties). When that testing is complete, Green Solar may begin Commercial
15 Operations.

16 Pursuant to the May 6, 2024, Memorandum Order, PacifiCorp will report that it has
17 “completed interconnection” when it completes the final milestone that is its responsibility under
18 the IA: the “Commissioning Document Review Complete” step. As noted above, completion of
19 that step depends on the successful testing of third-party communications equipment that is
20 underway as of the time of this filing.

21 As Judge Spruce noted in the Memorandum on Conference and during the Conference
22 itself, the central issue in the proceeding is the threshold determination, required by OAR 860-
23 082-0085(10)(c), of whether an order granting relief should issue based on the record as it stands,
24 or whether “further proceedings are necessary.”⁵ The Commission’s rules provide that in making
25 this determination, the ALJ:

⁴ The milestones referenced in this update are included in Attachment 3 of the IA. Capitalized terms refer to those terms as used in the IA.

⁵ Transcript of Prehearing Conference, at 55-58 (May 2, 2024) (*hereinafter*, “Conference Tr.”)

1 [M]ust consider, at a minimum, the positions of the parties, the need to clarify
2 evidence through the examination of witnesses, the complexity of the issues, the
3 need for prompt resolution, and the completeness of the information presented.⁶

4 For the reasons detailed herein, all of the factors enumerated in the Commission’s rule support
5 either dismissal of Green Solar’s claims or further proceedings to develop the evidentiary record
6 necessary to adjudicate them.

7 The testimony and arguments at the Conference make clear that all of the claims in Green
8 Solar’s complaint cannot be “determined on the pleadings and submissions without further
9 proceedings.”⁷ Green Solar’s pleadings themselves include requests for relief that cannot be
10 appropriately addressed using the truncated procedures applicable to resolving interconnection
11 agreement enforcement. PacifiCorp supports bifurcation of further proceedings to address the
12 disparate claims in the Complaint.

13 The Complaint mixes claims regarding enforcement of the parties’ existing interconnection
14 agreement (IA), which are eligible for processing under the “Complaints for Enforcement” section
15 of the Commission’s Small Generator Interconnection Rules (OAR 860-082-0085), with claims
16 that go well beyond the IA enforcement process. In addition to asking the Commission to issue an
17 injunctive order requiring completion of the interconnection of its facility, Green Solar requests
18 that the Commission impose unprecedented civil penalties on PacifiCorp and order the parties to
19 amend the IA to include new language favored by Green Solar.

20 Green Solar carries the burden of proof on all of its claims, and as the record stands today,
21 it has failed to meet its burden on any of them. As discussed herein, the pleadings and evidence
22 introduced thus far, in addition to the completion of Green Solar’s interconnection, support
23 dismissal of Green Solar’s claims as moot or for failure to state a claim. In no event should the

⁶ OAR 860-082-0085(10)(c).

⁷ OAR 860-082-0085(10)(b)

1 Commission rule in favor of Green Solar’s claims without establishing a schedule for further
2 proceedings as contemplated in OAR 860-082-0085(10)(b) and (c).

3 PacifiCorp urges the Commission to take the following procedural steps on each of the
4 issues raised in Green Solar’s complaint.

5 **A. Green Solar’s request that PacifiCorp complete its interconnection is moot and**
6 **should be dismissed.**

7 In its complaint, Green Solar argues that “the Commission should enforce the IA by
8 requiring PacifiCorp to interconnect Green Solar without delay.”⁸ This aspect of Green Solar’s
9 complaint falls within the ambit of the Commission’s interconnection enforcement rules, but the
10 record shows that PacifiCorp is already taking steps to complete all its obligations under the IA.
11 PacifiCorp’s Answer and the testimony of its witness, Mr. Kristopher Bremer, demonstrate that
12 PacifiCorp is taking the steps necessary to complete Green Solar’s interconnection without a
13 Commission order.⁹ If there is delay in Green Solar’s commercial operations at this juncture, it is
14 not because of PacifiCorp’s failure to act, but due to issues with the performance of third-party
15 communications equipment now being tested on site before final commissioning. The imminent
16 completion of PacifiCorp’s duties under the IA leaves nothing for the Commission to enforce. This
17 issue is, by definition, moot: Green Solar is asking the Commission to require PacifiCorp to do
18 work that it is doing or has already done. For this reason, there is no need for further proceedings
19 because Green Solar’s claim should be dismissed as moot once PacifiCorp reports completion of
20 the “Commissioning Document Review Complete” milestone in the IA.

