

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1971

In the Matter of

WACONDA SOLAR, LLC,
Complainant,

v.

PORTLAND GENERAL ELECTRIC
COMPANY,

Defendant.

WACONDA SOLAR’S OBJECTION
TO PGE’S SUR-REPLY OR, IN THE
ALTERNATIVE, WACONDA
SOLAR’S SUR-REPLY TO PGE’S
SUR-REPLY IN SUPPORT OF ITS
MOTION TO STAY OR, IN THE
ALTERNATIVE, TO EXTEND THE
FILING DEADLINE OF WACONDA
SOLAR’S RESPONSE TO PGE’S
MODIFIED SECOND MOTION FOR
SUMMARY JUDGMENT

I. INTRODUCTION

Waconda Solar, LLC (“Waconda Solar”) respectfully files this Objection to PGE’s Sur-Reply or, in the alternative, this Sur-Reply to Portland General Electric Company’s (“PGE”) sur-reply in support of Waconda Solar’s Motion to Stay or, in the alternative, to extend the filing deadline of Waconda Solar’s response to PGE’s Modified Second Motion for Summary Judgment (generally, the “Motion to Stay”). Waconda Solar is requesting a stay until three weeks after the Oregon Public Utility Commission (the “Commission”) makes a decision on the Petition for Declaratory Ruling recently filed by the Renewable Energy Coalition, Community Renewable Energy Association, and Oregon Solar + Storage Industries Association (collectively the “Interconnection

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Trade Associations”) in Docket No. DR 57. In the alternative, Waconda Solar is requesting an extension of three weeks from the date of the Commission’s ruling on its Motion to Stay. Waconda Solar provides this Sur-Reply to explain its disagreement with PGE’s position and respectfully requests that the Commission grant the Motion to Stay.

By filing this Sur-Reply, Waconda Solar is responding only to PGE’s arguments in its sur-reply. Waconda Solar maintains any and all arguments raised in its original Motion to Stay and Reply.

II. ARGUMENT

A. The Commission Should Deny PGE’s Motion for Leave to File a Sur-Reply

The Commission should deny PGE’s motion for leave to file a sur-reply and reject PGE’s sur-reply. OAR 860-001-0420 allows a party to file a response to a motion and allows the moving party to file a reply to the response.¹ The rules do not allow the non-moving party to file a sur-reply. Waconda Solar objects to PGE’s motion for leave and its sur-reply because it is not allowed by Commission rules. Thus, the Commission should deny PGE’s motion for leave to file the sur-reply.

¹ OAR 860-001-0420(4), (5).

B. Waconda Solar Has Plead that Contract Principles Apply During the iSIS Process

PGE asserts that Waconda Solar has for the first time argued “that contract principles should apply when the utility provides an interconnection applicant with system information necessary to conduct an iSIS.”² This is incorrect.

Waconda Solar’s Amended Complaint raised a number of arguments regarding PGE’s duty of good faith and fair dealing. For example, Waconda Solar plead that “PGE violated its duty of good faith and fair dealing when it unreasonably withheld its consent to allow Waconda Solar to hire a third-party consultant to complete the remainder of its interconnection studies or to complete an independent System Impact Study” and “PGE violated its duty to act reasonably with respect to its customers when it withheld its consent to allow Waconda Solar to hire a third-party consultant to complete the remainder of its interconnection studies or to complete an independent System Impact Study.”³

These claims specifically argue that the duty of good faith and fair dealing apply to the interconnection process, including but not limited to PGE’s decision not to allow Waconda Solar “to complete an independent System Impact Study.” A pre-condition to completing the iSIS is being provided information to conduct the study. Similarly,

² PGE’s Motion for Leave to File Sur-Reply and Sur-Reply at 7 (Oct. 26, 2021).

³ Amended Complaint at PP. 147-148.

PGE’s refusal to allow Waconda Solar to conduct the iSIS necessarily impacts PGE’s review of iSIS.

However, more important is that PGE attempts to shift the focus away from the core area of dispute. The core area of dispute, which applies to both the Declaratory Ruling and this complaint is, do the specific standards in the interconnection rules regarding reasonableness, discrimination, and duty of good faith and fair dealing apply to the iSIS process. Waconda Solar asserts that those standards do, and PGE asserts that they do not. If the Commission decides in the Declaratory Ruling proceeding that they apply, then that decision will mean that they also apply in this case.

