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June 11, 2019

VIA ELECTRONIC FILING

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

**Re: Docket UM 2009: In the Matter of the Complaint of Madras PV1, LLC, against
Portland General Electric Company.**

Attention Filing Center:

Attached for filing in the above-captioned docket is Portland General Electric Company's Motion for Application of Contested Case Procedures and for Designation as a Major Proceeding.

Please contact this office with any questions.

Sincerely,

A handwritten signature in blue ink that reads 'Wendy McIndoo'.

Wendy McIndoo
Office Manager

Attachment

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
UM 2009**

Madras PV1, LLC,
Complainant,

v.

Portland General Electric Company,
Respondent.

**PORTLAND GENERAL
ELECTRIC COMPANY'S
MOTION FOR APPLICATION OF
CONTESTED CASE
PROCEDURES AND FOR
DESIGNATION AS A MAJOR
PROCEEDING**

I. INTRODUCTION

On April 22, 2019, Madras PV1, LLC, (Madras) filed a Complaint with the Public Utility Commission of Oregon (Commission) against Portland General Electric Company (PGE), asking the Commission to resolve both specific disputed terms in the parties' draft Schedule 202 power purchase agreement (PPA), and to rule on claimed violations of law related to the PPA negotiation process.

Madras's Complaint states that it is made under two separate procedural mechanisms: OAR 860-029-0100(3), which provides a dispute resolution process for negotiated PPAs between qualifying facilities (QFs) and utilities (the dispute resolution process),¹ and OAR 860-001-0400, which is the default complaint process for a broad range of claims for relief based on alleged violations of any statute, tariff, and rule within the Commission's jurisdiction.² While Madras's intent is somewhat unclear, Madras appears to contemplate that the processes available under the dispute resolution process should govern this case. Moreover, given that the Commission's Administrative Hearings Division initially issued a notice requiring that PGE file

¹ OAR 860-029-0100(3) ("At any time after 60 calendar days from the date a Qualifying Facility has provided written comments to the public utility regarding the public utility's draft power purchase agreement, the Qualifying Facility may file a complaint with the Commission asking for adjudication of any unresolved terms and conditions of its proposed agreement with the public utility.").

² Both Commission rules are established pursuant to ORS 756.500(1), which authorizes any person to file a complaint with the Commission "against any person whose business or activities are regulated" by the Commission.

1 its Answer within 10 days of Madras’s Complaint,³ it appears that the Commission may be
2 intending to apply the dispute resolution process to this case as well.

3 The Commission’s dispute resolution process—which limits third-party participation,
4 assumes an expedited timeline, and limits the precedential value of any final order—is
5 inappropriate for the resolution of this case. This proceeding concerns a qualifying facility (QF)
6 that seeks to exclude the costs of network upgrades from both its avoided cost rates and the
7 interconnection process, raising critical policy issues related to cost allocation under the Public
8 Utility Regulatory Policies Act of 1978 (PURPA). The relevant facts and governing law are
9 complex and will likely require several rounds of testimony and briefing. Moreover, PGE
10 understands that other utilities are confronting similar QF challenges and, indeed, issues central
11 to this case are likely to be addressed in the Commission’s ongoing generic PURPA proceeding
12 in Docket UM 2000. In light of this case’s complexity as well as its broad applicability, PGE
13 respectfully requests that this case be decided either under the Commission’s generally
14 applicable contested case procedures or as a “major proceeding,” to ensure both that the
15 Commission is presented with an adequate record and that the end result builds on this
16 Commission’s precedent for future cases.

II. BACKGROUND

17 Madras is an approximately 66 MW QF proposed to be constructed by Ecoplexus, Inc.
18 (Ecoplexus) near Madras, Oregon, at a site is approximately 100 miles away from PGE’s service
19 territory. Madras proposes to interconnect with PGE on a generation lead line that connects
20 PGE’s Pelton-Round Butte Hydroelectric Project (PRB or Project) to the Round Butte
21 substation. Ecoplexus first reached out to initiate PPA negotiations in October of 2017.