⁸ *Green Solar LLC v. PacifiCorp, dba Pacific Power*, Docket No. UM 2305, Green Solar Complaint at 14, ¶ 97
(*hereinafter*, “Green Solar Complaint”).

⁹ Conference Tr. at 19.

1 **B. Green Solar’s request for penalties is beyond the scope of OAR 860-082-0085, fails**
2 **to state a claim, and requires further proceedings.**

3 PacifiCorp categorically rejects the allegations underlying Green Solar’s request for
4 “penalties up to \$10,000 ... against PacifiCorp and paid by PacifiCorp’s shareholders for each day
5 of interconnection delay beyond April 12, 2024.” To put Green Solar’s request in context, from
6 April 12, 2024, to the date of this pleading, Green Solar’s request would subject PacifiCorp to
7 \$260,000 in penalties. Notably, the “interconnection delay” that Green Solar argues justifies the
8 unprecedented imposition of civil penalties does not include the 14 months Green Solar delayed
9 meeting its own obligations under the IA.

10 With potentially hundreds of thousands of dollars of penalties at stake, due process
11 demands that PacifiCorp be given the opportunity and time to develop a full factual record to
12 demonstrate that penalties are unwarranted. A full hearing is particularly critical because
13 imposition of penalties would set a new Commission precedent. PacifiCorp has found no decision
14 where the Commission imposed ORS 756.990 civil penalties on a party in any generation
15 interconnection dispute. The Commission’s expedited interconnection enforcement process was
16 not designed to adjudicate imposition of penalties based on the complaint, answer, and brief
17 testimony now included in the record of this proceeding.

18 The only summary disposition appropriate for Green Solar’s request for penalties is
19 dismissal for failure to state a claim. Green Solar’s complaint does not state what Commission
20 order, rule, or governing statute PacifiCorp has violated that supports penalties under ORS
21 756.990. Even if viewed most favorably to Green Solar, none of the testimony or other facts in the
22 record establish the basis for a claim that the statutory standards for the Commission levying
23 penalties are met in this matter.

1 Green Solar’s penalties claims satisfy all five of the criteria “an ALJ must consider”¹⁰ to
2 determine that “further proceedings are necessary” because the issues raised in a complaint cannot
3 “be determined on the pleadings and submissions without further proceedings.”¹¹ The penalties
4 claims therefore should be bifurcated into a separate proceeding with a procedural schedule that
5 allows for discovery and development of more complete testimony than is now in the record. Such
6 bifurcation of issues is contemplated in the rules governing the interconnection enforcement
7 process.¹²

8 **C. An order amending the IA is beyond the scope of OAR 860-082-0085 and should be**
9 **subject to briefing in a bifurcated proceeding before the Commission approves any**
10 **contested amendments.**

11 Green Solar asks the Commission to order PacifiCorp to sign an amended IA, but only by
12 including a specific amendment favored by Green Solar. The Commission’s IA enforcement
13 process authorizes parties to file “a complaint for the enforcement of an interconnection
14 agreement.”¹³ It does not contemplate proceedings to amend, rather than enforce, existing IAs.

15 As discussed at the Conference, PacifiCorp and Green Solar agree that the IA should be
16 amended, albeit for different reasons.¹⁴ However, PacifiCorp is completing the interconnection
17 project, and its obligations under the IA, without executing an amended IA.¹⁵ Thus, the question
18 of how the IA should be amended is not a question of IA *enforcement* and should not be considered
19 using the OAR 860-082-0085 procedural process.

20 PacifiCorp is confident that the parties can negotiate mutually acceptable amendments to
21 the IA language that will reflect the physical realities of the completed interconnection of Green

¹⁰ OAR 860-082-0085(10)(c).
¹¹ OAR 860-082-0085(10)(b).
¹² *Id.*
¹³ OAR 860-082-0085(1).
¹⁴ Conference Tr. at 22-24.
¹⁵ *Id.*, at 22.

