

July 23, 2019

Via Electronic Filing

Public Utility Commission of Oregon
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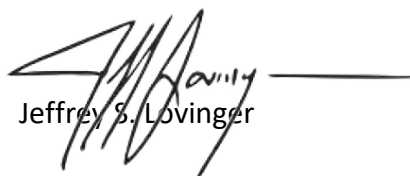
Re: UM 1971 - Waconda Solar, LLC v. Portland General Electric Company

Attention Filing Center:

Enclosed for filing today in the above-named docket is Jeffrey Lovinger's Declaration in Support of Portland General Electric Company's Response Opposing Waconda Solar LLC's Motion for Leave to File First Amended Complaint.

Thank you for your assistance.

Very truly yours,


Jeffrey S. Lovinger

892165

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

WACONDA SOLAR, LLC,

Complainant,

vs.

PORTLAND GENERAL ELECTRIC
COMPANY,

Defendant.

**DECLARATION OF
JEFFREY S. LOVINGER IN
SUPPORT OF PORTLAND
GENERAL ELECTRIC
COMPANY'S RESPONSE
OPPOSING WACONDA SOLAR
LLC'S MOTION FOR LEAVE
TO FILE FIRST AMENDED
COMPLAINT**

I, Jeffrey S. Lovinger, declare:

1. I am one of the attorneys for defendant Portland General Electric Company ("PGE"), and I make this declaration in support PGE's Response Opposing Waconda Solar LLC's ("Waconda") Motion for Leave to File First Amended Complaint. The following statements are true and correct and, if called upon, I could competently testify to the facts averred herein.

2. On October 25, 2018, PGE emailed Waconda the system impact study report and an executable facilities study agreement. Attached as **Exhibit 1** is a true and accurate copy of PGE's October 25, 2018 email and the executable facilities study agreement that was attached to the email. A copy of the system impact study that was attached to the same email has already been submitted in this matter as Exhibit K to PGE's Answer.

3. Waconda had until November 15, 2018 (15 business days after October 25, 2018) to executed the interconnection facilities system impact study or Waconda's interconnection application would be deemed withdrawn by operation of OAR 860-082-0060(8)(c).

4. On November 2, 2018, Waconda emailed PGE requesting that PGE agree to indefinitely stay the time for Waconda Solar to execute its facilities study agreement pending resolution of the complaint filed by Waconda on September 28, 2018. Attached as **Exhibit 2** is a true and accurate copy of that November 2, 2018 email.

5. On November 13, 2018, PGE sent a letter to Waconda indicating that it disagreed the deadline to execute the facilities study agreement should be stayed until the complaint is resolved. However, PGE did agree to a short-term extension of the deadline until December 13, 2018, to give the parties more time to discuss the case and explore whether they could find a mutually agreeable resolution to their interconnection dispute. Attached as **Exhibit 3** is a true and accurate copy of the November 13, 2018 letter from PGE's counsel to Waconda's counsel extending the deadline until December 13, 2018.

6. In late 2018 and early 2019, Waconda and PGE engaged in settlement discussions and PGE granted a series of short-term extensions to the deadline to execute the facilities study agreement. PGE granted the last of these extensions on April 19, 2019, in an email from PGE's counsel to Waconda's counsel stating that PGE agreed to extend the deadline to execute the facilities study agreement until April 30, 2019. The email further indicated that if the facilities study agreement was not executed by April 30, 2019, and the parties did not agree to another extension of the deadline, then Waconda's interconnection application would be deemed withdrawn by operation of OAR 860-082-0060(8)(c). Waconda did not execute the facilities study agreement by April 30, 2019; Waconda did not seek an additional extension of the deadline; and the parties did not agree to an extension of the April 30, 2019 deadline for Waconda to execute the facilities study agreement. By email dated May 2, 2019, PGE notified Waconda that because Waconda had not executed the facilities study agreement or sought or obtained an extension of the deadline before April 30, 2019, PGE would be within its rights to consider Waconda's application withdrawn by operation of OAR 860-082-0060(8)(c).

7. In late 2018 and early 2019, PGE and Waconda engaged in a substantial effort to settle Docket No. UM 1971 but those efforts ultimately failed to resolve the case.

8. On May 31, 2019, counsel for PGE consulted with counsel for Waconda to inform Waconda that PGE intended to file a motion for summary judgment on all claims and proposing a procedural schedule consisting of: (a) a prehearing conference on June 6, 2019; (b) motion(s) for

summary judgment due on June 17, 2019; (c) response(s) to motion(s) for summary judgment due on July 2, 2019; (d) replies to motion(s) for summary judgment due on July 12, 2019; and (e) a target date for an order from the Commission of August 12, 2019.

