

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 2009

MADRAS PV1, LLC,  
Complainant,

vs.

PORTLAND GENERAL ELECTRIC  
COMPANY,  
Defendant,

RULING

Pursuant to ORS 756.500.

**DISPOSITION: PGE’S MOTION TO AMEND ITS COUNTERCLAIM GRANTED IN  
PART; PREVIOUS RULING CLARIFIED; AND CURRENT  
PROCEDURAL SCHEDULE UNCHANGED**

**BACKGROUND**

On December 9, 2019, I issued a ruling in this docket denying a PGE motion to strike certain portions of Madras PV1, LLC’s (Madras Solar) testimony and exhibits filed on November 5, 2019. That ruling also clarified the scope of the complaint, and granted an unopposed motion to modify the procedural schedule in the case. In clarifying the scope of the complaint, I stated: “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.”<sup>1</sup>

On January 3, 2020, PGE filed a motion to amend its answer and complaint, and a first amended answer and complaint incorporating interconnection claims for relief in its amended counterclaim. On January 17, 2020, Madras Solar filed a motion for clarification of my ruling of December 9, 2019. A prehearing conference was held on January 22, 2020, and a schedule for responses to the motion to amend and to clarify was adopted. On January 21, 2020, Madras Solar filed a response to PGE’s motion to amend. On January 31, 2020, PGE filed a combined response to Madras Solar’s motion for clarification and reply in support of its motion to amend its counterclaim. On February 4, 2020, Madras Solar filed a reply in support of its motion for clarification. Finally, on February 5, 2020, PGE filed a supplemental response to Madras Solar’s motion for clarification.

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<sup>1</sup> ALJ Ruling/Memoranda at 3 (Dec 9, 2019).

This ruling addresses the outstanding procedural issues in this case in three parts. First, the ruling determines that PGE's motion to amend its counterclaim is granted in part. Second, the ruling reviews the request to clarify my ruling of December, 9 2019. Third, the ruling briefly discusses the remaining schedule in this case – and determines due to the limited nature of the impact of PGE's amendments to its counterclaim, I make no change in the current schedule of this docket.

## **MOTION TO AMEND COUNTERCLAIM**

### ***Law***

ORS 756.500 provides that a complaint may be amended at any time before the completion of taking of evidence by order of the Commission. The Commission shall freely give leave to amend a pleading when justice so requires.<sup>2</sup>

The Commission reviews four factors when considering a motion to amend a complaint: “(1) the proposed amendment's nature and relationship to the existing pleadings, (2) prejudice to the opposing party, (3) timing, and (4) the merit of the proposed amendment.”<sup>3</sup>

### ***PGE Counterclaim***

On January 3, 2020, PGE filed a First Amended Answer and Counterclaims (Amended Answer) containing a new claim for relief:

177. PGE requests that this Commission conclude that PGE properly performed Madras's System Impact Re-Study and Facilities Study.

178. PGE requests that this Commission conclude that Madras is obligated to pay for the costs identified in the Facilities Study.

### ***Positions of the Parties: PGE***

In support of its added counterclaim, PGE states that my Ruling of December 9, 2019, concluded that addressing interconnection costs, including interconnection studies and the cost of network upgrades, is integral to this proceeding. PGE specifically asks the Commission to conclude that PGE properly performed Madras Solar's System Impact Re-Study (SIS) and Facilities Study, and that Madras Solar is therefore obligated to pay for the costs identified in the Facilities Study.<sup>4</sup>

PGE argues that the interconnection dispute cannot be subdivided into discrete components, but must address all potential interconnection issues, including deliverability-related network upgrades that studies reasonably deem necessary.

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<sup>2</sup> ORCP 23 A.

<sup>3</sup> *In the Matter of Northwest Public Communications Council v. Qwest Corporation*, Docket No. DR 26/UC 600, Order No. 09-155 at 8 (May 4, 2009).

<sup>4</sup> PGE Motion to Amend at 3.

