

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2009

In the Matter of

Madras PV1, LLC,
Complainant,

v.

Portland General Electric Company,
Defendant.

RULING

**DISPOSITION: MOTION TO STRIKE DENIED; SCOPE OF COMPLAINT CLARIFIED;
UNOPPOSED MOTION TO MODIFY THE PROCEDURAL SCHEDULE
GRANTED**

I. OVERVIEW

On November 15, 2019, Portland General Electric Company filed a motion to strike (motion) certain portions of Madras PV1, LLC’s (Madras Solar) testimony and exhibits supporting its complaint filed on November 5, 2019.¹ PGE requested in the alternative to striking certain testimony and exhibits, that Madras Solar be ordered to amend its complaint to include a claim regarding an interconnection dispute. PGE stated that its understanding of Madras Solar’s April 22, 2019 complaint was as follows: Madras Solar sought resolution of several disputed PPA terms; and Madras Solar requested the Commission determine the appropriate avoided cost pricing.²

PGE also noted that while Madras Solar “expressed disagreement” with PGE’s interconnection studies, Madras Solar did not “request the Commission to adjudicate the validity” of these criticisms.³ In its motion, PGE opined that extensive testimony and exhibits filed by Madras Solar on November 5, 2019 devoted significant space to interconnection issues. PGE asserts that such testimony and accompanying exhibits are outside the narrow issues listed in Madras Solar’s initial complaint. PGE further states that allowing such extensive testimony and exhibits on the

¹ PGE filed an errata and corrections to Attachment A of its Motion, *et al*, on November 19, 2019.

² PGE Motion to Strike at 1 (Nov 15, 2019).

³ *Id.* at 1-2.

record describing interconnection issues, without resolution, will prejudice PGE and its customers and cause significant delay of these proceedings.

In its November 26, 2019 response to the motion, Madras Solar does not deny that the description and discussion of interconnection issues in the testimony and exhibits issues are extensive. Madras Solar insists that the background interconnection issues are in large part a reason for the delay in executing a PPA with PGE.⁴ Thus, according to Madras Solar, the inclusion of the interconnection testimony and exhibits are necessary in order to resolve the issues presented in its complaint that remain outstanding in its PPA term dispute with PGE. In addition, Madras Solar states that the interconnection background is important to determine which avoided cost rates should be included in the PPA.⁵

Madras Solar argues that the terms proposed by PGE regarding interconnection could allow PGE to “impose unreasonable or illegal interconnection costs on Madras Solar and then terminate the PPA if Madras Solar does not execute the interconnection agreement or otherwise seek to challenge PGE’s interconnection costs.”⁶ Madras Solar argues that its testimony “demonstrates how PGE’s interconnection process and studies are technically deficient.”⁷ Madras Solar further states that its extensive testimony and exhibits are relevant, allow for the full development of a complete record, and provide for a discussion and debate in order for the Commission to have a “holistic view” of the interconnection dispute.⁸

In its reply, PGE characterizes Madras Solar’s response as an indication of “forum shopping” and that discussion of interconnection issues without resolution will be a waste of Commission and party resources.⁹ PGE argues that in the interest of efficiency, the interconnection dispute should be resolved as a part of this case and that Madras should be required to amend its complaint to include a claim regarding interconnection issues.

On December 9, 2019, PGE filed an unopposed motion to modify the procedural schedule in this case. PGE requests that PGE’s rebuttal testimony deadline be moved to February 4, 2020, from January 22, 2020. PGE also requests that Madras Solar’s surrebuttal testimony be due March 26, 2020, rather than March 13, 2020.

⁴ Madras Solar Response to PGE’s Motion to Strike at 2-3 (Nov 26, 2019).

⁵ *Id.* at 11-13.

⁶ *Id.* at 3.

⁷ *Id.* at 9.

⁸ *Id.* at 15-16.

⁹ PGE Reply in Support of Motion to Strike Testimony or in the Alternative Require Amendment of Complaint at 3-4 (Dec 4, 2019).

II. LEGAL STANDARD

Under the Commission’s rules, relevant evidence is “evidence tending to make the existence of any fact at issue in the proceedings more or less probable than it would be without the evidence.”¹⁰ Accordingly, evidence that tends to make a fact at issue in this case more or less probable can be made part of the record. If the fact does not relate to a “fact at issue” in the case, then it can be excluded on relevancy grounds.

III. RULING

Both parties include extensive discussion of interconnection issues as part of their substantive filings and arguments in this case. I deny PGE’s motion to strike because the testimony and exhibits PGE seeks to strike are relevant to the claims and arguments of both parties to this proceeding. PGE’s request that the Commission “construe Madras Solar’s extensive testimony regarding the interconnection dispute as effectively amending the Complaint to request that the Commission resolve the interconnection dispute” is reasonable, although this ruling does not “amend” Madras Solar’s complaint.¹¹ Instead, it recognizes that both parties have effectively, through their claims, counterclaims, answers, and through their proposed and disputed PPA terms made interconnection issues part of this proceeding. Both parties to this proceeding should be prepared to discuss, and propose resolution for any interconnection-related issue that impacts disputed PPA terms, which are the subject of the pending complaint and counterclaim. Additionally, I grant PGE’s motion to modify the procedural schedule.