9. On June 6, 2019, the parties participated in an initial prehearing conference. The parties engaged in informal “off-the record” consultation both before the prehearing conference and during the conference. During these informal consultations, PGE reiterated to Waconda that it intended to file a motion for summary judgment against all of the claims stated in Waconda’s complaint.

10. As part of the informal “off the record” discussion during the conference, Waconda urged PGE not to immediately file its motion for summary judgment but to instead explore whether the parties could reach an agreement on a procedural schedule that might involve limited preliminary discovery and cross-motions for summary judgment. PGE indicated that it believed the most efficient way to proceed was for PGE to file its comprehensive motion for summary judgment and for the parties to engage in discovery only if a claim survived summary judgment. Nevertheless, in response to Waconda’s suggestion and request, PGE agreed to hold off filing its motion for summary judgment and to engage in an approximately two-week process of discussion to see if the parties could reach an agreement on a procedural schedule.

11. Consistent with this approach, the parties asked the ALJ to schedule a follow-up prehearing conference approximately two weeks after the initial conference. During the “on the record” portion of the initial prehearing conference, PGE expressly reserved its right to take unilateral action and file its motion for summary judgment if the parties could not reach agreement on a procedural schedule.

12. The ALJ scheduled a follow-up prehearing conference for June 19, 2019. On June 19, 2019, Waconda filed a request to reschedule the follow-up prehearing conference to give the parties one more week to discuss a procedural schedule. The request was granted, and the follow-up prehearing conference was ultimately rescheduled for June 27, 2019.

13. On June 24, 2019, the Commission issued Order No. 19-218 in *Sandy River Solar, LLC v. Portland General Electric Co.*, Docket No. UM 1967. That order granted PGE's motion for partial summary judgment on a claim that PGE violated OAR 860-082-0060(8)(f) by refusing to agree to allow the QF in that case (Sandy River Solar, LLC) to hire a third-party consultant to construct the required interconnection facilities. The legal issues raised by that claim are effectively identical to the primary legal issue raised in Waconda's second claim for relief. The parties agreed that an additional two-week extension of the follow-up conference was appropriate to allow Waconda time to determine whether it would continue with its complaint given that Order No. 19-218 effectively resolves the primary legal issue raised by Waconda's second claim for relief. On June 26, 2019, Waconda requested a two-week delay in the prehearing conference date. On June 27, 2019, the Commission canceled the June 27, 2019 prehearing conference.

14. On July 8, 2019, before the Commission had re-scheduled the follow-up prehearing conference, counsel for Waconda called counsel for PGE, announced that Waconda would be filing a motion for leave to amend its complaint later that day, and asked whether PGE objected to such a motion. Counsel for PGE stated that Waconda's plan of action was inconsistent with the party's agreement that PGE would withhold filing its motion for summary judgment while the parties attempted to agree on a procedural schedule and Waconda considered whether to proceed with its complaint in light of Order No. 19-218. Counsel for PGE requested that Waconda share a draft of the motion for leave to amend and provide PGE with a day to review the motion so that PGE could make an informed decision as to whether it opposed the motion. Counsel for Waconda indicated that it was unwilling to share a draft of the motion or delay filing the motion because it did not want PGE to have an opportunity to file its motion for summary judgment before Waconda filed its motion for leave to amend the complaint. Waconda then filed its motion for leave to amend the complaint later the same day.

15. By email dated July 9, 2019, PGE informed Waconda that a higher queued project – SPQ0048 – had withdrawn from the interconnection queue, that this withdrawal impacted the

system impact study for the Waconda project, and that the Waconda system impact study will therefore need to be restudied. Attached as **Exhibit 4** is a true and accurate copy of PGE's July 9, 2019 email providing notice that the higher queued project has withdrawn and the system impact study for Waconda will need to be performed again to reflect the changed circumstances.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED this 23rd day of July, 2019.



Jeffrey S. Lovinger, OSB #960147

889473

From: Small Power Production <Small.PowerProduction@pgn.com>
Sent: Thursday, October 25, 2018 6:00 PM
To: 'Troy@tlscapital.com'
Cc: Small Power Production
Subject: Waconda Solar System Impact Study Report
Attachments: SPQ0172 Waconda Solar, System Impact Study Report.pdf; SPQ0172 Waconda Solar Facility Study Agreement.pdf

Hello,

PGE has completed the System Impact Study for Waconda Solar. The report is attached.

If you would like to proceed with the next study, please provide a copy of the signed Facility Study Agreement along with the \$1,000 deposit no later than November 16th, 2018 (15 business days).

Please let me know if you have any questions.