1 Solar’s facility to the PacifiCorp system. If that is not possible, however, PacifiCorp requests the
2 opportunity to brief the legal issues regarding contested IA terms and conditions before the
3 Commission moves forward with any type of order on the merits. PacifiCorp and Green Solar
4 agreed during the Conference that bifurcation of the IA amendment issue would be appropriate to
5 achieve this purpose.¹⁶

6 II. ARGUMENT

7 A. Green Solar’s interconnection is nearly complete and its request for interconnection 8 agreement enforcement is moot and should be dismissed.

9 Green Solar asks the Commission to issue an order “[r]equiring PacifiCorp to interconnect
10 Green Solar by May 14, 2024.”¹⁷ The evidence on the record thus far demonstrates that PacifiCorp
11 has taken all the steps necessary to finish the interconnection project. All construction and other
12 milestones that are under PacifiCorp’s control are completed. As noted in the update in Section I,
13 PacifiCorp’s last step in the project involves testing third-party communications equipment that is
14 already installed onsite. There is not more that PacifiCorp could commit to do, or be ordered to
15 do, that is not already underway to complete the interconnection project.

16 The Commission faced a similar circumstance in a 2021 enforcement complaint brought
17 by Dalreed Solar LLC (Dalreed).¹⁸ In that case, the central dispute was whether PacifiCorp should
18 provide a draft Power Purchase Agreement (PPA) to Dalreed. After PacifiCorp committed to
19 provide the draft PPA, Dalreed nevertheless requested a Commission order that would require what
20 had already occurred. The Commission held that the “core legal issue in the case” (whether
21 PacifiCorp would provide the draft PPA) was “mooted by the ... commitment of PacifiCorp to

¹⁶ Conference Tr. at 50 (Green Solar stated: “[W]e’re definitely not opposed to bifurcation of the interconnection agreement amendment and have that addressed separately.”).

¹⁷ Green Solar Complaint at 22, Prayer for Relief ¶ 6.

¹⁸ *Dalreed Solar LLC v. PacifiCorp, dba Pacific Power*, Docket No. UM 2125, Order No. 21-097 (2021) (*hereinafter*, “*Dalreed*”).

1 provide the draft PPA to Dalreed. As a result, we do not address the legal question.”¹⁹ The
2 Commission cited Oregon judicial precedent holding that a “justiciable, nonmoot case is one in
3 which ... the court’s decision in the matter [will] have some practical effect on the rights of the
4 parties.”²⁰ The Commission held that “resolving the legal issue presented” in the complaint “would
5 not have any practical effect in this matter. ... PacifiCorp committed to providing the PPA and to
6 negotiating in good faith. Accordingly, an order directing PacifiCorp to provide ... a draft PPA and
7 to negotiate in good faith would not have any direct effect.”²¹

8 The same situation presents itself in this proceeding. Green Solar seeks an order “requiring
9 PacifiCorp to interconnect Green Solar by May 14, 2024.”²² Since PacifiCorp has interconnected
10 Green Solar already, the order requested by Green Solar would not have any direct effect, and the
11 Commission should dismiss the request as moot.

12 In addition, in its decision in *Dalreed*, the Commission declined Dalreed’s request to
13 impose penalties. The Commission held: “We will not consider penalties in this case because to
14 do so would be inconsistent with our findings that the underlying issue in the case is now moot.”²³
15 The plaintiff’s “request we consider penalties ... does not overcome our finding that the case is
16 moot.”²⁴ Similarly, in this case, “resolving the legal issue presented,” – *i.e.*, whether PacifiCorp
17 met its obligation under the IA to complete Green Solar’s interconnection – should result in a
18 dismissal based on mootness. That dismissal should, in turn, result in dismissal of Green Solar’s
19 claims that the Commission impose penalties.

¹⁹ *Id.*, Order No. 21-097 at 6.

²⁰ *Id.*, quoting, *Association of Oregon Corrections Employees v. State Dep’t of Corrections*, 266 Or App 496, 503 (2014) (internal quotations omitted).

²¹ *Id.*

²² Green Solar Complaint, at 22, Prayer for Relief ¶ 6.

²³ Order No. 21-097, at 7.

