

June 29, 2020

Via Electronic Filing

The Honorable Allan J. Arlow
Public Utility Commission of Oregon
PO Box 1088
Salem, OR 97308-1088

**Re: St. Louis Solar, LLC v. Portland General Electric Company
Oregon PUC Docket No. UM 2057**

Dear Judge Arlow:

On June 17, 2020, the Public Utility Commission of Oregon (Commission) held a prehearing conference in this matter. St. Louis Solar LLC (St. Louis Solar) and Portland General Electric Company (PGE) later agreed to submit a joint proposed procedural schedule on June 29, 2020.

The parties have been unable to reach agreement on a proposed schedule. PGE therefore respectfully submits its preferred schedule as Attachment A. PGE could also agree to the alternative schedule submitted as Attachment B. As a third alternative, PGE proposes that the Commission delay adopting a procedural schedule until St. Louis Solar's pending motion to dismiss PGE's counterclaims has been resolved and the parties and Commission know what claims and counterclaims will be decided through the procedural schedule.

The parties dispute whether PGE has its full rights, and the same rights as St. Louis Solar, under the Oregon Rules of Civil Procedure.

PGE's preferred schedule, and its proposed alternative schedule, reflect the Rules of Civil Procedure and give both sides the opportunity to present their cases within the Rules. St. Louis Solar has refused to agree that PGE can file a motion for summary

judgment and obtain resolution of that motion before the case proceeds to testimony and hearing. St. Louis Solar has also taken the position that PGE is not entitled to file the same level of testimony and briefing in support of PGE's counterclaims that St. Louis Solar is entitled to file in support of its claims. St. Louis Solar's one-side approach is contrary to the Rules and would lead to a violation of PGE's Due Process rights.

PGE's Preferred Schedule (Attachment A)

On June 25, 2020, PGE proposed its preferred schedule to St. Louis Solar. PGE's preferred schedule (Attachment A) involves five steps:

1. **St. Louis Solar's motion to dismiss.** The schedule provides for resolution of St. Louis Solar's pending motion to dismiss PGE's counterclaims and an opportunity for PGE to file an amended answer if needed.
2. **Either party's dispositive motion.** The schedule provides specific dates for the filing, briefing, and resolution of dispositive motion(s) under ORCP 47 and/or ORCP 21 B.
3. **Testimony.** The schedule provides for three rounds of simultaneous testimony by the parties regarding their claims and counterclaims.
4. **Hearing.** The schedule provides for pre-hearing briefs and an evidentiary hearing.
5. **Post-Hearing Briefs.** The schedule provides for simultaneous post-hearing briefs (an opening brief by each party, a response brief by each party, and a reply brief by each party).

Items (3) to (5) will be unnecessary if all claims are resolved through dispositive motion(s).

PGE's Alternative Schedule (Attachment B)

On June 26, 2020, St. Louis Solar objected to PGE's preferred schedule on the grounds that St. Louis Solar would not agree at this time to schedule a motion for summary judgment. PGE therefore proposed an alternative schedule (Attachment B) that eliminated the scheduled dates for resolving PGE's dispositive motion(s). However, PGE's alternative schedule includes a footnote to the effect that PGE intends to file a dispositive motion or motions and anticipates the resolution of such motion(s) will impact the schedule.

On June 28, 2020, St. Louis Solar made clear it would not agree to PGE's alternative schedule. St. Louis Solar seeks a schedule that provides it with a unilateral fourth round

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of testimony and that allows it to file the first and last post-hearing brief with PGE only filing a single post-hearing response. St. Louis Solar argues that this is a “traditional sequencing” that makes sense because St. Louis Solar has the burden of proof.

PGE disagrees. Both parties have asserted claims (St. Louis Solar has asserted nine claims in its complaint, PGE has asserted two counterclaims in its answer). Because both parties have claims, both parties should have the opportunity to file opening and reply briefs in support of their respective claims or counterclaims. Both parties should have the same opportunity to submit testimony in support of their respective claims or counterclaims. Finally, any schedule that does not provide specific dates for filing and briefing PGE’s dispositive motion(s) should note that PGE intends to file such motion(s) and that resolution of such motion(s) will impact the schedule.

Third Alternative – Defer Adopting a Procedural Schedule

As a third alternative, the Commission could wait to adopt a procedural schedule until after resolution of St. Louis Solar’s motion to dismiss and any subsequent amendment of the pleadings. That way, the Commission will know what claims and counterclaims will be resolved before it decides on an appropriate procedural schedule.

Very truly yours,

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

Jeffrey S. Lovinger

Attachment A – PGE’s Preferred Schedule
Attachment B – PGE’s Alternative Schedule

cc: Irion A. Sanger

Attachment A

PGE's Preferred Procedural Schedule for Docket No. UM 2071

Event	Date
SLS reply supporting its motion to dismiss (MTD)	June 29, 2020
Commission decision on MTD	July 29, 2020
PGE files amended answer/counterclaims if needed	August 12, 2020
PGE Dispositive Motion (ORCP 21 or ORCP 47)*	September 2, 2020
Response to Dispositive Motion	September 16, 2020
Reply on Dispositive Motion	September 30, 2020
Oral Argument	October 14, 2020
Decision on Dispositive Motion	November 16, 2020
For any claims not decided by dispositive motion:	
Simultaneous Opening Testimony	December 18, 2020
Simultaneous Response Testimony	January 8, 2021
Simultaneous Reply Testimony	January 22, 2021
Simultaneous Pre-hearing Briefs	February 5, 2021
All parties cross examination statements	February 12, 2021
Hearing	Week of February 22, 2021
Simultaneous Post-hearing Opening Briefs	March 19, 2021
Simultaneous Post-Hearing Response Briefs	April 9, 2021
Simultaneous Post-Hearing Reply Briefs	April 23, 2021
Decision	May 23, 2021

** SLS is free to file a cross motion for summary judgment or other dispositive motion when PGE files its dispositive motion or after resolution of PGE's dispositive motion if any claims remain.

Attachment B

PGE's Alternative Procedural Schedule for Docket No. UM 2071

Event*	Date
SLS reply supporting its motion to dismiss (MTD)	June 29, 2020
Commission decision on MTD	July 29, 2020
PGE files amended answer/counterclaims if needed	August 12, 2020
Simultaneous Opening Testimony	October 16, 2020
Simultaneous Response Testimony	November 13, 2020
Simultaneous Reply Testimony	December 4, 2020
Simultaneous Pre-hearing Briefs	December 18, 2020
All parties cross examination statements	January 8, 2021
Evidentiary Hearing	Week of January 11, 2021
Simultaneous Post-hearing Opening Briefs	February 5, 2021
Simultaneous Post-Hearing Response Briefs	February 19, 2021
Simultaneous Post-Hearing Reply Briefs	February 26, 2021
Decision	March 26, 2021

* PGE anticipates filing a dispositive motion or motions under ORCP 21 B or ORCP 47. When it does so, PGE anticipates the procedural schedule will need to be modified to provide for resolution of PGE's dispositive motion(s) prior to continuing with the remainder of the procedural schedule (if any claims survive the dispositive motions). PGE reserves the right to file motions consistent with ORCP 21 and ORCP 47. PGE acknowledges that St. Louis Solar also has the right to file motions consistent with ORCP 21 and ORCP 47.