Thank you,



Nikee Weber

QF Interconnection Specialist • 503-464-2264•

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**Small Generator Facility
Facilities Study Agreement**

This Agreement is made and entered into this ____ day of _____ (*month and year*) by and between Waconda Solar, LLC, ☐ an individual ☐ a company, (“Applicant”) and Portland General Electric Company, a corporation existing under the laws of the State of Oregon, (“PGE”). Applicant and PGE each may be referred to as a “Party,” or collectively as the “Parties.”

Recitals:

Whereas, Applicant is proposing to develop a Small Generator Facility or adding generating capacity to an existing Small Generator Facility consistent with the Application completed on March 23, 2018; and

Whereas, Applicant desires to interconnect the Small Generator Facility with PGE’s Transmission & Distribution (T&D) System; and

Whereas, PGE has completed a System Impact Study and provided the results of said study to Applicant (This recital to be omitted if the Parties have agreed to forego the System Impact Study.); and

Whereas, Applicant has requested PGE to perform a Facilities Study to specify and estimate the cost of the equipment, engineering, procurement and construction work in accordance with Good Utility Practice needed to physically and electrically connect the Small Generator Facility to PGE’s T&D System.

Now, therefore, in consideration of and subject to the mutual covenants contained herein the Parties agree as follows:

1. When used in this Agreement, with initial capitalization, the terms specified shall have the meanings set forth in this Agreement or as given in OAR 860-082-0005 through 860-082-0085 and to the extent that this Agreement conflicts with the Rules, the Rules shall take precedence.
2. Applicant and PGE shall cause to be performed a Facilities Study consistent with OAR 860-082-0060(8).
3. The scope of the Facilities Study shall be subject to data provided by Applicant in its Application as well as the data provided by the Applicant in Attachment A of this Agreement.
4. A Facilities Study report (1) shall provide a description, estimated cost, and schedule

FACILITY STUDY AGREEMENT FOR SMALL GENERATOR FACILITY, PAGE 1 OF 5

for required Interconnection Facilities and System Upgrade(s) to interconnect the Small Generator Facility to PGE's T&D System including a description of any facilities or upgrades necessary to address impacts to Affected Systems and (2) shall address the short circuit, instability, and power flow issues identified in any prior System Impact Studies.

5. PGE may require a study deposit as described in OAR 860-082-0035(1).

6. As required by OAR 860-082-0060(8)(a), the public utility will provide scope for the Facilities Study, a reasonable schedule for completion of the study, and a good-faith, non-binding cost estimate to perform the study (Attachment B). In cases where no System Upgrade or Interconnection Facilities is required, the Facilities Study shall be completed and the results will be transmitted to Applicant within sixty (60) business days after this Agreement is signed by the Parties.

7. Study fees will be based on actual costs in accordance with the provisions of 860-082-0035 and as follows:

7.1 The non-binding good faith estimate of the cost to complete the Facilities Study is \$6,000. Applicant is required to pay a deposit of fifty (50) percent this estimate or \$1,000, whichever is less, prior to start date of study.

7.2 Any study fees shall be based on PGE's actual costs and will be invoiced to Applicant after the study is completed and delivered and will include a summary of professional time.

7.3 Applicant must pay any study costs that exceed the deposit without interest within thirty (30) calendar days on receipt of the invoice or resolution of any dispute. If the deposit exceeds the invoiced fees, PGE shall refund such excess within thirty (30) calendar days of the invoice without interest.

8. Cost Responsibility is detailed in OAR 860-082-0035 of the Rule.

Signatures:

In witness whereof, the Parties have caused this Agreement to be executed by their respective duly authorized representatives.

For APPLICANT:

Signature: _____

Printed Name: _____

Title (if any): _____

Date: _____

FACILITY STUDY AGREEMENT FOR SMALL GENERATOR FACILITY, PAGE 2 OF 5

For PORTLAND GENERAL ELECTRIC COMPANY:

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Attachment A
Facilities Study Agreement

Data to be Provided by Applicant with the Facilities Study Agreement

Provide location plan and simplified one-line diagram of the plant and station facilities. For staged projects, please indicate future generation, distribution circuits, etc.

Please provide a 7.5-minute quadrangle map of the site. Indicate the plant, station, distribution line, and property lines.

Estimated line length from interconnection station to the PGE's T&D System:
_____ feet.

On the one-line diagram, indicate the generation capacity attached at each utility metering location (maximum load on CT/PT).

One set of metering is required for each generation connection to the new ring bus or existing PGE station. Number of generation connections: _____

On the one-line diagram, indicate the location of any auxiliary power and minimum load on CT/PT (Amps).

Will an alternate source of auxiliary power be available during CT/PT maintenance?
Yes _____ No _____.