²⁴ *Id.*

1 If the ALJ nevertheless decides the penalties claims should survive the mootness of Green
2 Solar’s interconnection dispute, for the reasons discussed in the following section, the
3 Commission’s consideration of the penalty claims should be bifurcated for further proceedings.

4 **B. All of the factors identified in OAR 860-082-0085(10)(c) point to the need for further**
5 **proceedings on Green Solar’s request for imposition of penalties.**

6 The Commission’s interconnection agreement enforcement rule provides that “[i]n
7 determining whether further proceedings are necessary, the ALJ must consider, at a minimum,”
8 five factors. These include the:

- 9 1. “positions of the parties;”
- 10 2. “need to clarify evidence through examination and witnesses;”
- 11 3. “complexity of the issues;”
- 12 4. “need for prompt resolution;” and
- 13 5. “completeness of the information presented.”²⁵

14 For the reasons discussed above, PacifiCorp urges the ALJ to follow Commission
15 precedent and reject Green Solar’s requests for penalties because the legal claim underlying them
16 is moot. Dismissal of the penalties claims for mootness would obviate the need for further
17 proceedings.

18 If the ALJ does not dismiss the penalties request and applies the five factors in the rule,
19 however, the existing record makes clear that each factor supports setting a schedule for further
20 proceedings, including opportunities for discovery, the filing of testimony, and the other features
21 of a Commission contested case.

22 **1. The “positions of the parties”: There is fundamental disagreement between**
23 **the parties, in large part because Green Solar has failed to state its legal**
24 **claim for imposition of penalties.**

25 The Complaint, Answer, and the testimony and argument at the Conference all highlight
26 the parties’ dramatically different positions on imposition of penalties. It should not be surprising

²⁵ OAR 860-082-0085(10)(c).

1 that allegations that one party has broken the law and should be penalized at the statutory maximum
2 level for those violations would result in factual and legal disagreements that remain unresolved
3 after the filing of a Complaint and Answer. In this case, however, the central problem with ruling
4 based on the current record is that Green Solar has not stated a claim under ORS 756.990 that
5 would justify imposition of penalties at all.

6 As stated in its Complaint, Green Solar’s position is that PacifiCorp violated the IA, which
7 delayed the interconnection required by the IA in a manner that was “unjust and reasonable.”²⁶
8 For these actions, Green Solar requests penalties “pursuant to ORS 756.990.”²⁷ Green Solar never
9 supplies any detail on what provisions of ORS 756.990 it claims PacifiCorp has violated.

10 This is for good reason. ORS 756.990 authorizes the Commission to impose penalties in
11 specifically delineated circumstances. The statutorily-defined circumstances arise when a
12 regulated entity: (a) “violates any statute administered by the Commission”; (b) violates or fails to
13 perform “any duty enjoined upon the person”; (c) “fails to obey any lawful requirement or order
14 made by the commission”; or (d) “fails to obey any judgment made by any court upon the
15 application of the commission.”²⁸ Green Solar’s complaint alleges no violation of law, order, or
16 injunction that could potentially state a claim for penalties. Rather, Green Solar, at best, alleges
17 contractual violations arising under the IA.

18 The complaint requests the Commission impose the maximum level of statutory penalties
19 on PacifiCorp without identifying any of the types of legal violations that could justify such
20 punishment. In addition, as discussed in more detail herein, the factual allegations underlying the

²⁶ Green Solar alleged that PacifiCorp violated the IA: (a) by “not interconnecting Green Solar in a timely manner;” (b) delaying interconnection in a manner that was “unjust and unreasonable;” and (c) violating the contractual “duty of good faith and fair dealing in the IA.” *See* Complaint, at 22 (allegations summarized in Green Solar’s “Prayer for Relief.”).

²⁷ *Id.*

²⁸ ORS 756.990(2)(a)-(d). The statute also authorizes certain penalties when a regulated entity fails to comply with a subpoena or discovery order issued by the Commission.

1 claims for penalties have not been clarified sufficiently to support any claim for penalties against
2 PacifiCorp.