22 Beginning with the first contacts between the companies, PGE informed Ecoplexus that
23 the line from the Round Butte substation to PGE’s service territory (the Bethel-to-Round Butte
24 230 kV line) was fully committed to transmitting PRB’s output to PGE. PGE further explained

³ Email from Candice Menza Re. OPUC Docket UM 2009 – Initial (Application, Complaint, Petition) – Notice of Filing (Apr. 3, 2019 at 2:51 p.m.) (referring to an Answer deadline of May 2, 2019)

1 that, if Madras chose to interconnect at its proposed location, then Madras would be responsible
2 (under the Commission’s QF Large Generator Interconnection Procedures (QF LGIP)) to pay for
3 upgrades required to allow PGE to deliver Madras’s output to load. However, Ecoplexus has
4 steadfastly refused to acknowledge responsibility to pay for upgrades, arguing that its
5 interconnection is actually subject to Federal Energy Regulatory Commission (FERC)
6 jurisdiction because it is reserving the right to sell its test energy to a third party. Accordingly,
7 Ecoplexus has claimed that it is entitled to request an inferior interconnection service that would
8 avoid the necessity of paying for upgrades or, alternatively, that it might be entitled to refunds of
9 the amounts paid. At the same time, Ecoplexus has sought to lock in avoided cost prices
10 calculated under the assumption that the project has paid for the necessary network upgrades.
11 Because of these and other disagreements, the parties have been unable to agree on the
12 appropriate terms to include in Madras’s PPA.

III. DISCUSSION

13 This Commission has established three general avenues for litigation of a complaint: (1) a
14 narrow dispute resolution path for resolution of contract-specific PPA terms in negotiated
15 contracts;⁴ (2) the generally applicable contested case procedures for complaints;⁵ and (3) “major
16 proceedings” for consideration of particularly impactful issues or cases presenting novel
17 questions of law and fact.⁶ These paths differ in the procedural steps they employ, the
18 opportunity for third-party participation, and the extent to which the Commission’s decision will
19 have precedential value. The following discussion briefly summarizes the relevant distinctions
20 before turning to address the appropriate procedural vehicle for this case.

21 **First**, this Commission has established a “streamlined” alternative dispute resolution
22 process for consideration of specific disputed PPA terms in a negotiated contract when the utility
23 and the QF are unable to reach agreement.⁷ In order to facilitate this “expedite[d]” form of “QF

⁴ OAR 860-029-0100(9).

⁵ See OAR 860-001-0400.

⁶ OAR 860-001-0660(1), (4).

⁷ OAR 860-029-0100(9).

1 contract review,”⁸ complaints must include the specific disputed terms, a statement of each
2 side’s position, and a proposed agreement “encompassing all matters.”⁹ To further streamline
3 the review process, such cases authorize only the utility and the QF to participate as full
4 parties.¹⁰ Finally, because the proceedings are tailored to the facts and circumstances of a
5 particular contract, any provisions approved by the Commission are not considered precedential
6 for future proceedings.¹¹

7 **Second**, the Commission’s default contested case rules apply broadly to complaints
8 alleging violations of statute, rule, or tariff, within the scope of the Commission’s jurisdiction.
9 The rules associated with these types of complaints do not dictate the nature of the claims, nor
10 restrict the type of relief sought.¹² While the Commission has discretion to determine the
11 appropriate procedural steps in contested cases, such proceedings commonly include testimony
12 and briefing where requested by the parties.

13 **Third**, the Commission has also established a “major proceeding” designation for
14 significant cases warranting somewhat enhanced procedural protections.¹³ A major proceeding
15 entails a full procedural schedule with written testimony and oral argument.¹⁴ A case may be
16 designated a “major proceeding” when it has a “significant impact” on “the operations of a
17 regulated utility for energy utilities having more than 50,000 customers,¹⁵ or where the case
18 “[r]aises novel questions of fact or law.”¹⁶

19 Here, Madras begins by asking the Commission to simply resolve certain disputed terms
20 and conditions in the parties’ draft PPAs, disclaiming any intent to conduct “a contentious
21 proceeding that focuses on past behavior.”¹⁷ Madras then proceeds to ask the Commission to

⁸ *In re Staff’s Investigation Relating to Elec. Util. Purchases from Qualifying Facilities*, Docket No. UM 1129, Order No. 07-360 at 10 (Aug. 20, 2007).