Will a transfer bus on the generation side of the metering require that each meter set be designed for the total plant generation?
Yes _____ No _____ (Please indicate on the one-line diagram.)

What type of control system or PLC will be located at the Generating Facility?
_____.

What protocol does the control system or PLC use? _____.

Attachment B
Facilities Study Agreement
PGE Provided Scope, Schedule, and Budget for Facilities Study

As part of the Interconnection process, the following utility system upgrades have been determined to be necessary to facilitate a safe and reliable interconnection:

- New Service metering
- Install an electronic recloser to replace existing hydraulic recloser #8425
- Install a 100T fuse to replace existing 65T fuse
- Reconductor 2.13 miles
- Reconductor .17 miles
- Transfer Trip to the DER via Mirror Bits
- RTAC to facilitate Transfer Trip

The Facilities Study report will provide the estimated costs and design, procurement, and construction timelines for the above work.

Budget for the study is estimated at \$6,000.

PGE will deliver the study results within 60 business days from the time that PGE has received all of the following:

- Signed copy of the study agreement, and
- \$1000.00 deposit payment, and
- All necessary materials outlined in Attachment A of this Study Agreement.

If PGE determines during the Study process that supplemental or clarifying information is required, then PGE will request the information from the applicant. The time necessary to complete the evaluation of the application will be extended by the time required for the receipt of the additional information.

From: Marie Phillips Barlow <marie@sanger-law.com>
Sent: Friday, November 2, 2018 3:06 PM
To: Jeff Lovinger
Cc: Irion Sanger; Donald Light
Subject: UM 1971 Waconda - Facilities Study

Jeff,

Waconda Solar would like to request that PGE stay its obligation to execute the Facilities Study Agreement indefinitely pending the outcome of this case and so that Waconda Solar can have an independent System Impact Study performed. Since the crux of this dispute is over whether Waconda can hire a third party to complete the studies, it makes sense to stay its obligation to execute the agreement for the last study. The Facilities Study Agreement was provided on October 25, 2018, and Waconda's deadline to execute it is November 15, 2018.

Thank you

Marie Phillips Barlow

Attorney at Law
Sanger Law PC
1117 SE 53rd Ave
Portland, OR 97215

503-420-7734 (tel)
503-334-2235 (fax)
marie@sanger-law.com

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Portland General Electric Company
Legal Department
121 SW Salmon Street • Portland, Oregon 97204
503-464-8315 • Facsimile 503-464-2200

Donald J. Light
Assistant General Counsel

November 13, 2018

Via Email

marie@sanger-law.com

Ms. Marie Phillips Barlow
Attorney at Law
Sanger Law PC
1117 SE 53rd Avenue
Portland, OR 97215

Re: UM 1971 –Waconda Solar, LLC vs. Portland General Electric Company

Dear Ms. Barlow:

I am in receipt of your email dated November 2, 2018, in which you request that Portland General Electric Company (“PGE”) stay the time for Waconda Solar to execute its Facilities Study Agreement pending the outcome of the complaint filed by your firm on September 28, 2018. PGE provided a draft Facilities Study Agreement on October 25, 2018, and Waconda Solar’s deadline to execute the Facilities Study Agreement is November 15, 2018. As you know, PGE does not consent to Waconda Solar hiring a third-party to conduct the remaining Facilities Study. Further, PGE does not agree that it is necessary to stay the deadline for execution of the Facilities Study Agreement in order to allow Waconda Solar to conduct an independent system impact study. However, PGE is willing to agree to a four-week extension of the deadline to execute the Facilities Study Agreement in order to give the parties more time to discuss the case and explore whether they can find a mutually agreeable resolution. By this letter, and pursuant to OAR 860-082-0010(2), PGE agrees to extend the deadline for Waconda Solar to execute the Facilities Study Agreement until December 13, 2018.

Sincerely,

Donald J. Light
Assistant General Counsel

DJL:hp

From: Small Power Production <Small.PowerProduction@pgn.com>
Sent: Tuesday, July 9, 2019 1:51 PM
To: Troy Snyder
Cc: Small Power Production
Subject: Waconda Solar SPQ0172 - Restudy Required

Troy,

Recently a higher queued project (SPQ0048) on PGE's Waconda-13 feeder withdrew from the interconnection process. At the time the project withdrew it had a signed interconnection agreement.

Our engineering team has determined the withdrawal will cause the need for Waconda Solar to be restudied. The location of SPQ0048 in relation to the remaining projects make a restudy necessary to ensure the interconnection requirements are properly allocated.

Once Waconda Solar is ready to proceed a System Impact Study will be required.

Please let us know if you have any questions.



Jason Zappe

Customer Generation Specialist • 503-464-7264 • 503-464-8300
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