According to PGE, narrowing the scope of the proceeding to exclude some issues would prejudice PGE, while Madras Solar would not be unduly burdened or lose the value of its previously filed testimony by allowing PGE's additional claim for relief. Finally, PGE argues that Madras Solar cannot now claim that PGE is seeking to bypass the QF Large Generator Interconnection Procedures (QF-LGIP) informal dispute resolution process, because Madras Solar brought its complaint to the Commission in the first instance and, consequently, the Commission should not delay resolution of the complaint while awaiting conclusion of the informal dispute resolution process.<sup>5</sup>

### ***Positions of the Parties: Madras Solar***

Madras Solar opposes PGE's motion to amend its answer and counterclaim and further asks that the Commission impose penalties on PGE for allegedly violating a Commission order pursuant to ORS 756.990, because, in Madras Solar's view, PGE is seeking to bypass the dispute resolution procedures of the QF-LGIP. Madras Solar argues that the filing of the PGE amendment so late in the proceedings significantly diminishes the value of its prior work product and prejudices Madras Solar by providing little opportunity to investigate and respond.<sup>6</sup> Madras Solar states that PGE has not met the Commission's four-factor test to determine whether a party should be granted leave to amend and that each factor affects the weight of the other factors. According to Madras Solar, the PGE amendment fails in all four areas: (1) the proposed amendment changes the nature of the case by expanding the scope of the proceeding; (2) the amendment is prejudicial to Madras Solar; (3) the PGE amendment introduces a different legal claim late in the proceedings; and (4) the proposed amendment has little merit as it fails to state ultimate facts sufficient to constitute a claim.<sup>7</sup> Madras Solar also contends that it is improper to allow PGE to litigate interconnection questions outside the QF-LGIP process, but if it does permit PGE's proposed amendment, Madras Solar should be afforded the opportunity to investigate and respond.<sup>8</sup>

Madras Solar contends that the Commission does not need to resolve every interconnection issue in order to set an avoided cost price. Madras Solar states that interconnection issues are relevant only insofar as PGE's delays and unreasonable cost estimates—with respect to interconnection—obstructed progress toward the provision by PGE of an executable power purchase agreement (PPA). Madras Solar also claims that interconnection issues regarding final facilities study costs are not relevant to PPA terms or avoided cost prices and that its own interconnection testimony was for the purpose of demonstrating that the PGE-mandated milestones are unreasonable in light of the record of PGE's past behavior.<sup>9</sup>

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<sup>5</sup> PGE Combined Response to Madras Solar Motion for Clarification and Reply in Support of Motion to Amend Counterclaim, at 3-6.

<sup>6</sup> Madras Solar Response to PGE's Motion to Amend Answer and Counterclaim and Request for Imposition of Penalties for Violation of Commission Order under ORS 756.999 at 1-2 (Jan 21, 2020).

<sup>7</sup> *Id.*, at 4-11.

<sup>8</sup> *Id.*, at 13-17.

<sup>9</sup> Madras Solar Reply in support of Motion for Clarification of ALJ Ruling at 3-15 (Feb 4, 2020).

## ***Resolution***

I permit PGE to amend its answer and counterclaim by adding the claim set forth in paragraph 177. I deny PGE's motion to amend its answer and counterclaim with respect to the claim set forth in paragraph 178.

The appropriate COD term may be colored by the interconnection dispute. The Commission may address all relevant factors that determine whether each parties' respective behavior was reasonable during those negotiations and how their behavior affected or should affect the terms of the PPA.

From the outset, questions with respect to interconnection at the Round Butte substation and transmission constraints on the Pelton-Round Butte 230 kilowatt transmission line and the parties' respective actions to assess the alleged existence, nature and costs associated with accepting Madras Solar's output at that POD have been at the heart of this dispute.

