

September 15, 2021

Via Electronic Filing

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

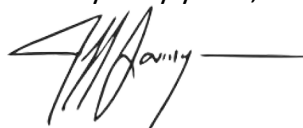
Re: UM 1971 - Waconda Solar, LLC v. Portland General Electric Company

Attention Filing Center:

Enclosed for filing today in the above-named docket is Declaration of Rebecca Dodd in Support of Portland General Electric Company's Modified Second Motion for Summary Judgment.

Thank you for your assistance.

Very truly yours,


Jeffrey S. Lovinger

Attachment
1189998

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
UM 1971**

WACONDA SOLAR, LLC,

Complainant,

vs.

PORTLAND GENERAL ELECTRIC
COMPANY,

Defendant.

**DECLARATION OF REBECCA
DODD IN SUPPORT OF
PORTLAND GENERAL
ELECTRIC COMPANY'S
MODIFIED SECOND MOTION
FOR SUMMARY JUDGMENT**

I, Rebecca Dodd, declare:

1. I am a paralegal for defendant, Portland General Electric Company ("PGE"), and I make this declaration in support of PGE's Modified Second Motion for Summary Judgment. The following statements are true and correct and, if called upon, I could competently testify to the facts averred herein.
2. Attached as **Exhibit 1** is a true and accurate copy of the June 23, 2021, letter from PGE to Waconda Solar, LLC ("Waconda").
3. Attached as **Exhibit 2** is a true and accurate copy of the July 8, 2021, letter from Waconda to PGE.
4. Attached as **Exhibit 3** is a true and accurate copy of the July 30, 2021, letter from PGE to Waconda.
5. Attached as **Exhibit 4** is a true and accurate copy of the August 9, 2021, letter from Waconda to PGE.
6. Attached as **Exhibit 5** is a true and accurate copy of the August 20, 2021, letter from PGE to Waconda.
7. Attached as **Exhibit 6** is a true and accurate copy of the August 25, 2021, letter from Waconda to PGE.

8. Attached as **Exhibit 7** is a true and accurate copy of the September 14, 2021, letter from PGE to Waconda.

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence and is subject to penalty for perjury.

DATED this 15th day of September, 2021.

Rebecca Dodd

Rebecca Dodd

1188307

EXHIBIT 1

June 23, 2021

Via Email Only (irion@sanger-law.com)

Irion A. Sanger
Sanger Law, PC
1041 SE 58th Place
Portland, OR 97215

**Re: Waconda Solar, LLC v. Portland General Electric Company
Public Utility Commission of Oregon Docket No. UM 1971**

Dear Irion:

Waconda Solar LLC ("Waconda") has applied to interconnect a proposed 2.25-megawatt solar generator to Portland General Electric Company's ("PGE") Waconda-13 feeder in Marion County, Oregon. That application has been assigned to queue position SPQ0172.

On August 24, 2018, Waconda asked PGE to agree that Waconda could hire a third-party consultant to conduct the remaining interconnection studies (the System Impact Study and the Facility Study) consistent with OAR 860-082-0060(9). In the same letter, Waconda asked PGE "to provide the system configuration" so that Waconda's independent consultant could complete an independent system impact study ("iSIS"). On September 7, 2018, PGE responded that it denied Waconda's request that PGE agree Waconda could hire a third-party consultant to complete the System Impact Study and the Facility Study per OAR 860-082-0060(9).

PGE has not refused to provide Waconda with information or access necessary to allow Waconda to conduct an iSIS. PGE has repeatedly indicated that it is willing to provide Waconda with system information and system access necessary to allow Waconda to conduct an iSIS, if Waconda identifies the specific information it seeks to conduct an

iSIS, and if Waconda enters into an appropriate confidentiality agreement to protect PGE's confidential or proprietary information.¹

Waconda has not yet indicated to PGE whether it actually wants to conduct an iSIS or whether it seeks a confidentiality agreement to protect PGE's confidential or proprietary information needed by Waconda to conduct an iSIS. Since at least 2019, counsel for PGE has repeatedly asked counsel for Waconda whether Waconda seeks to conduct an iSIS and counsel for Waconda has responded that Waconda has not determined whether it will actually conduct an iSIS. As recently as last week, on June 15, 2021, I inquired whether Waconda actually wants to conduct an iSIS and you indicated that you did not know and would have to discuss the question with Waconda.

PGE requests that Waconda inform PGE in writing by July 7, 2021: (1) whether Waconda wants to conduct an iSIS during the summer of 2021; (2) whether Waconda seeks system information and system access from PGE to facilitate Waconda performing an iSIS during the summer of 2021, and if so, what information and access Waconda seeks; and (3) whether Waconda is willing to enter into a confidentiality agreement to protect PGE's confidential or proprietary information needed by Waconda to allow Waconda to conduct an iSIS during the summer of 2021.

PGE remains willing to provide reasonable system information and reasonable system access subject to an appropriate confidentiality agreement and an appropriate site access agreement to facilitate Waconda's conduct of an iSIS. PGE does not release or waive any of its defenses in Docket No. UM 1971. By asking Waconda to provide PGE with a written response as to whether Waconda wants to conduct an iSIS this summer, PGE is not suggesting or in any way warranting that Waconda has sufficient time to conduct an iSIS, complete the interconnection process,² and to achieve commercial

¹ See e.g., *Waconda Solar LLC v. Portland Gen. Elec. Co.*, Docket No. UM 1971, PGE's Second Motion for Summary Judgment at 31 (Aug. 20, 2019) ("If Waconda requests specific information from PGE for the identified purpose of conducting an independent system impact study, then PGE is willing to work in good-faith to provide Waconda with appropriate information subject to reasonable limits regarding relevance, breadth, burden of production, and provided that any sensitive or confidential commercial or system information can be and is protected through appropriate confidentiality agreement or protective order."); April 13, 2021, email from Jeff Lovinger to Irion Sanger ("As previously stated, PGE remains ready to provide Waconda Solar with information to allow it to conduct an independent system impact study (iSIS) if Waconda seeks to conduct an iSIS.").

² Completing the interconnection process after an iSIS will involve multiple steps, including without limitation: (i) obtaining a PGE evaluation of the iSIS; (ii) entering into a facilities study agreement; (iii) obtaining a PGE facilities study; (iv) entering into an interconnection agreement; (v) completing the milestones under the IA; and (vi) obtaining an in-service interconnection.

Irion A. Sanger
June 23, 2021
Page 3

operation before the end of the cure period identified in PGE's February 9, 2021, notice of default. I have enclosed a copy of the notice of default for your reference. PGE reserves the right to terminate the Waconda PPA (as detailed in the notice of default) if the default is not cured by February 9, 2022.

Very truly yours,

A handwritten signature in black ink, appearing to read "J. Lovinger", followed by a horizontal line.

Jeffrey S. Lovinger

Enclosure: February 9, 2021, Notice of Default
cc: Donald J. Light, PGE Assistant General Counsel (donald.light@pgn.com)
Kristin Ingram, PGE Assistant General Counsel (kristin.ingram@pgn.com)

1156516

EXHIBIT 2

Via Electronic Mail

July 8, 2021

Jeffrey S. Lovinger
Markowitz Herbold, PC
1211 SW Fifth Avenue, Suite 3000
Portland OR 97204

**Re: Waconda Solar v. Portland General Electric Co.
Waconda Solar iSIS
Docket No. UM 1971**

Dear Mr. Lovinger,

I am sending this letter on behalf of my client Waconda Solar, LLC (“Waconda Solar”) in response to your June 23, 2021 letter (“PGE Letter”) requesting that Waconda Solar answer specific questions regarding Waconda Solar’s request to perform an independent System Impact Study (“iSIS”). Waconda Solar continues to wish to have an iSIS conducted, but only if Portland General Electric Company (“PGE”) will comply with all relevant legal requirements. Waconda Solar is not willing to expend resources regarding an iSIS if PGE will not provide the information necessary to conduct the study, or review the study results in a reasonable manner consistent with Good Utility Practice consistent with Oregon law, rules and policies. Waconda Solar’s last settlement offer would provide Waconda Solar with the assurances it is seeking.

This first letter corrects mischaracterizations that PGE has repeated throughout this litigation, including those in your Letter. Next, the letter then reiterates Waconda Solar’s conditions for the performance of an iSIS.

Finally, your Letter did not address a number of matters raised in Waconda Solar’s complaint, two most important of which are Waconda Solar’s claims that PGE should have allowed Waconda Solar to perform the remaining interconnection studies and PGE should extend its commercial operation date. Waconda Solar requests that PGE state its position on the following two questions.