3 **2. The brief testimony offered at the Conference and the parties’ filings to date**
4 **demonstrate the “need to clarify evidence through examination of witnesses.”**

5 At the Conference, the ALJ correctly focused questions to the parties on the factual
6 allegations in Green Solar’s complaint. The brief testimony in response helped clarify some issues,
7 but left others in need of further development, which is not possible without an opportunity for
8 discovery, thorough testimony, and cross-examination of witnesses. PacifiCorp highlights three
9 examples.

10 A. Impact of PacifiCorp “Transmission Upgrade”: Green Solar alleges that PacifiCorp
11 “preferred to complete an unrelated transmission upgrade at the Culver substation” before
12 completing Green Solar’s interconnection.²⁹ The implication of Green Solar’s allegation is that
13 PacifiCorp favored its system upgrade to completing Green Solar’s interconnection and
14 improperly delayed Green Solar’s interconnection while it completed the preferred project.³⁰

15 In its Answer and in argument at the Conference, PacifiCorp denied that it favored any
16 transmission project over Green Solar’s generation interconnection project.³¹ PacifiCorp engages
17 in numerous system improvement projects simultaneously, including for reliability upgrades,
18 customer load requests, and generator interconnection projects. In this case, PacifiCorp’s original
19 construction timeline for Green Solar contemplated that construction would be completed in
20 October 2022.³² When Green Solar delayed its project by 14 months, PacifiCorp was required to

²⁹ See Green Solar Complaint at ¶¶ 27-30.

³⁰ Conference Tr. at 28 (Green Solar witness Mr. Conard refers to “this other transmission level project that [PacifiCorp] wanted to get complete before they did the work for our project.”)

³¹ *Green Solar LLC v. PacifiCorp, dba Pacific Power*, Docket No. UM 2305, PacifiCorp Answer at 8, ¶ 27 (PacifiCorp Answer) (PacifiCorp denies that there were delays in completion of Green Solar’s interconnection due to, as alleged in Paragraph 27, “transmission upgrades at the Culver substation unrelated to Green Solar that PacifiCorp desired to complete before implementing the work required by the Green Solar IA.”).

³² See IA, at 19, Attachment 3 (Milestones), filed with Green Solar Complaint as Attachment B.

1 reassess the construction timeline based on circumstances as of late 2022. By that time, a separate
2 and unrelated construction project in the vicinity of Green Solar had commenced.

3 The only link between the pre-existing construction project and Green Solar's
4 interconnection, is the fact that both projects required upgrades to several of the same transmission
5 poles. PacifiCorp was therefore required to incorporate the upgrades resulting from the unrelated
6 construction project into the design for Green Solar's interconnection, which, again, was occurring
7 largely in 2023 because of Green Solar's delay. PacifiCorp estimates that the design revisions to
8 incorporate the newly-completed infrastructure may have taken weeks – a far cry from the months
9 of delay Green Solar alleges occurred. There was never a situation in which PacifiCorp prioritized
10 its own internal projects to the detriment of completing Green Solar's interconnection.

11 This additional context demonstrates that, even if the design changes delayed Green Solar's
12 interconnection, it was not because: (a) PacifiCorp acted to intentionally delay Green Solar; or (b)
13 PacifiCorp took any action contrary to the parties' IA. PacifiCorp identified an issue during the
14 design process that required updated information, conveyed that to Green Solar, and moved
15 forward with the interconnection based on the revised designs.

16 B. Installation of Communications Equipment: As part of its narrative that PacifiCorp
17 repeatedly delayed interconnection in violation of the IA, Green Solar alleges that PacifiCorp
18 informed Green Solar in early April 2024 that “communication equipment that was needed to be
19 installed to support the fiber optic cable and microwave links for the transfer trip equipment may
20 not have been ordered.”³³ PacifiCorp admitted it provided this update to Green Solar.³⁴ What is
21 left unreported in the record as it stands is that PacifiCorp ultimately was able to locate the relevant

³³ Green Solar Complaint at 10, ¶ 59.

³⁴ PacifiCorp Answer at 10, ¶¶ 59-60.

1 communications equipment and complete installation of the equipment as planned.³⁵ As noted in
2 PacifiCorp’s update in Section 1, that equipment is installed and being tested for commissioning
3 as of the date of this filing.