⁹ OAR 860-029-0100(5)(e).

¹⁰ OAR 860-029-0100(10).

¹¹ OAR 860-029-0100(13).

¹² *See* OAR 860-001-0400.

¹³ OAR 860-001-0660(1), (4).

¹⁴ OAR 860-001-0660(1), (4).

¹⁵ OAR 860-001-0660(1).

¹⁶ OAR 860-001-0660(2).

¹⁷ Madras Complaint at 3.

1 resolve a number of legal claims relating to the PPA negotiation process—including assertions of
2 bad faith, alleged delays, and multiple claims to having established legally enforceable
3 obligations (LEOs)—for which Madras seeks declaratory relief and financial penalties of up to
4 \$10,000 for each purported violation. Such claims go far beyond simply asking the Commission
5 to approve particular PPA terms, and thus exceed the scope of the Commission’s negotiated PPA
6 dispute resolution procedures and warrant consideration in a full contested case proceeding.

7 More importantly, Madras’s Complaint concerns questions far broader than the specifics
8 of the draft PPA’s terms. The central dispute in this case is how to allocate the costs caused by a
9 QF’s siting decision, where that QF attempts to exclude those costs from both its avoided cost
10 prices *and* from its interconnection service. Specifically, Madras is attempting to secure avoided
11 cost prices calculated under the assumption that it will obtain and pay for system upgrades that
12 would be required under the Commission’s QF LGIP. However, at the same time, Madras is
13 arguing that its interconnection is FERC-jurisdictional and that, as such, it is entitled to seek an
14 inferior interconnection service that will allow it to escape responsibility to pay for
15 interconnection-related upgrades, or that it will be entitled to obtain refunds of interconnection-
16 related upgrade costs. Thus, in deciding this case, the Commission is presented with three novel
17 legal questions:

- 18 1. Can a QF insist on selling its incidental test energy to a third party where (a) the
19 QF intends to sell the entirety of the operational project’s net output to the utility,
20 (b) the utility offers a commercially reasonable price for the output, and (c) the
21 provision is included solely to avoid this Commission’s jurisdiction over the
22 project’s interconnection?
- 23 2. If a QF is allowed the option to sell its test energy to a third party, while selling
24 the project’s full operational net output to the utility during the term of the PPA,
25 does this Commission nonetheless retain jurisdiction over the project’s
26 interconnection?

1 3. If a QF's interconnection is FERC-jurisdictional, and if FERC concludes that a
2 QF is either entitled to use a more limited form of interconnection service or can
3 obtain refunds from PGE's customers, how should the utility account for the
4 additional incremental costs caused by the QF's siting decision?

5 All of these legal issues are woven into the disputed terms of Madras's draft PPA, and form the
6 foundation for this dispute.

7 Moreover, the questions presented in this case are not unique to PGE, as there have been
8 similar attempts to use the sale of incidental test energy as a means of creating an end-run around
9 this Commission's jurisdiction over the interconnection process.¹⁸ Indeed, as transmission
10 constraints increase, it will become increasingly important to have clear Commission guidance
11 on how to allocate siting-related costs to ensure that customers are protected—regardless of
12 whether those costs are reflected in avoided cost prices or through the interconnection process.

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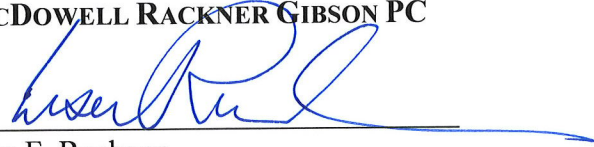
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¹⁸ See *Blue Marmots V LLC et al.*, Docket No. EL19-13-000, Motion to Intervene and Comments of PacifiCorp at 20 (Dec. 7, 2018) (“QFs seeking interconnection service on PacifiCorp’s system have even argued, for example, that selling some portion of the QF’s ‘test energy’ in the market would be sufficient to shift the jurisdiction of the interconnection from the state to FERC, thus creating an end-run around the service-type and cost-allocation requirements embedded in state interconnection rules.”).

1 PGE therefore asks that the Commission carefully consider the questions presented in this
2 proceeding through a major proceeding or, at minimum, a full contested case.

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Dated: June 11, 2019.

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