First, Waconda Solar requested that Waconda Solar be allowed to conduct the remaining interconnection studies in lieu of PGE, and asked the Oregon Public Utility Commission (the “Commission”) to find PGE in violation of its obligation to reasonably consider and consent to Waconda Solar’s request to hire a third-party consultant to complete its interconnection studies, including the System Impact Study. If the Commission makes such a finding, then Waconda Solar may ask a circuit court to require PGE to reimburse Waconda Solar for the costs of PGE’s System Impact Study, including treble damages and attorneys fees. Please let Waconda Solar know if PGE will refund the costs Waconda Solar paid PGE for the System Impact Study, and/or its attorneys fees.

Second, Waconda Solar has also the Commission to grant Waconda Solar an extension of its power purchase agreement commercial operation date to coincide with its actual interconnection in-service date. Please let Waconda Solar know if PGE will agree to extend the commercial operation date.

I. PGE Mischaracterizes PGE's Past Position on Whether Waconda Solar Could Conduct an iSIS

As preliminary matter, Waconda Solar believes it is necessary to respond to certain factual statements and assumptions in the June 23, 2021 letter. PGE is attempting to construct a narrative that Waconda Solar never asked for an iSIS, and that PGE has always been willing to allow Waconda Solar to conduct an iSIS. Waconda Solar understands that PGE is making these arguments to bolster its litigation position in UM 1971; however, Waconda Solar does not have confidence that PGE will reasonably evaluate any iSIS when PGE refuses to recognize basic historical facts regarding Waconda Solar's interconnection process.

The PGE Letter states: "On August 24, 2018, Waconda asked PGE to agree that Waconda could hire a third-party consultant to conduct the remaining interconnection studies (the System Impact Study and the Facility Study) consistent with OAR 860-082-0060(9)." The PGE Letter does not mention that Waconda Solar also requested that it be allowed an iSIS. On August 24, 2018, Waconda Solar also wrote to PGE: "Waconda Solar intends to seek an independent System Impact Study under OAR 860-082-0060(7)(h)."

The PGE Letter also states: "PGE has not refused to provide Waconda with information or access necessary to allow Waconda to conduct an iSIS." PGE's Second Motion for Summary Judgment makes an even more inaccurate statement: "since the August 2018 letter, Waconda has not requested any specific information for the identified purpose of conducting an independent system impact study. In short, Waconda has never made any serious effort to engage in an independent system impact study and has never identified any specific information or access that it seeks from PGE for the identified purpose of performing an independent system impact study."

Again this is inaccurate. On August 24, 2018, Waconda Solar requested that PGE provide system configuration data for the specified purpose of conducting an iSIS. In addition, Waconda Solar and PGE discussed and exchanged information as part of settlement discussions, which included specific information and was a serious effort to engage in an independent system impact study. For example, on January 29, 2019, Waconda Solar asked for information that would allow it to reproduce PGE's SIS and conduct an iSIS, including requests for detailed information.

Waconda Solar has little confidence that PGE will provide necessary information or reasonably review the results on any iSIS when PGE refuses to acknowledge that Waconda Solar has already requested one, and PGE refused to allow Waconda Solar to conduct its own iSIS. Waconda Solar requests that PGE correct the record to confirm that Waconda Solar has already requested an iSIS, and taken serious efforts to obtain information for the identified purpose of performing an iSIS.

II. Waconda Wants Information that Would Allow It to Conduct an iSIS that Would Be Reviewed in a Reasonable Manner Consistent with Good Utility Practice as Required by Oregon Law, Rules and Policies

PGE has asked Waconda to answer the question: “whether Waconda wants to conduct an iSIS during the summer of 2021”. Waconda Solar remains interested in having an iSIS conducted; however, it does not want the iSIS to be a waste of money and resources because PGE refuses to evaluate the study in a reasonable manner consistent with Good Utility Practices as required by Oregon law, rules and policies. Waconda Solar first requested an iSIS almost two years ago and discussed settlement for an iSIS process with PGE for about a year and half. Waconda Solar requests that PGE enter into a binding agreement that would provide Waconda Solar sufficient assurances that PGE’s evaluation will be consistent with the law. Waconda Solar’s last settlement offer would provide the assurances that Waconda Solar needs.

PGE has provided inconsistent and changing statements about Waconda Solar’s ability to perform an iSIS, and Waconda Solar is concerned that PGE will again change its position after Waconda Solar has invested significant resources in conducting a study. Waconda Solar previously requested information that would allow it to conduct an iSIS or review PGE’s SIS, and PGE provided inaccurate and insufficient information unsatisfactory to Waconda Solar.

PGE has also taken the position that Waconda Solar effectively has no legal remedy if PGE fails to perform adequate studies, fails to provide sufficient information, or changes its position. For example, PGE has stated that “PGE denies that there is a requirement under the applicable rules for a utility to provide information and access to facilitate an independent system impact study.”¹ PGE has also argued that: “PGE has no role in approving or agreeing that Waconda will hire a consultant to conduct an independent system impact study.”² PGE has also stated: “No part of the rule states that the utility must provide any specified information to the applicant or do so under any specified schedule. Simply put, Waconda has not identified any statute, rule, or order that PGE has allegedly violated by failing to provide Waconda with the information Waconda believes it is entitled to receive so that it can conduct an independent system impact study.”³

Waconda Solar disagrees, and requests that PGE agree that it is legally obligated under the current interconnection rules to provide information and access to facilitate an iSIS, and that it has a role in agreeing that Waconda Solar can hire a consultant to conduct an iSIS. As long as PGE retains the ability to unilaterally change its position and argue that Waconda Solar has no remedies if PGE changes its position or fails reasonably review an iSIS, then Waconda Solar is not willing to expend significant resources to conduct a meaningless study.

¹ PGE Answer to Amended Complaint at P. 144.

² PGE Second Motion for Summary Judgment at 20.

³ PGE Second Motion for Summary Judgment at 28.

Waconda Solar has made proposals in settlement discussions that would provide Waconda Solar with assurances that, if PGE changes its position, then Waconda Solar will have effective legal remedies prior to spending significant sums of money on an iSIS. Waconda Solar urges PGE to accept its last settlement offer.

III. Waconda Solar Has Sought and Seeks System Information and System Access

PGE has asked Waconda Solar to answer the question: “whether Waconda seeks system information and system access from PGE to facilitate Waconda performing an iSIS during the summer of 2021, and if so, what information and access Waconda seeks”. Waconda Solar has requested that PGE provide certain information to allow Waconda Solar to perform an iSIS in settlement discussions. In addition, Waconda Solar and PGE have discussed what types of information PGE should be required to provide, and discussed how Waconda Solar can gain system access to PGE. This information and these discussions were not completed. Waconda Solar is willing to review the information and discussions to date and make additional specific requests, but only after PGE provides sufficient assurances, as discussed earlier in this letter.

IV. Waconda Solar Is Willing to Enter into a Confidentiality Agreement

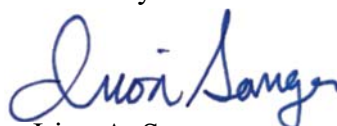
PGE has asked Waconda Solar to answer the question: “whether Waconda is willing to enter into a confidentiality agreement to protect PGE’s confidential or proprietary information needed by Waconda to allow Waconda to conduct an iSIS during the summer of 2021.” Waconda Solar is willing to enter into a confidentiality agreement. Waconda Solar has previously made settlement offers that would provide the framework for the type of confidentiality agreement that Waconda Solar would agree to. After additional discussions, both Waconda Solar and PGE agreed that any settlement would not need to include a confidentiality agreement. However, it appeared to Waconda Solar that PGE and Waconda Solar were likely to be able to reach agreement on appropriate treatment of confidential material. Waconda Solar is willing to review a proposed confidentiality agreement, but only after PGE provides sufficient assurances, as discussed earlier in this letter.

V. Conclusion

Waconda Solar is concerned that PGE’s purpose in sending its Letter is to bolster its litigation position because settlement negotiations have failed to reach a mutually agreed upon resolution. Waconda Solar urges PGE to reconsider its final settlement offer, which would provide Waconda Solar with sufficient assurances necessary to conduct an iSIS.

Please let me know if you have any questions or wish to discuss.

Sincerely



Irion A. Sanger

EXHIBIT 3

July 30, 2021

Via Email Only (irion@sanger-law.com)

Irion A. Sanger
Sanger Law, PC
1041 SE 58th Place
Portland, OR 97215

**Re: Waconda Solar, LLC v. Portland General Electric Company
Public Utility Commission of Oregon Docket No. UM 1971**

Dear Mr. Sanger:

This replies to your letter of July 8, 2021 (“July 8 Letter”). Your letter responded to my letter of June 23, 2021 (“June 23 Letter”). We exchanged these letters on behalf of my client Portland General Electric Company (“PGE”) and your client Waconda Solar, LLC (“Waconda”).

PGE’s June 23 Letter asked three questions.

PGE’s June 23 Letter stated that PGE has not refused to provide Waconda with information or access needed by Waconda to conduct an independent system impact study (“iSIS”) of the type referenced in OAR 860-082-0060(7)(h). PGE is willing to provide information and access needed to allow Waconda to conduct an iSIS, if Waconda identifies the information and access it seeks and enters into a confidentiality agreement to protect PGE’s information.