4 If the ALJ authorizes further proceedings, PacifiCorp will be able to include this updated
5 information in testimony. Perhaps more importantly, PacifiCorp can explain that the emailed
6 update Green Solar cited in its complaint was an example of effective project management.
7 PacifiCorp advised Green Solar of a potential problem that arose during the construction of the
8 interconnection facilities and described how it hoped to address the issue. Identifying a potential
9 problem is not a delay, or evidence of intent to create delays, or any other action that could
10 reasonably be declared a violation of law or Commission order meriting ORS 756.990 penalties.
11 Before the Commission considers penalties, due process requires that PacifiCorp be given the
12 opportunity to fully respond to Green Solar’s allegations, and to cross-examine Green Solar’s
13 witnesses at hearing.

14 C. Revised estimated dates for completing the interconnection: In February 2023,
15 PacifiCorp offered Green Solar a revised estimated project completion date of November 30, 2023
16 (the revised estimate took into account Green Solar’s 14 months of delay to start the process,
17 receipt of Green Solar’s designs in August 2022, and other developments since the IA was signed
18 in April 2021).³⁶ This date never represented a contractual commitment, but rather an estimate of
19 project completion if the parties met all critical milestones. Green Solar refused to execute an IA

³⁵ At the Conference, Green Solar’s witness, Mr. Conard, asserted that PacifiCorp had failed to order enough fiber cable to complete the last stages of connecting the communications equipment. Conference Tr. at 20. Green Solar failed to report that PacifiCorp used additional fiber it had in inventory to complete the connection work without causing delay.]
³⁶ Green Solar Complaint at 7, ¶¶ 28-30.

1 amendment that included the new estimated completion date and the revised milestones necessary
2 to achieve it.³⁷

3 One of the milestones in the IA requires that the interconnecting generator obtain the
4 property rights, permits, and right-of-way (in short, site control) necessary to construct the
5 interconnection facilities. In the IA, this milestone is entitled “Property/Permits/RoW Procured.”³⁸
6 When PacifiCorp presented its November 30, 2023, estimated completion date, the revised
7 milestone date for Green Solar to deliver property control was June 1, 2023.³⁹

8 In early April 2023, PacifiCorp notified Green Solar that the line extension necessary to
9 complete connection of PacifiCorp’s facilities with Green Solar’s facilities would require an
10 easement to allow PacifiCorp’s facilities to be safely extended to the point of interconnection. This
11 was an aspect of the line extension that PacifiCorp discovered when its staff visited the location to
12 plan construction. To achieve site control for installation of the guy wire needed to complete the
13 line extension, Green Solar would need to execute an easement with the owner of the private
14 property where the guy wire would be installed. Despite the best efforts of both parties, the
15 property owner would not provide the necessary easement.

16 The ultimately unsuccessful effort to obtain the easement caused Green Solar to miss the
17 critical milestone underlying the estimated November 30, 2023, completion date. PacifiCorp
18 emphasizes that this milestone was Green Solar’s responsibility, and the missed milestone had a
19 cascading impact on the subsequent milestones leading to project completion. After the effort to
20 obtain the easement failed, PacifiCorp examined alternative means of designing the line extension

³⁷ PacifiCorp Answer at 10, ¶¶ 34-35.

³⁸ This milestone designation is included in Attachment 3 or the IA. *See* Green Solar Complaint, Attachment B, Green Solar Executed Interconnection Agreement, IA Attachment 3, at 19.

³⁹ *See* Conference Tr. at 35-36 (testimony of PacifiCorp witness Mr. Bremer.)

1 in a way that would avoid the need for the easement.⁴⁰ On December 21, 2023, PacifiCorp
2 communicated to Green Solar the possibility of an engineering workaround that could safely
3 achieve interconnection without the need for obtaining an easement.⁴¹ PacifiCorp discussed the
4 potential workaround with Green Solar in meetings during December 2023 and January 2024, and
5 the parties agreed to pursue the alternative approach to completing the line extension.⁴²

6 The delay in Green Solar’s ability to establish site control resulted slippage in the
7 construction schedule that made completion of the project in November 2023 impossible.
8 Throughout the process, however, PacifiCorp worked cooperatively with Green Solar to resolve
9 this and other challenges to project completion.