C. PGE Has Not Agreed to Allow or Offer Waconda Solar to Conduct its Independent System Impact Study

PGE has not really allowed Waconda Solar to conduct the independent system impact study (“iSIS”) because PGE has not agreed to review the iSIS consistent with all Commission rules and contractual provisions. PGE claims it “agrees that Waconda can perform an iSIS, so there is no dispute in this case about whether an Interconnection Applicant has a right to conduct an iSIS.”⁴ PGE further claims it has “agreed to provide Waconda with system information if Waconda executes a non-disclosure agreement, so there is no dispute in this case about whether the utility must provide the Interconnection Applicant with sufficient information for an iSIS to be performed.”⁵ Just because PGE

⁴ PGE’s Motion for Leave to File Sur-Reply and Sur-Reply at 5 (Oct. 26, 2021).

⁵ PGE’s Motion for Leave to File Sur-Reply and Sur-Reply at 5 (Oct. 26, 2021).

claims there is no dispute in the case does not mean there is actually no dispute. PGE's view is much narrower than the actual disputes in this proceeding.

PGE has not agreed to allow Waconda Solar to conduct an iSIS consistent with the Oregon interconnection rules. PGE has conditioned its agreement to Waconda Solar being able to conduct the iSIS upon, in effect, Waconda Solar dropping its request that PGE review the iSIS in a reasonable, nondiscriminatory manner consistent with Good Utility Practice and the contractual duty of good faith and fair dealing.⁶ Thus, if PGE will not agree to review Waconda Solar's iSIS under these standards that Waconda Solar argues are required by Commission rules and contractual duties, then PGE is preventing Waconda Solar from conducting the iSIS.

PGE suggests the issues Waconda Solar raises are advisory opinions which courts abstain from issuing.⁷ That is not the case. All the questions and issues raised in the declaratory ruling docket and this proceeding are directly related and relevant to the issue regarding whether PGE has actually allowed Waconda Solar to conduct an iSIS. Thus, the Commission should grant Waconda Solar's Motion to Stay.

⁶ PGE's Declaration of Rebecca Dodd in Support of PGE's Modified Second Motion for Summary Judgment, Exhibit 7 at 2-3 (Sept. 15, 2021).

⁷ PGE's Motion for Leave to File Sur-Reply and Sur-Reply at 8 (Oct. 26, 2021).

D. PGE Has Clearly Stated its Position on Which Standards of Review Do Not Apply When It Reviews an Independent System Impact Study

PGE claims it “has never taken the position in this docket that ‘Oregon rules’ do not apply to the iSIS process.”⁸ That is incorrect as PGE has taken a position on this issue, and PGE has specifically stated that the most relevant administrative rules do not apply.

At first PGE refused to state what standards of review applied when PGE reviews an iSIS.⁹ PGE finally admitted that it believes the declaratory ruling “seeks to expand the utility’s existing obligation under [OAR 860-082-0060(7)(h)]–to ‘evaluate and address’ alternative findings in an applicant’s iSIS–to also *require the utility to do so reasonably, in a non-discriminatory manner, consistent with the utility’s contractual duty of good faith and fair dealing, and consistent with Good Utility Practice.*”¹⁰

Here, PGE is essentially stating PGE’s review of an iSIS does need to be in a reasonable, non-discriminatory manner, consistent with Good Utility Practice and the utility’s contractual duty of good faith and fair dealing. PGE has only said it will “comply with its obligation under OAR 860-082-0060(7)(h) to ‘evaluate and address’ any alternative findings in the iSIS.”¹¹ Therefore, PGE’s legal position is that its review

⁸ PGE’s Motion for Leave to File Sur-Reply and Sur-Reply at 9 (Oct. 26, 2021).

⁹ PGE’s Declaration of Rebecca Dodd in Support of PGE’s Modified Second Motion for Summary Judgment, Exhibit 3 at 8 (Sept. 15, 2021).

¹⁰ PGE’s Response to Waconda Solar’s Motion to Stay at 2 (Oct. 12, 2021) (emphasis added).

¹¹ PGE’s Response to Waconda Solar’s Motion to Stay at 12 (Oct. 12, 2021).

of the Waconda Solar iSIS can essentially be cursory and to throw it in the trash because Waconda Solar will have no recourse if PGE decides to do so.

Waconda Solar disagrees with PGE regarding the standards of review that apply when reviewing an iSIS. Thus, that issue is relevant to this proceeding and the Commission should grant the Motion to Stay because the declaratory ruling docket is a more appropriate venue to resolve these issues.

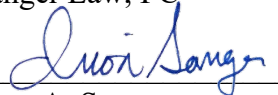
III. CONCLUSION

For all the reasons herein, Waconda Solar requests that the Commission either: 1) stay this proceeding until three weeks after the Commission issues a final order on the Petition for Declaratory Ruling; or, in the alternative, 2) extend the filing deadline for Waconda Solar's response to PGE's Second Modified Motion for Summary Judgment until three weeks after the date of the ruling on this motion.

Dated this 29th day of October 2021.

Respectfully submitted,

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