The June 23 Letter noted that Waconda had not indicated to PGE that it actually wants to conduct an iSIS. Since at least September 2019, counsel for PGE has repeatedly asked counsel for Waconda if Waconda seeks to conduct an iSIS, and counsel for Waconda has stated that Waconda has not determined whether it will conduct an iSIS.

Given these circumstances, PGE’s June 23 Letter asks Waconda to answer three questions. First, does Waconda want to conduct an iSIS in summer 2021? Second, does

Waconda seek information and access so that it can conduct an iSIS, and if so, what information and access does Waconda seek? Third, will Waconda enter into a confidentiality agreement?

Waconda's July 8 response is equivocal.

Waconda has provided a clear answer to only one of PGE's three questions. Waconda states it will enter into a confidentiality agreement. Waconda does not identify the system information or access it seeks. Waconda states it wants to conduct an iSIS but conditions its position on PGE agreeing to terms not found in OAR 860-082-0060(7)(h). Specifically, Waconda conditions its intent to conduct an iSIS on PGE agreeing to the terms in Waconda's last settlement offer.

Waconda also asks PGE to agree, under OAR 860-082-0060(9), that Waconda can conduct the remaining interconnection studies in lieu of PGE conducting those studies. Waconda asks PGE to agree to extend the commercial operation date ("COD") under Waconda's power purchase agreement ("PPA"). Finally, Waconda asserts that PGE has misrepresented its past position on whether Waconda can conduct an iSIS.

Based on Waconda's July 8 letter, PGE understands that Waconda will not be performing an independent system impact study.

PGE's June 23 letter asked Waconda: (1) whether Waconda actually wants to conduct an iSIS of the type referenced in OAR 860-082-0060(7)(h); (2) to identify the system information and access Waconda is seeking to facilitate that study; and (3) whether Waconda is willing to enter into a confidentiality agreement to protect any confidential or proprietary information it obtains from PGE.

Waconda's July 8 Letter fails to answer the first two questions. Three years into discussions, Waconda *still* will not state unequivocally that it intends to perform an iSIS as contemplated by OAR 860-082-0060(7)(h). Instead, Waconda's July 8 letter states that it is "interested in having an iSIS conducted" but only if PGE will "accept [Waconda's] last settlement offer."¹ Similarly, on the second question, Waconda's July 8 letter refused to make "specific requests" for system information and system access again demanding assurance that PGE will accept Waconda's last settlement offer.²

¹ July 8 Letter at 3-4.

² *Id.* at 4.

PGE rejected Waconda's last settlement offer and rejects it again. If Waconda's desire to conduct an iSIS is contingent on PGE accepting Waconda's last settlement offer, which PGE already rejected, then PGE understands that Waconda does not currently want to perform an iSIS.

PGE does not agree Waconda can hire a consultant to conduct the remaining interconnection studies in lieu of PGE.

The July 8 letter renews Waconda's request that PGE agree to allow Waconda to hire a third-party consultant to conduct the remaining interconnection studies under OAR 860-082-0060(9). PGE considered this request in September 2018 and stated it does not agree. PGE still does not agree.

In conducting interconnection studies under the Commission's small generator interconnection rules, PGE is evaluating the adverse impacts to PGE's system that are expected to arise from a proposed interconnection and PGE is determining what interconnection facilities and system upgrades PGE will need to install on its own system to mitigate the expected adverse impacts. PGE's view is that it is important for PGE, either directly or through its own consultants, to conduct this analysis of impacts and modifications to PGE's system.

As detailed in PGE's first and second motions for summary judgment, PGE's position is that OAR 860-082-0060(9) does not require the utility to agree to allow the applicant to hire consultants to conduct the utility's interconnection studies. In Order No. 19-218, the Commission held that under OAR 860-082-0060(8)(f) a utility is not required to agree that the interconnection applicant can hire a third-party consultant to construct needed interconnection facilities and system upgrades. The Commission held there is no "reasonableness standard" or other requirement controlling a utility's discretion not to agree.³ OAR 860-082-0060(9) has the same operative language as OAR 860-082-0060(8)(f).⁴ PGE's position, detailed in both its motions for summary judgment, is that OAR 860-082-0060(9) does not require PGE to agree that it will surrender its role in

³ See Order No. 19-218 at 25 ("We do not interpret OAR 860-082-0060(8)(f) as either requiring that PGE reasonably exercise its discretion to agree to, or indicating that we have authority to direct PGE to, hire a third-party consultant to complete Sandy River's interconnection facilities and system upgrades.").

⁴ OAR 860-082-0060(9) states: "A public utility and an applicant may agree in writing to allow the applicant to hire a third-party consultant to complete a feasibility study, system impact study, or facilities study, subject to public utility oversight and approval." OAR 860-082-0060(8)(f) states: "A public utility and an applicant may agree in writing to allow the applicant to hire a third-party consultant to complete the interconnection facilities and system upgrades, subject to public utility oversight and approval."

conducting interconnection studies for the same reasons that OAR 860-082-0060(8)(f) does not require a utility to agree to allow the applicant to hire consultants to construct the needed interconnection facilities and system upgrades.

PGE does not agree to extend the COD under Waconda's PPA.

Waconda's July 8 Letter asks whether PGE will agree to extend the COD under Waconda's PPA. Waconda entered into a PPA in June 2018 and "locked in" standard prices in effect on that date. Waconda agreed to achieve commercial operation by February 1, 2020 (earlier than required under the stipulation that allowed Waconda to select a COD up to 36 months after the PPA effective date). Waconda has failed to meet its February 1, 2020, COD. However, PGE refrained from issuing a notice of default until February 9, 2021. In that notice of default, PGE gave Waconda until February 9, 2022, to cure and PGE reserved the right to terminate the PPA if Waconda does not achieve COD by February 9, 2022. Given the terms of PGE's notice of default, PGE has already effectively extended Waconda's cure period by approximately 12 months. PGE is not willing to extend Waconda's cure period further or to agree to extend the COD. However, PGE remains willing to consider compromise proposals to settle Docket No. UM 1971; depending on the other terms of a settlement proposal, PGE would be willing to consider an extension of the COD cure period.

PGE has not mischaracterized its position on whether Waconda can conduct an iSIS.

Waconda states PGE is mischaracterizing its past position on whether Waconda can conduct an iSIS. Waconda further states that PGE is attempting to "construct a narrative that Waconda never asked for an iSIS."⁵ Waconda is incorrect.

First, Waconda notes PGE's letter states: "On August 24, 2018, Waconda asked PGE to agree that Waconda could hire a third-party consultant to conduct the remaining interconnection studies (the System Impact Study and Facility Study) consistent with OAR 860-082-0060(9)." Waconda then *incorrectly* states that PGE's letter "does not mention that Waconda Solar also requested that it be allowed an iSIS."⁶ PGE's letter clearly states that Waconda's August 24, 2018, letter "asked PGE 'to provide the system configuration' so that Waconda's independent consultant could complete an

⁵ July 8 Letter at 2.

⁶ *Id.*

independent system impact study[.]”⁷ PGE has not “mischaracterized” the August 24, 2018, letter.

Second, Waconda notes that PGE’s letter states: “PGE has not refused to provide Waconda with information or access necessary to allow Waconda to conduct an iSIS.” Waconda also notes that PGE’s Second Motion for Summary Judgment states: “since the August 2018 letter, Waconda has not requested any specific information for the identified purpose of conducting an independent system impact study.”⁸ Waconda argues these statements are inaccurate for two reasons: (a) because Waconda requested system information for an iSIS on August 24, 2018; and (b) because Waconda and PGE “discussed and exchanged information as part of settlement discussions, which included specific information and was a serious [effort] to engage in an independent system impact study.”⁹

To begin with, Waconda’s August 24, 2018, letter made incompatible requests. It requested that PGE agree Waconda could hire a third-party to conduct the SIS and Facility Study in lieu of PGE conducting those studies. It also requested that PGE provide “the system configuration” so that Waconda’s consultant could complete an iSIS. If Waconda’s consultant conducts the SIS and Facility Study in lieu of PGE conducting those studies, then there is no purpose for an iSIS, which provides Waconda’s alternative findings to the studies conducted by the utility. PGE responded to Waconda’s August 24, 2018 request by stating that PGE did not agree Waconda could hire a third party to conduct the remaining studies in lieu of PGE conducting those studies. PGE’s response to Waconda’s August 24, 2018, letter did not address Waconda’s request for the “system configuration” and certainly did not state that PGE refused to provide Waconda with information or access necessary to allow Waconda to conduct an iSIS.