10 **3. The “complexity of the issues”: The Commission should develop a full**
11 **record of the course of dealing between the parties over the last three years**
12 **before considering imposition of penalties.**

13 PacifiCorp does not contend that the legal issues before the Commission are complex. As
14 already discussed, Green Solar’s complaint for IA enforcement is moot, and it has not presented a
15 legally cognizable claim for penalties. The factual issues, however, are sufficiently complex to
16 merit development of a full contested case record, including a hearing, before the Commission
17 considers Green Solar’s request for penalties.

18 The record developed thus far shows that the parties have a course of dealing that goes
19 back to the execution of the IA over three years ago.⁴³ As PacifiCorp stated in its Answer,⁴⁴ after
20 Green Solar executed the IA, for the remainder of 2021 and much of 2022 (approximately 14
21 months), Green Solar met none of the “critical milestones” set forth in the IA as necessary to

⁴⁰ See PacifiCorp Answer at 10, ¶¶ 31-34.

⁴¹ See, *id.* at 11-12, ¶¶ 46-49.

⁴² *Id.*

⁴³ Green Solar Complaint at 6, ¶18 (“On April 22, 2021, Green Solar and PacifiCorp executed the IA.”).

⁴⁴ PacifiCorp Answer at 1-2 and 7, ¶¶ 18-23.

1 complete the interconnection of its proposed facility. Although Green Solar was contractually
2 required to provide its initial design package by June 4, 2021, it was not until August 2022 that
3 Green Solar (now under new ownership and management) approached PacifiCorp with the initial
4 facility design information that PacifiCorp needed to begin the interconnection work contemplated
5 in the IA. As a practical matter, the 18-month interconnection timeline estimated in the IA did not
6 begin until Green Solar provided its facility design plans to PacifiCorp in August 2022.

7 If the Commission is going to entertain this request for statutory penalties based on the
8 course of dealing between two parties to an IA, particularly when the interconnection project
9 subject to the IA is complete, both parties must be given the opportunity to present their versions
10 of the back-and-forth business communications that they exchanged over the last three years. There
11 has not been sufficient time to develop a complete record of several years of the parties' actions to
12 implement the IA. PacifiCorp urges the ALJ to establish a schedule for further proceedings that
13 provides opportunity to create the comprehensive record needed to adequately address Green
14 Solar's request for penalties.

15 **4. The “need for prompt resolution” regarding interconnection agreement**
16 **enforcement does not apply to imposition of penalties.**

17 The Commission's Small Generator Interconnection rules authorize the fast-track
18 proceedings set forth in OAR 860-082-0085 to handle disputes regarding “the enforcement of an
19 interconnection agreement.”⁴⁵ In one of its claims for relief, Green Solar seeks enforcement of its
20 interconnection agreement. As discussed above, PacifiCorp's completion of Green Solar's
21 interconnection moots that request for relief.

22 The legal procedures in OAR 860-082-0085 are designed to manage disputes over the
23 terms of standardized IAs. By their own terms, the interconnection enforcement procedures apply

⁴⁵ OAR 860-082-0085(1).

1 only to that specific type of dispute. Moreover, the rule recognizes, in subsection (10), that some
2 pure IA enforcement disputes are not susceptible to resolution based on the truncated legal process
3 embodied in the rule. There is no language in the rule, or elsewhere, that applies its truncated legal
4 process more broadly to other bilateral disputes, much less to proceedings that could result in the
5 imposition of millions of dollars in penalties.

6 While rapid resolution may be important when interconnection projects have not been
7 completed and the barrier to interconnection is one that the Commission can remedy, the need for
8 speed does not apply to a post-hoc review of how the parties executed and implemented the IA.
9 Neither party will be harmed if litigation of penalties is bifurcated from Green Solar’s other claims.
10 Unlike damages, which a party hopes to receive as quickly as possible, penalties are paid to the
11 State and do not benefit either party financially. Given the due process limits on imposing penalties
12 without a complete evidentiary record, there is no “need for prompt resolution” in this case that
13 outweighs the need for further proceedings on Green Solar’s allegations.