IV. DISCUSSION

Without prejudging any of the facts at issue in this case, it is clear after a detailed review of the evidence PGE seeks to strike could be directly relevant to the proposed and disputed PPA terms. For example, PGE argues that the back-and-forth associated with PGE’s original interconnection cost estimate should be stricken, given that Madras Solar has not explicitly requested relief on interconnection issues in this proceeding, and the fact that PGE substantially revised its estimates of interconnection costs is not disputed. Madras Solar argues that this information is necessary to evaluate PPA terms that discuss the appropriate COD, and the conditions for obtaining the PPA.

Whether or not PGE’s change in interconnection costs, or the reasonableness of the studies and process to derive those costs in general, should constitute a specific COD deadline, or contract provisions that recognize the length of time necessary to resolve interconnection issues, are questions at issue in this case. Madras Solar asserts changes, mistakes, and other interconnection

¹⁰ OAR 860-001-0450 (1)(a).

¹¹ PGE Motion to Strike at 3.

study problems justify more time and flexibility in the PPA, while PGE asserts those issues do not justify such PPA terms.

Specifically, PGE answers Madras Solar's allegations by stating: "...the parties protracted negotiation timeline was not caused by unreasonable delays on the part of PGE, but instead was the result of Ecoplexus's unwillingness to clarify its intent to accept responsibility for network upgrades caused by its interconnection, or to finalize its project's basic size and output parameters."¹²

It would be prejudicial and unfair to allow PGE in this case to assert that flexible or extended COD terms in the PPA are inappropriate because PGE did not cause unreasonable delays, while simultaneously limiting Madras Solar's ability to produce evidence that PGE acted unreasonably in developing the interconnection cost estimates.

Similarly, in its answer and counterclaim, PGE states that:

Madras has not demonstrated that the necessary interconnection studies have been completed and has not provided adequate assurance that the necessary interconnection arrangements have either been executed or are under negotiation. As a result, Madras is not entitled to a draft—let alone an executable—PPA because it has failed to meet the requirements of Schedule 202.¹³

Accordingly, to resolve this dispute, the Commission may need to evaluate whether or not the failure to complete interconnection studies justifies PGE's withholding of an executable PPA. To resolve this question, information regarding interconnection study disputes may be directly relevant.

Finally, PGE's testimony includes considerable technical discussion of PGE's central Oregon system, and the constraints on that system; yet PGE seeks to strike testimony that seems to directly reply to facts alleged in this testimony. For example, in testimony PGE states that "PGE does not have any load in Central Oregon, and therefore PRB's output-and any additional generation that will be used to serve PGE's load-must be transmitted to the Willamette Valley."¹⁴

Madras Solar asserts the opposite, stating that the claim of no load to service does not appear to be credible; and utilizes data request number 62 to make this point.¹⁵ This testimony from

¹² PGE Answer and Counterclaim at 6 (Jun 11, 2019).

¹³ *Id.* at 30-31.

¹⁴ PGE/200 Foster – Larson/5

¹⁵ Madras Solar/300 Rogers/52

Madras Solar directly responds to a claim in testimony by PGE; if the claim in PGE’s testimony is relevant to the complaint, then Madras Solar’s opposite assertion and evidence in testimony is relevant as well—yet PGE seeks to strike this testimony and the accompanying exhibit on relevancy grounds. It would be unfair and prejudicial to allow PGE to make a factual assertion in testimony—such as “PGE does not have any load in Central Oregon,” and to simultaneously dismiss as irrelevant testimony that seeks to directly disprove this factual assertion.

V. CONCLUSION

Based on the filings of both parties, I consider the issue of interconnection in general, and the dispute over interconnection costs specifically, a part of this proceeding. The Commission may, in its resolution of this case and in order to grant any relief it deems necessary and appropriate, review these interconnection issues and resolve interconnection disputes. Therefore, the motion to strike is denied. I strongly encourage parties to clearly explain, in subsequent filings, testimony, and briefs the specific interconnection related outcomes they feel are legally and technically warranted and required as part of the PPA terms in question, as the Commission may need to address such disputes to resolve all elements of the complaint, and the counterclaim.

PGE’s unopposed motion to modify the procedural schedule in this case is granted, the schedule for this case is amended, and PGE’s rebuttal testimony deadline is February 4, 2020, and Madras Solar’s surrebuttal testimony is due March 26, 2020. The remainder of the schedule is unchanged.

Dated this 9th day of December, 2019 at Salem, Oregon.



Nolan Moser
Administrative Law Judge