Next, as stated in PGE’s Second Motion for Summary Judgment, after Waconda’s August 24, 2018, letter, Waconda has not requested specific information for the identified purpose of conducting an iSIS. Waconda states that the parties “discussed and exchanged information as part of settlement discussions, which included specific information and was a serious [effort] to engage in an independent system impact study.”¹⁰ As an example, Waconda states “Waconda Solar asked for information that would allow it to reproduce PGE’s SIS and conduct an iSIS, including requests for

⁷ June 23 Letter at 1.

⁸ July 8 Letter at 2 (quoting PGE’s Second MSJ) (entire quote not included for brevity).

⁹ July 8 Letter at 2.

¹⁰ *Id.*

detailed information.”¹¹ Waconda is mischaracterizing the parties’ settlement discussions.

In late 2018 and early 2019, the parties had a series of settlement discussions and information exchanges. Waconda asked questions about PGE’s interconnection studies and requested certain information. Waconda did not state that it was seeking the information to conduct an iSIS. PGE answered Waconda’s questions and responded to the requests for information. PGE did not understand Waconda to be asking for information at that time so that Waconda could conduct an iSIS, and Waconda did not produce an iSIS based on the information exchanged. If Waconda was seeking information to conduct an iSIS, PGE provided it. However, the fact that Waconda did not produce an iSIS or request further information for the identified purpose of conducting an iSIS supports PGE’s understanding that Waconda was not seeking information for the purpose of conducting an iSIS.

These initial settlement discussions did not resolve the parties’ dispute and PGE filed a motion for summary judgment in July of 2019. Waconda then filed an amended complaint and PGE filed an amended answer. On August 20, 2019, PGE filed a second motion for summary judgment which replaced the first motion for summary judgment.

In mid-September 2019, the parties discussed reengaging in settlement negotiations. Counsel for PGE (Donald Light and me) asked counsel for Waconda (Mark Thompson) what Waconda really wanted out of the case and whether Waconda wanted to conduct an iSIS. Our understanding is that Mr. Thompson discussed the question with Waconda and that Waconda had not decided whether it would conduct an iSIS. As a result, the parties decided to pursue a settlement involving negotiation of a generally applicable iSIS process that PGE would post to its website and that any small generator interconnection applicant could use. It was clearly understood by PGE and Waconda that the parties were not negotiating the terms of a Waconda-specific iSIS; rather, they were negotiating a generic process for used by any small generator interconnection applicant that sought to conduct an iSIS of the type referenced in OAR 860-082-0060(7)(h). During these settlement negotiations, PGE’s counsel periodically inquired as to whether Waconda had reached a decision about whether it would conduct an iSIS and was repeatedly told by counsel for Waconda that Waconda had not decided whether it would conduct an iSIS.

I assume that you acknowledge that counsel for PGE asked, in September 2019 and periodically thereafter, whether Waconda wanted to conduct an iSIS and that you and

¹¹ *Id.*

Mr. Thompson responded that Waconda had not yet decided whether it would conduct an iSIS. If you deny these facts, please explain.

Most recently, in a June 15, 2021, telephone conversation between me, you and Mr. Light, I asked if Waconda had decided whether it wanted to conduct an iSIS and you indicated that you did not know and would have to discuss the question with Waconda. The purpose of PGE's June 23 Letter was to obtain the answer to this question (as well as to determine what system information and access Waconda seeks and whether Waconda will enter into a confidentiality agreement).

The second effort to settle this case ultimately failed. The parties had negotiated most of the terms of a generally applicable iSIS process but could not agree on terms governing the future modification of PGE's iSIS process. Waconda offered to accept PGE's proposal regarding modification if PGE agreed to pay Waconda a specified amount of money. PGE did not agree. PGE then proposed an entirely different approach to settlement and Waconda rejected PGE's proposal. It now appears the parties are returning to litigation and PGE is trying to determine whether Waconda wants to conduct an iSIS.

In sum, PGE has never indicated that it will not provide Waconda with reasonable information and access to facilitate an iSIS. To the contrary, PGE has stated it is willing to do so if Waconda actually wants to conduct an iSIS, if Waconda identifies the information and access it seeks, and if Waconda will enter into an appropriate confidentiality agreement and site access agreement to protect PGE's information and rights. During settlement negotiations in late 2018 and early 2019, PGE answered questions that Waconda had about PGE's interconnection studies and PGE provided information requested by Waconda. PGE did not understand Waconda to be seeking information for the purpose of conducting an iSIS, PGE provided the requested information, and Waconda did not produce an iSIS. After the parties filed further pleadings, they made a second effort at settlement. At the start of this effort in September 2019, PGE asked Waconda if it sought to conduct an iSIS and Waconda stated that it had not decided whether it would conduct an iSIS or not. PGE checked in periodically between September 2018 and June 2021 to ask if Waconda had determined whether it wanted to conduct an iSIS and was repeatedly told that Waconda had not decided. The purpose of PGE's June 23 Letter was to seek a firm decision from Waconda regarding whether it wants to conduct an iSIS. PGE has not mischaracterized its past position on whether Waconda can perform an iSIS and has not refused to cooperate with Waconda to facilitate an iSIS if Waconda ever decides that it wants to conduct an iSIS consistent with OAR 860-082-0060(7)(h).

Despite Waconda's delay and equivocation, PGE remains willing to evaluate and respond to an iSIS from Waconda.

As discussed above, Waconda's July 8 Letter suggests it is no longer interested in pursuing an iSIS as contemplated by the Commission's rules, and instead will only conduct an iSIS if PGE agrees to accept a settlement offer PGE has already rejected. Despite this, PGE asks again whether Waconda is interested in pursuing an iSIS as contemplated by the rules, without additional conditions or demands. PGE notes that it has recently posted to its OASIS website an independent system impact study process that PGE is making available to small generator interconnection applicants. PGE suggests that Waconda review PGE's posted process.

Despite Waconda's misstatements to the contrary, PGE has always been prepared to "evaluate and respond" to an independent system impact study as required by OAR 860-082-0060(7)(h) and PGE has never refused to do so. Further, PGE has stated, in writing, since at least July 23, 2019, that it is willing to work with Waconda to provide the system information Waconda needs to conduct an iSIS. PGE remains willing to work with Waconda to provide the system information Waconda needs to conduct an iSIS.

To move forward, PGE requests that Waconda reply to this letter within one week (i.e., by August 6, 2021) and state affirmatively, and without preconditions, that it intends to perform an iSIS. PGE also requests that Waconda execute the enclosed non-disclosure agreement ("NDA") by that same date. Finally, PGE requests that Waconda identify the information and access it believes is reasonably necessary for it to perform the iSIS. For the avoidance of doubt, PGE reserves all rights and remedies available to it, including the right to contest whether any information or access sought by Waconda is in fact reasonably necessary for the completion of the iSIS.

Conclusion

For the reasons discussed above, PGE considers Waconda's July 8 letter to be an indication that Waconda does not want to conduct an iSIS. However, if Waconda wants to conduct an iSIS consistent with OAR 860-082-0060(7)(h), then PGE requests that Waconda execute the enclosed NDA and return it to PGE by August 6, 2021, and that Waconda state what specific information and access it seeks so that it can conduct an iSIS. If Waconda does not sign the NDA and indicate what information and access it seeks by August 6, 2021, PGE will consider Waconda to have indicated that it does not seek to conduct an iSIS.

Irion A. Sanger
July 30, 2021
Page 9

Please let me know if you have any questions or would like to discuss.

Sincerely,



Jeffrey S. Lovinger

Enclosure: Executable Non-Disclosure Agreement
cc: Donald J. Light, PGE Assistant General Counsel (donald.light@pgn.com)
Kristin Ingram, PGE Assistant General Counsel (kristin.ingram@pgn.com)

NON-DISCLOSURE AGREEMENT

THIS NON-DISCLOSURE AGREEMENT ("Agreement") effective as of _____, 20__ (the "Effective Date") is entered into by and between PORTLAND GENERAL ELECTRIC COMPANY ("PGE" or "Disclosing Party") an Oregon Corporation having its principal place of business at 121 SW Salmon Street, Portland, Oregon, 97204, and Waconda Solar, LLC, ("Recipient"), having its principal place of business at 7455 SW Bridgeport Road, Suite 200, Portland OR 97224. Throughout this Agreement PGE and Recipient may individually be referred to as a "Party" and collectively as "the Parties."