14 **5. The “completeness of the information presented”: The existing record**
15 **provides no factual or legal support for imposition of penalties.**

16 As PacifiCorp discussed above regarding the “need to clarify evidence” and “complexity of the
17 issues” factors in the OAR 860-082-0085(10)(c) analysis, the information presented by Green Solar thus
18 far is woefully incomplete as a basis for imposing penalties on PacifiCorp. There would have to be further
19 proceedings to develop what is now a record that fails to state a claim for ORS 756.990 penalties.

20 Notably, Green Solar contended at the Conference that it should be allowed to file a reply to
21 PacifiCorp’s Answer, because PacifiCorp stated “new additional facts” in its Answer.⁴⁶ Those “new
22 additional facts” were nothing more than PacifiCorp’s responses to Green Solar’s unproven allegations.
23 Green Solar’s request was a tacit admission that more facts are needed to resolve the parties’ disputes. The

⁴⁶ Conference Tr. at 5-6.

1 ALJ wisely denied Green Solar’s request for what might become an endless series of initial pleadings.⁴⁷
2 When there are “new facts” in initial pleadings (also known as the other party’s side of the story), the
3 appropriate response is to set a procedural schedule that allows both parties to explore all the facts in
4 discovery and through testimony. In this case, which should lead to an order for further proceedings on
5 Green Solar’s claims for penalties.

6 **C. If IA amendment language cannot be successfully negotiated by the parties,**
7 **amendments proposed by Green Solar and PacifiCorp should be considered after**
8 **submission of legal briefs.**

9 PacifiCorp and Green Solar both want the IA signed in 2021 to be amended.⁴⁸ As discussed
10 at the Conference, PacifiCorp believes the parties could successfully negotiate the terms of the IA
11 amendments. PacifiCorp requests bifurcation of the IA amendment issue raised in Green Solar’s
12 complaint so the parties can determine if any disputes remain for Commission resolution. Green
13 Solar stated at the Conference that “we’re definitely not opposed to bifurcation of the
14 interconnection agreement and having that addressed separately.”⁴⁹ If there are disputes that cannot
15 be resolved after the bifurcation of issues, PacifiCorp requests the Commission give both parties
16 the opportunity to file legal briefs on the merits of the contract language proposals.

17 PacifiCorp strongly objects to the Commission ordering an amendment including only the
18 one-sided reservation of rights language proposed by Green Solar. There is no basis in the
19 Commission’s IA enforcement rule for ordering changes to an IA rather than enforcing one as it
20 already exists. Moreover, as with the penalties claims, all of the OAR 860-082-0085(10)(c) factors
21 support the further legal proceedings recommended by PacifiCorp. Any Commission consideration
22 of an IA amendment is incomplete without considering PacifiCorp’s proposed amendments. Since
23 PacifiCorp never anticipated litigating IA amendments at the Commission, those proposed

⁴⁷ *Id.*, at 54.
⁴⁸ See Green Solar Complaint at 22; Conference Tr. at 47-48.
⁴⁹ Conference Tr. at 50.

1 amendments are not in the record. There is also no “need for prompt resolution”: PacifiCorp
2 completed the interconnection under the existing IA, and the amendments will govern the parties’
3 future dealings.

4 **III. CONCLUSION**

5 For all the reasons stated, PacifiCorp requests that the ALJ:

6 1. Order that “further proceedings are necessary” in this docket, pursuant to OAR 860-
7 082-0085(10)(b) and (c);

8 2. Order “bifurcation of the issues” in this docket, pursuant to OAR 860-082-
9 0085(10)(b);

10 3. Establish a procedural schedule regarding Green Solar’s request for injunctive
11 relief that would order PacifiCorp to interconnect Green Solar’s facilities, or, alternatively, dismiss
12 Green Solar’s request for mootness.

13 4. Establish a procedural schedule regarding Green Solar’s request for penalties
14 pursuant to ORS 756.990, or, alternatively, dismiss Green Solar’s request for penalties for failure
15 to state a claim.


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1 5. Establish a procedural schedule regarding Green Solar’s request for an order
2 amending the Interconnection Agreement between the parties, including a requirement that the
3 parties seek to negotiate mutually agreeable language before filing additional pleadings addressing
4 the terms of the Interconnection Agreement.

Respectfully submitted, this 8th day of May 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