WHEREAS, Recipient, a small generator interconnection applicant, has requested and PGE has agreed to provide certain PGE confidential and sensitive information for the sole purpose of conducting an independent System Impact Study for the purposes of interconnection in Oregon ("Purpose"); and

NOW THEREFORE, in consideration of and as a condition for PGE furnishing the Confidential Information (as defined below), Recipient agrees to the following:

1. Definitions.

- a. Critical Energy/Electric Infrastructure Information ("CEII"): The terms "Critical Energy Infrastructure Information" or "CEII," as used herein, mean all non-public, confidential transmission and distribution system operations and planning information disclosed by PGE to the Recipient on or after the Effective Date, whether disclosed orally or in written electronic or other form or media, and whether or not marked, designated or otherwise identified as "Critical Energy Infrastructure Information," which may include:
 - i. specific engineering, vulnerability, or detailed design information about proposed or existing infrastructure that: (i) relates details about the production, generation, transportation, transmission, or distribution of energy; (ii) could be useful to a person in planning an attack on critical infrastructure; and (iii) does not simply give the general location of the critical infrastructure;
 - ii. all designs, specifications, documentation, components, models, images, icons, audiovisual components and objects, schematics, drawings, and other visual depictions, in whole or in part, of any of the foregoing;
 - iii. any third-party confidential information included with, or incorporated in, any information provided by PGE to the Recipient; and
 - iv. all notes, analyses, compilations, reports, forecasts, studies, samples, data, statistics, summaries, interpretations and other materials (the "Notes") prepared by or for the Recipient that contain, are based on, or otherwise reflect or are derived from, in whole or in part, any of the foregoing.

CEII is always Confidential Information and is subject to more stringent requirements than other Confidential Information under this Agreement. CEII includes but is not necessarily limited to: transmission conductor details, transmission structure design details, planned or expected transmission outages critical to the power system, substation design details, control

center locations or design details, power plant facility design details, geographic coordinates more specific than line routes and natural gas line locations or design details.

- b. Confidential Information: Any oral or written information which is made available to Recipient by PGE or one of its Representatives in connection with the Purpose before or after the Effective Date of this Agreement, regardless of the manner in which such information is furnished. Confidential Information also includes the following: all data, materials, products, compilations, evaluations, analyses or other information developed or prepared by Recipient using Confidential Information. Confidential Information includes CEII.

Notwithstanding anything in this Agreement to the contrary, the term "Confidential Information" does not include any information which (provided):

- i. at the time of disclosure by PGE, or thereafter, is generally available to and known by the public (other than as a result of a disclosure made directly or indirectly by Recipient),
- ii. was available to Recipient on a non-confidential basis from a source other than PGE (provided that such source is not or was not bound by a confidentiality agreement with PGE or had any other duty of confidentiality to PGE known to the Recipient), or
- iii. is already known to the Recipient or has been independently acquired or developed by Recipient without violating any of such Recipient's obligations under this Agreement.

The (i)-(iii) exclusions do not apply to CEII.

- c. Representative: A Party's officers, employees, partners, consultants, agents, or associates. If the Recipient is an individual, he or she has no Representatives.

2. Recipient Obligations. The Recipient shall:

- a. protect and safeguard the confidentiality of all such Confidential Information with at least the same degree of care as the Recipient would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care;
- b. not use the Disclosing Party's Confidential Information, or permit it to be accessed or used, for any purpose other than the Purpose;
- c. not disclose any such Confidential Information to any person or entity, except to the Recipient's Representatives who:
 - i. need to know the Confidential Information to assist the Recipient, or act on its behalf, in relation to the Purpose or to exercise its rights under the Agreement;
 - ii. are informed by the Recipient of the confidential nature of the Confidential Information; and
 - iii. are subject to confidentiality duties or obligations to the Recipient that are no less restrictive than the terms and conditions of this Agreement;

- d. immediately notify the Disclosing Party of any unauthorized disclosure of Confidential Information or other breaches of this Agreement by the Recipient or its Representatives of which the Recipient has knowledge;
 - e. fully cooperate with the Disclosing Party in any effort undertaken by the Disclosing Party to enforce its rights related to any such unauthorized disclosure;
 - f. be responsible for any breach of this Agreement caused by any of its Representatives; and
 - g. with respect to CEII, in addition to the foregoing, Recipient shall not, without PGE's express knowledge and written consent: (i) divulge, disclose or communicate any CEII to a third party, or (ii) use CEII in any manner to the detriment of PGE. CEII must be protected at all times and held in strictest confidence.
3. Additional Confidentiality Obligations. Except as otherwise permitted by this Agreement or required by applicable federal, state or local law or regulation, the Recipient shall not, nor permit any of its Representatives to, disclose to any person or third party:
- a. that the Confidential Information has been made available to the Recipient or its Representatives, or that it has inspected any portion of the Confidential Information;
 - b. that discussions or negotiations may be, or are, underway between the Parties regarding the Confidential Information or the Purpose, including the status thereof; or
 - c. any terms, conditions or other arrangements that are being discussed or negotiated in relation to the Confidential Information or the Purpose.
4. Security. Recipient will maintain and comply with administrative, technical and physical safeguards that are designed to protect the security and integrity of the Confidential Information, including in connection with any transfer, communication, remote access or storage of the Confidential Information as permitted or required under this Agreement.
5. Required Disclosure. Any disclosure by the Recipient or its Representatives of any of the Disclosing Party's Confidential Information pursuant to applicable federal, state or local law, regulation or a valid order or other legally supported data request issued by a court or governmental agency of competent jurisdiction (a "**Legal Order**") shall be subject to the terms of this Section 5 (Required Disclosure). Prior to making any such disclosure, the Recipient shall provide the Disclosing Party with:
- a. to the extent reasonably possible and not prohibited by law, prompt written notice of such requirement so that the Disclosing Party may seek, at its sole cost and expense, a protective order or other remedy; and
 - b. reasonable assistance, at the Disclosing Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure.

If, after providing such notice and assistance as required herein, the Recipient remains subject to a Legal Order to disclose any Confidential Information, the Recipient (or its Representatives or other persons to whom such Legal Order is directed) shall disclose no more than that portion of the Confidential Information which, such Legal Order specifically requires the Recipient to disclose. Recipient shall not be in breach of this Agreement or liable to Disclosing Party for any disclosure made pursuant to this Section 5 (Required Disclosure).

6. Return or Destruction of Confidential Information. At any time during or after the term of this Agreement, at the Disclosing Party's written request, the Recipient and its Representatives shall promptly return to the Disclosing Party all copies, whether in written, electronic or other form or media, of the Disclosing Party's Confidential Information, or destroy all such copies and certify in writing to the Disclosing Party that such Confidential Information has been destroyed; provided, however, that the Recipient may keep copies of the Confidential Information for legal compliance, systematic backup or archival purposes, and will hold such copies subject to the terms of this Agreement. In addition, the Recipient shall also destroy all copies of any Notes created by the Recipient or its Representatives and certify in writing to the Disclosing Party that such copies have been destroyed; provided, however, that Recipient may keep copies of the Notes for legal compliance, systematic backup or archival purposes, and will hold such copies subject to the terms of this Agreement.

Notwithstanding the foregoing, Recipient must promptly return all CEII, including all material derived from CEII by Recipient, and all copies, extracts, and other objects or items in which CEII may be contained or embedded, to PGE upon completion of the Purpose, or upon a request. CEII may not be retained in any manner or form after completion of the Purpose or after PGE requests its return.

7. Term and Termination. The term of this Agreement shall commence on the Effective Date and shall expire for one (1) year from the Effective Date; provided however such termination shall not affect any obligation with respect to Confidential Information received by Recipient prior to such termination, which obligation shall continue for a period of three (3) years from the effective date of expiration or termination of this Agreement. Notwithstanding the foregoing, any obligations under this Agreement with respect to CEII shall continue into perpetuity.
8. Indemnification. The Recipient shall defend, indemnify and hold harmless the Disclosing Party, its affiliates and their respective shareholders, officers, directors, employees, agents, successors and permitted assigns from and against all losses, damages, liabilities, deficiencies, actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees, in connection with any third party claim, suit, action or proceeding arising out of or resulting from a breach of any representation, warranty or obligation set forth in this Agreement by the Recipient or any of its Representatives.
9. No Representations or Warranties. Neither the Disclosing Party nor any of its Representatives make any representation or warranty, expressed or implied, as to the accuracy or completeness of the Confidential Information disclosed to the Recipient hereunder. Neither the Disclosing Party nor any of its Representatives shall be liable to the Recipient or any of its Representatives relating

to or resulting from the Recipient's use of any of the Confidential Information or any errors therein or omissions therefrom.

10. No Transfer of Rights, Title or Interest. The Disclosing Party hereby retains its entire right, title and interest, including all intellectual property rights, in and to all of its Confidential Information. Any disclosure of such Confidential Information hereunder shall not be construed as an assignment, grant, option, license or other transfer of any such right, title or interest whatsoever to the Recipient or any of its Representatives.
11. No Other Obligation. The Parties agree that:
- a. this Agreement does not require or compel the Disclosing Party to disclose any Confidential Information to the Recipient;
 - b. neither Party shall be under any legal obligation of any kind whatsoever, or otherwise be obligated to enter into any business or contractual relationship, investment, or transaction, by virtue of this Agreement, except for the matters specifically agreed to herein;
 - c. either Party may at any time, at its sole discretion with or without cause, terminate discussions and negotiations with the other Party, in connection with the Purpose or otherwise and may pursue a similar purpose without the involvement of, or liability to, the other party; and
 - d. unless or until the Parties enter into a written definitive agreement, no business or contractual relationship, investment, or transaction is created or otherwise established by virtue of disclosing or receiving Confidential Information under this Agreement.
12. Remedies. The Recipient acknowledges and agrees that money damages will not be a sufficient remedy for any breach or threatened breach of this Agreement by the Recipient or its Representatives. Therefore, in addition to all other remedies available at law (which neither Party waives by the exercise of any rights hereunder), the Disclosing Party shall be entitled to seek specific performance and injunctive and other equitable relief as a remedy for any such breach or threatened breach, and the Recipient hereby waives any requirement for the securing or posting of any bond or the showing of actual monetary damages in connection with such claim.
13. Governing Law, Jurisdiction and Venue. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Oregon without giving effect to any choice or conflict of law provision or rule (whether of the State of Oregon or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the State of Oregon. Any legal suit, action or proceeding arising out of or related to this Agreement or the matters contemplated hereunder shall be instituted exclusively in the federal courts of the United States or the courts of the State of Oregon in each case located in the city of Portland and County of Multnomah, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding and waives any objection based on improper venue or *forum non conveniens*. Service of process, summons, notice or other document by mail to such Party's

address set forth herein shall be effective service of process for any suit, action or other proceeding brought in any such court.

14. Attorney Fees. In the event that any party institutes any legal suit, action or proceeding, against the other party to enforce the covenants contained in this Agreement, the prevailing party in the suit, action or proceeding shall be entitled to receive in addition to all other damages to which it may be entitled, the costs incurred by such party in conducting the suit, action or proceeding, including reasonable and actual attorneys' fees and expenses and court costs.
15. Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the Recipient, and on the next business day if sent after normal business hours of the Recipient; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the addresses set forth on the first page of this Agreement (or to such other address that may be designated by a Party from time to time in accordance with this Section).
16. Entire Agreement. This Agreement constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each Party hereto.
17. Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.
18. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.
19. Assignment. The Recipient may assign any of its rights hereunder without the prior written consent of the Disclosing Party. Any purported assignment in violation of this Section shall be null and void. No assignment shall relieve the assigning Party of any of its obligations hereunder. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

20. Waivers. No waiver by the Disclosing Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Disclosing Party. No waiver by any Party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement as of the date first written above.

PORTLAND GENERAL ELECTRIC COMPANY (“PGE”)

By: _____

Title: _____

Date: _____

WACONDA SOLAR, LLC (“Recipient”)

By: _____

Title: _____

Date: _____

EXHIBIT 4

Via Electronic Mail

August 9, 2021

Jeffrey S. Lovinger
Markowitz Herbold, PC
1211 SW Fifth Avenue, Suite 3000
Portland OR 97204

**Re: Waconda Solar v. Portland General Electric Co.
Waconda Solar iSIS
Docket No. UM 1971**

Dear Mr. Lovinger,

I am sending this letter on behalf of my client Waconda Solar, LLC (“Waconda Solar”) in response to your July 30, 2021 letter (“PGE Letter”) and non-disclosure agreement. Waconda Solar is only providing this brief response letter, and Portland General Electric Company (“PGE”) should not take the lack a response as agreement to any of the statements in the PGE Letter. This letter simply repeats that Waconda Solar is not being unequivocal: Waconda Solar has requested and is continuing to request to be allowed to perform an independent System Impact Study (“iSIS”). Waconda Solar requests that PGE provide assurances to Waconda Solar that PGE will comply with all relevant legal requirements, and Waconda Solar is not willing to expend resources regarding an iSIS if PGE will not provide the information necessary to conduct the study, or review the study results in a reasonable manner consistent with Good Utility Practice and with Oregon law, rules and policies. Waconda Solar’s last settlement offer would provide Waconda Solar with the assurances it is seeking.

Sincerely



Irion A. Sanger

EXHIBIT 5

August 20, 2021

Via Email Only (irion@sanger-law.com)

Irion A. Sanger
Sanger Law, PC
1041 SE 58th Place
Portland, OR 97215

**Re: Waconda Solar, LLC v. Portland General Electric Company
Public Utility Commission of Oregon Docket No. UM 1971**

Dear Mr. Sanger:

This replies to your letter of August 9, 2021 (“August 9 Letter”). Your August 9 Letter responded to my letter of July 30, 2021 (“July 30 Letter”). We exchanged these letters on behalf of my client Portland General Electric Company (“PGE”) and your client Waconda Solar, LLC (“Waconda”).

The August 9 Letter states that Waconda seeks to conduct an independent System Impact Study (“iSIS”). PGE has repeatedly stated it is willing to provide Waconda with reasonable system information and reasonable system access as needed to conduct an iSIS. In addition, PGE has repeatedly indicated that Waconda must execute a confidentiality agreement before PGE can provide Waconda with PGE’s non-public system information. Enclosed with the July 30 Letter, PGE provided Waconda with an executable Non-Disclosure Agreement (“NDA”) for this purpose. PGE asked Waconda to execute the NDA and to return it to PGE by August 6, 2021, if Waconda seeks to conduct an iSIS. Waconda has not done so.

PGE’s July 30 Letter asked Waconda to identify the specific information Waconda seeks from PGE. The July 30 Letter also informed Waconda that PGE recently posted an iSIS process to PGE’s OASIS website. PGE’s iSIS process states that after an interconnection applicant provides written notice of intent to conduct an iSIS and executes an NDA, PGE will counter-sign the NDA and provide the applicant with PGE’s “Standard System

Information.” The specific information included in PGE’s Standard System Information is detailed in PGE’s posted iSIS process.¹

Waconda’s August 9 Letter states Waconda is unequivocally requesting “to be allowed to perform an [iSIS].” But Waconda continues to condition its performance of an iSIS on PGE agreeing to standards not found in the Commission’s small generator interconnection rules. In addition, Waconda has not executed the proffered NDA or provided any feedback on that agreement. As a result, PGE concludes that Waconda does not currently seek information from PGE to conduct an iSIS of the type referenced in OAR 860-082-0060(7)(h). If Waconda seeks information from PGE so that it can conduct an iSIS, Waconda should provide PGE with a partially executed copy of the NDA and indicate that Waconda intends to conduct an iSIS without conditioning Waconda’s notice of intent on PGE agreeing to standards not found in the Commission’s rules.

PGE remains willing to provide Waconda with reasonable system information and with reasonable system access so that Waconda can conduct an iSIS. If Waconda conducts an iSIS and provides the results to PGE, then PGE will evaluate and address the alternative findings of the iSIS consistent with applicable law and regulations. PGE requires that Waconda execute an NDA before PGE will provide PGE’s Standard System Information. If Waconda believes it needs system information beyond PGE’s Standard System Information, Waconda should specifically identify the additional information it seeks and explain why that information is required. If Waconda seeks system access to conduct an iSIS, Waconda should specifically identify the system access it seeks and explain why that access is needed.

Because Waconda has not returned an executed NDA, and because Waconda has conditioned its request to conduct an iSIS on PGE agreeing to standards not found in the Commission’s rule addressing iSIS, PGE has concluded: (1) Waconda does not currently seek information from PGE to allow Waconda to conduct an iSIS of the type referenced in OAR 860-082-0060(7)(h); and (2) PGE cannot provide Waconda with PGE’s Standard System Information.

The August 9 Letter states that Waconda’s “last settlement offer would provide Waconda Solar with the assurances it is seeking.” As you know, PGE is not willing to accept Waconda’s last settlement offer. This issue was addressed on page 7 of PGE’s

¹ PGE’s posted iSIS process can be found at:
http://www.oasis.oati.com/woa/docs/PGE/PGEdocs/PGE_Independent_System_Impact_Study_Process_07.21.2021.pdf.

Irion A. Sanger
August 20, 2021
Page 3

July 30 Letter. PGE and Waconda did not reach agreement on settlement terms. After the parties' settlement negotiations ended, and separate from those negotiations, PGE posted a PGE iSIS process to PGE's OASIS website. PGE's posted iSIS process is similar to, but not identical to, the iSIS process that PGE and Waconda discussed in their settlement negotiations.

PGE's position is that Waconda has unreasonably refused to move forward with a facility study agreement, has unreasonably refused to move forward with an iSIS, and is unreasonably stalling the interconnection process. PGE reserves its rights to take any appropriate action, including concluding that Waconda's interconnection application has already been withdrawn from the interconnection queue by operation of OAR 860-082-0060(8)(c) ("The applicant must execute the interconnection facilities study agreement within 15 business days after receipt of the agreement or the application is deemed withdrawn").

Please let me know if you have any questions or would like to discuss.

Sincerely,



Jeffrey S. Lovinger

cc: Donald J. Light, PGE Assistant General Counsel (donald.light@pgn.com)
Kristin Ingram, PGE Assistant General Counsel (kristin.ingram@pgn.com)

1175894

EXHIBIT 6

Via Electronic Mail

August 25, 2021

Jeffrey S. Lovinger
Markowitz Herbold, PC
1211 SW Fifth Avenue, Suite 3000
Portland OR 97204

**Re: Waconda Solar v. Portland General Electric Co.
Waconda Solar iSIS
Docket No. UM 1971**

Dear Mr. Lovinger,

I am sending this letter on behalf of my client Waconda Solar, LLC (“Waconda Solar”) in response to your August 20, 2021 letter (“PGE August Letter”). Waconda Solar is only providing this brief response letter, and Portland General Electric Company (“PGE”) should not take the lack of response on any point not discussed herein as agreement to any of the statements in the PGE Letter. This letter: 1) thanks PGE for providing more explicit confirmation that PGE’s position is that Waconda Solar has no legal right or effective remedy to if PGE does not review the iSIS in a reasonable and good faith manner consistent with Good Utility Practices; and 2) provides an illustrative example from the Waconda Solar interconnection process of PGE disregarding independent information provided by Waconda Solar that PGE claims was an “error” committed by PGE.

1. PGE’s Position Is that Waconda Solar Has No Legal Right to or Effective Remedy if PGE Does Not Review the iSIS in a Reasonable and Good Faith Manner Consistent with Good Utility Practice

Waconda Solar’s August 9, 2021 letter stated:

Waconda Solar has requested and is continuing to request to be allowed to perform an independent System Impact Study (“iSIS”). Waconda Solar requests that PGE provide assurances to Waconda Solar that PGE will comply with all relevant legal requirements, and Waconda Solar is not willing to expend resources regarding an iSIS if PGE will not provide the information necessary to conduct the study, or review the study results in a reasonable manner consistent with Good Utility Practice and with Oregon law, rules and policies. Waconda Solar’s last settlement offer would provide Waconda Solar with the assurances it is seeking.

The PGE August Letter responded to the last Waconda Solar letter stating, *inter alia*, that “Waconda has conditioned its request to conduct an iSIS on PGE agreeing to

Dodd Declaration

Exhibit 6

Page 1 of 3

standards not found in the Commission's rule addressing iSIS." Waconda Solar appreciates PGE's confirmation of its position, which perfectly encapsulates Waconda Solar's concerns. These are: 1) that PGE does not agree that it needs to review study results in a good faith and reasonable manner consistent with Good Utility Practice, and 2) that PGE does not agree that Waconda Solar has any effective remedy to challenge PGE's review.

Further, even if PGE was not obligated by law to act in a good faith and reasonable manner (which it is), PGE has refused to agree to do so. The PGE August Letter responded to the last Waconda Solar letter stating that "PGE's posted iSIS process is similar to, but not identical to, the iSIS process that PGE and Waconda discussed in their settlement negotiations." Waconda Solar strongly disagrees that the processes are similar. The iSIS process posted by PGE lacks the most important features requested by Waconda Solar, including any guarantee that PGE will review the study results in a good faith and reasonable manner and good faith consistent with Good Utility Practice and with Oregon law, rules and policies.

2. PGE Claims that It Committed an "Error" related to Kale Patch, After Waconda Solar Pointed Out the "Error" to PGE

Waconda Solar is simply unwilling to pay to have an iSIS performed if PGE's position is that Waconda Solar has no effective recourse to resolve disagreements. PGE has already unreasonably disregarded information provided by Waconda Solar, even though PGE admits that its actions resulted in "an error," as explained below. Waconda Solar does not have information to agree or disagree with PGE's assertion that its actions were an "error" but if PGE is correct that it was an "error," then PGE could only have made that "error" if it unreasonably disregarded and ignored independent information provided by Waconda Solar. Waconda Solar is not certain if another interconnection customer, PGE's ratepayers, or PGE's shareholders are responsible for the costs of PGE's "error." Waconda Solar is also not certain what the cost implications are for PGE's system or its interconnection process and studies.

PGE's "error" concerns its interconnection of Kale Patch, which occurred after Waconda Solar notified PGE of the "error." On July 12, 2018, Waconda Solar asked PGE questions about the Waconda Solar Feasibility Study via email. Waconda Solar pointed out that the Kale Patch project was going to backfeed and specifically asked "why did the Kale Patch project not require transfer trip?"¹ Again, on July 27, 2018, Waconda Solar pointed out that more than half the Feasibility Study was incorrect, and asked a number of additional questions, including "With Kale Patch, since it could back feed onto PGE's transmission system and they are not installing protection equipment, how is PGE's system protected if a fault were to occur?"² Therefore, PGE was made fully aware that Kale Patch would backfeed and that PGE's plans were to not install any protection equipment.

¹ PGE Answer, at Exhibit D at page 1 (November 1, 2018).

² PGE Answer, at Exhibit G at page 1 (November 1, 2018).

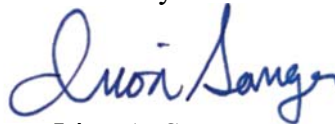
On August 10, 2021, PGE filed testimony on behalf of Kellie Cloud in a complaint by Zena Solar in Docket No. 2164. Ms. Cloud testified that:

When PGE conducted its system impact study for the Kale Patch interconnection, PGE made an error and failed to recognize that the addition of the project would cause aggregate generation on the feeder to exceed the daytime minimum load on the substation transformer. As a result of this error, PGE did not require a 3V0 protective scheme for the Kale Patch interconnection. PGE did not realize it had made this error until after the Kale Patch interconnection was completed and in service.³

Waconda Solar does not have information to agree or disagree that the failure to install additional protection was an “error,” but according to PGE’s witness, PGE made an “error.” Therefore, according to PGE, PGE ignored and disregarded information provided by Waconda Solar, and proceeded to make an “error” regarding the installation of protective equipment. Waconda Solar does not know how many interconnection studies replicated this “error.”

Waconda Solar notes that Ms. Cloud’s testimony stated that PGE made this error after the Kale Patch interconnection was completed and in service. Waconda Solar’s understanding from a July 27, 2018 email is that Kale Patch, SPQ0028 was not interconnected as of July 2018. Waconda Solar understands from other public documents that Kale Patch was put in service in October 2019.⁴ This means that Waconda Solar informed PGE of its “error” and PGE knew, or should have known, but disregarded the “error”, before the Kale Patch interconnection was completed and in service, contrary to Ms. Cloud’s testimony.

Sincerely



Irion A. Sanger

³ *Zena Solar LLC v. PGE*, Docket No. UM 2164, PGE/100, Cloud/36.

⁴ *Zena Solar LLC v. PGE*, Docket No. UM 2164, Zena Solar/100, Nelson/13.

EXHIBIT 7

September 14, 2021

Via Email Only (irion@sanger-law.com)

Irion A. Sanger
Sanger Law, PC
1041 SE 58th Place
Portland, OR 97215

**Re: Waconda Solar, LLC v. Portland General Electric Company
Public Utility Commission of Oregon Docket No. UM 1971**

Dear Mr. Sanger:

This replies to your letter of August 25, 2021, the latest in a series of letters we have exchanged on behalf of my client Portland General Electric Company (“PGE”) and your client Waconda Solar, LLC (“Waconda”).¹ PGE is providing a response to certain assertions in Waconda’s August 25 letter, and Waconda should not take the lack of response on any point not discussed in this letter as agreement with any of the statements in Waconda’s letter.²

This letter clarifies that PGE does not take the position that Waconda has no rights or remedies regarding PGE’s evaluation of the alternative findings in an independent system impact study.

This letter also clarifies that PGE did not disregard information provided by Waconda in July 2018 regarding the interconnection of the Kale Patch Solar project.

¹ Our exchange of letter consists of my letter of June 23, 2021, your response of July 8, 2021, my reply of July 30, 2021, your response of August 9, 2021, my reply of August 20, 2021, and your response of August 25, 2021.

² In addition, Waconda should not take the lack of response on any point raised in Waconda’s letters of July 8, 2021, or August 9, 2021, as agreement with any of the points made by Waconda in those letters.

- 1. PGE's position is that if a small generator interconnection applicant provides an independent system impact study to PGE, then PGE will evaluate and address any alternative findings from that study, and if PGE's evaluation is inconsistent with the Commission's requirements, the applicant may seek a remedy as authorized by rule and statute.**

PGE does not take the position that Waconda has no legal right or effective remedy to challenge PGE's evaluation of any alternative findings in an independent system impact study ("iSIS"). As explained in prior PGE letters, if Waconda returns an executed non-disclosure agreement to PGE, then PGE will provide Waconda with Standard System Information.³ If Waconda then conducts an iSIS and provides the iSIS to PGE, PGE will "evaluate and address any alternative findings from that study", as required by OAR 860-082-0060(7)(h). If Waconda believes that PGE's evaluation of any alternative findings from a Waconda iSIS are inconsistent with PGE's responsibilities under the Commission's small generator interconnection rules, then Waconda can challenge PGE's evaluation as permitted by Commission rule and statute.

As part of a comprehensive settlement of Waconda's complaint in Docket No. UM 1971, PGE and Waconda attempted to negotiate a mutually agreed iSIS process that would be available to all small generator interconnection applicants. The process under discussion in settlement negotiations included specific review standards and an associated definition of "Good Utility Practice." However, PGE and Waconda were not able to agree to the terms of a comprehensive settlement and did not agree to the terms of an iSIS process.

In its prior letters, Waconda has stated that it is not willing to conduct an iSIS if PGE will not agree that its evaluation of alternative findings in the iSIS will be conducted consistent with certain standards of review, including "reasonableness", "good faith", and "Good Utility Practice."⁴ But none of these standards of review are stated, or

³ As explained in a prior letter, PGE has posted an iSIS process to PGE's OASIS website. Under that process, PGE has described "Standard System Information" that PGE will provide to a small generator interconnection applicant if the applicant provides timely notice of intent to conduct an iSIS and the applicant enters into a non-disclosure agreement. If an applicant seeks additional information beyond the Standard System Information, the applicant needs to identify what additional information it seeks and why such additional information is needed. PGE will then work with the applicant to provide reasonable information, beyond the Standard System Information, if such information is needed to conduct an iSIS.

⁴ Waconda's July 8, 2021, Letter at 1 ("Waconda Solar is not willing to expend resources regarding an iSIS if PGE will not ... review the study results in a reasonable manner consistent with Good Utility Practice consistent with Oregon law, rules, and policies."); Waconda's August 9, 2021, Letter at 1; Waconda's

defined, by the Commission's rules as standards applicable to evaluation of an independent system impact study. Waconda has stated that it would be willing to move forward with an iSIS if PGE accepted Waconda's last settlement offer.⁵ But PGE does not accept Waconda's last settlement offer because that offer includes terms unacceptable to PGE.

As PGE has explained in prior letters, PGE is not willing to agree to be bound by specific standards of review, or definitions, not stated in the Commission's rules unless such standards are part of a comprehensive settlement of Waconda's complaint in Docket No. UM 1971. This does not mean that PGE intends to operate in bad faith or in an unreasonable fashion or inconsistent with general principles of good utility practice. Rather, it means that PGE will evaluate any iSIS it receives consistent with the requirements of all applicable Commission rules and statutes. As with any requirement of a Commission rule that is not subject to an explicit standard, the Commission will need to decide what standard it will apply if the Commission is required to determine whether PGE has complied with the requirements of OAR 860-082-0060(7)(h).

The Commission's small generator interconnection rules establish a process for interconnection requests and interconnection studies. The rules allow an applicant to provide the public utility with an independent system impact study. If the applicant does so, then the public utility is required to evaluate and address any alternative findings in the applicant's independent system impact study. *See*, OAR 860-082-0060(7)(h). The Commission's rules also require that an applicant must execute each interconnection study provided by the public utility within 15 business days after receipt of the study agreement or the application is deemed withdrawn. *See e.g.*, OAR 860-082-0060(8)(c). The Commission's small generator interconnection rules do not allow an applicant to indefinitely delay the interconnection process by refusing to sign a facilities study agreement, and by refusing to move forward with an iSIS.

August 25, 2021, Letter at 2 (Waconda Solar's concerns [include] ... that PGE does not agree that it needs to review study results in a good faith and reasonable manner consistent with Good Utility Practice[.]").

⁵ Waconda's July 8, 2021, Letter at 3 ("Waconda Solar requests that PGE enter into a binding agreement that would provide Waconda Solar sufficient assurances that PGE's evaluation will be consistent with the law. Waconda Solar's last settlement offer would provide the assurances that Waconda needs.") and 4 ("Waconda Solar urges PGE to reconsider its final settlement offer, which would provide Waconda Solar with sufficient assurances necessary to conduct an iSIS."); Waconda's August 9, 2021, Letter at 1

2. PGE did not disregard information provided by Waconda regarding the Kale Patch Solar interconnection, and PGE's error regarding the Kale Patch system impact study is not relevant to the Waconda interconnection.

Waconda's August 25 letter states: "Waconda Solar is simply unwilling to pay to have an iSIS performed if PGE's position is that Waconda Solar has no effective recourse to resolve disagreements." As discussed above, it is not PGE's position that Waconda has no effective recourse to resolve disagreements.

Waconda's letter goes on to assert that "PGE has already unreasonably disregarded information provided by Waconda Solar, even though PGE admits that its actions resulted in 'an error,' as explained below." PGE disagrees with the implication that questions asked by Waconda in e-mails sent in 2018 should allow Waconda to hold up the interconnection process. In any event, PGE did not unreasonably disregard information provided by Waconda.

PGE provided a feasibility study to Waconda on July 10, 2018. The study stated the daytime minimum load on the Waconda substation transformer occurred on May 13, 2018, and was 1.79 MW. In a July 12, 2018 e-mail, Waconda asked PGE why it was not requiring transfer trip for the 2.2 MW Kale Patch interconnection if the daytime minimum load on the substation transformer was 1.79 MW. On July 27, 2018, PGE responded that transfer trip was not required for Kale Patch because, when the Kale Patch interconnection was studied, the daytime minimum load on the Waconda substation transformer was much higher.

PGE issued a system impact study for the Kale Patch interconnection on May 24, 2017. The study did not require installation of 3V0 protection or transfer trip because PGE concluded, based on the historic daytime minimum load data available in May 2017, that minimum load exceeded the nameplate capacity of the 2.2 MW Kale Patch project.

In the summer of 2020, another applicant to interconnect to the Waconda-13 feeder—SPQ0158—provided PGE with notice of intent to file a complaint against PGE. SPQ0158 argued that PGE reached the wrong conclusions in its Kale Patch system impact study and that PGE should have required Kale Patch to pay for 3V0 protection and transfer trip. SPQ0158 argued that if PGE had required Kale Patch to pay for these upgrades, then SPQ0158 would not be required to pay for 3V0 protection (because it would already exist at the substation) and SPQ0158 would not need to pay for a portion of the fiber optic cable needed for transfer trip (because Kale Patch would have already paid for fiber optic cable from the substation to the Kale Patch project). In response to this

notice of intent, PGE engaged in discussions with SPQ0158, and PGE reviewed its 2017 system impact study for the Kale Patch project. At that time, PGE discovered that it had made an error in its 2017 evaluation of historic daytime minimum load on the Waconda substation transformer. As a result of its reevaluation of the Kale Patch system impact study in summer 2020, PGE determined that the daytime minimum load in 2017 was too low to accommodate the Kale Patch interconnection without risk of backfeed.

On August 10, 2021, in Docket No. UM 2164, PGE filed the testimony of Kellie Cloud. In her testimony, Ms. Cloud explained that Kale Patch is not currently causing backfeed because a higher-queued generator has been switched to a different feeder and, as a result, the daytime minimum load on the substation transformer is sufficient to handle all of the output of the Kale Patch project without backfeed.⁶ Ms. Cloud also explained that when PGE conducted the system impact study for the Kale Patch interconnection, PGE made an error and did not recognize that the generation from the Kale Patch project would exceed the daytime minimum load on the substation transformer.⁷ Ms. Cloud explained that PGE discovered that its system impact study results were in error after the Kale Patch project was interconnected.⁸ Ms. Cloud's testimony is correct. PGE did not discover that it had made a mistake in its May 24, 2017, system impact study for the Kale Patch interconnection until the summer of 2020, which was after the Kale Patch project interconnected in October 2019.

In sum, PGE has not unreasonably disregarded information provided by Waconda. In July 2018, Waconda asked PGE why Kale Patch did not require transfer trip if the May 2018 minimum load on the substation transformer was 1.79 MW. PGE responded that the requirements for the Kale Patch interconnection were determined based on the minimum load conditions that existed in 2017, when the Kale Patch interconnection was studied, not by the minimum load conditions in May 2018. It was not until PGE reevaluated its 2017 system impact study for Kale Patch in the summer of 2020 that PGE discovered it had made an error regarding the level of daytime minimum load that existed in 2017. In any event, PGE's error in its 2017 system impact study for the Kale Patch project has no bearing on PGE's study results for the Waconda project; PGE is not requiring Waconda Solar to pay for 3V0 protection and PGE is not requiring Waconda

⁶ *Zena Solar LLC v. Portland General Electric Co.*, Docket No. 2164, PGE/100, Cloud/36-37.

⁷ Docket No. 2164, PGE/100, Cloud/36.

⁸ *Id.*

Irion A. Sanger
September 14, 2021
Page 6

Solar to pay for the length of fiber optic cable between the substation and the Kale Patch project.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey S. Lovinger", followed by a horizontal line.

cc: Donald J. Light, PGE Assistant General Counsel (donald.light@pgn.com)
Kristin Ingram, PGE Assistant General Counsel (kristin.ingram@pgn.com)