In its complaint, Madras Solar describes COD dispute for the PPA as follows:

“Project Commercial Operation Date milestone related to Generator Interconnection Agreement (Section 2.1): Section 2.1 of the PPA identifies “Project Milestones” that Madras Solar agrees to undertake to complete its project by the Commercial Operation Date (“COD”), which is identified as March 1, 2022. Section 5.1(h) of the PPA states that, if Madras Solar misses a Project Milestone, than [it] shall be in default, and Section 5.2 provides that PGE may terminate the PPA for such a default under certain circumstances. Thus, Project Milestones are critical provisions of the PPA. Madras Solar and PGE disagree about whether certain network transmission upgrades are required as part of the interconnection process. \* \* \* In light of this potential need to adjudicate this issue before FERC, Madras Solar has asked PGE to agree that the Project Milestone related to signing an interconnection agreement state that the required action is for Madras Solar to sign a Generation Interconnection Agreement no later than 30 days after Madras Solar and PGE reach agreement with regard to the form of the agreement, including the cost of any network upgrades and/or interconnection facilities, and the timeline for completion of those upgrades or facilities.”<sup>10</sup>

Madras Solar argues such a provision, which would extend the COD indefinitely, is appropriate because PGE has not properly engaged in the interconnection process, and because the achievement of milestones in the PPA should not be hampered by Madras Solar's efforts to secure reasonable interconnection agreement terms. “Such a provision is reasonable because it ensures that Madras Solar's ability to sell power to PGE under its legally enforceable obligation is not upset solely due to a need to resolve disputes with

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<sup>10</sup> Madras Complaint at 16-17 (Apr 22, 2019).

PGE regarding a position that Madras Solar believes PGE has taken unlawfully, unreasonably, or unjustifiably.”<sup>11</sup>

PGE answers Madras Solar’s allegations by stating “the parties protracted negotiation timeline was not caused by unreasonable delays on the part of PGE.”<sup>12</sup> PGE states that it has “acted in good faith at all times during the negotiations”.<sup>13</sup>

The testimony and exhibits Madras Solar filed on November 5, 2019, are in large part devoted to argument that PGE’s interconnection study analysis up to that point was inaccurate, inappropriate, and unlawful; supporting a PPA provision which would allow Madras to avoid project default due to PGE’s deficient interconnection study analysis.

Madras has summarized the interconnection issues in this cases as follows:

“Madras Solar believes that the interconnection process was faulty from the outset and continues to be faulty today. PGE has made a series of erroneous determinations as to what is required of Madras Solar in order to interconnect its project mischaracterizing the nature of its Central Oregon transmission and how generation in the area is delivered to load \* \* \* The Commission cannot understand the history of the interconnection related disputes, without a comprehensive understanding of their current status and what issues remain unresolved. Because of these delays, Madras Solar is entitled to both its proposed interconnection milestone language and the avoided cost prices in effect at the time Madras Solar executed the PPA.”<sup>14</sup>

Previously, Madras rejected a PGE offer to stipulate to the fact that a dispute over interconnection in this case existed. In justifying its rejection of this offer, Madras noted that “A simple agreement that a dispute exists does not provide the Commission with the evidence necessary to judge the reasonableness of PGE’s insistence that the PPA set a tight timetable for Madras Solar to sign an interconnection agreement \* \* \* a simple stipulation about the existence of the dispute would not provide necessary information to the Commission about the seriousness of the dispute, and would not provide the context needed to understand the delays that Madras Solar has encountered in dealing with PGE through the interconnection and PPA negotiation process.”<sup>15</sup>

Madras Solar recognizes that the Commission must review and ultimately inform its decisions on PPA terms by passing judgement on the interconnection process. PGE’s amended paragraph 177 asks that the Commission make a factual determination with respect to whether PGE properly performed Madras Solar’s System Impact Re-Study and

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<sup>11</sup> Madras Solar/200 Rogers/4 (Apr 22, 2019).

<sup>12</sup> PGE Answer and Counterclaim at 6 (Jun 11, 2019).

<sup>13</sup> *Id.*

<sup>14</sup> Madras Solar Response to PGE Motion to Stay at 9 (Nov 20, 2019).

<sup>15</sup> *Id.*, at 11.

Facilities Study. This determination is one that the Commission must already consider to determine key PPA terms. Madras Solar forcefully argues that the interconnection actions and analysis in this case are relevant to the appropriate PPA terms; PGE's claim amended paragraph 177 simply ask the Commission—after it completes its review of all the interconnection evidence that Madras and PGE have presented—to establish that PGE acted reasonably. That evidence has already been submitted for this same purpose. Madras Solar's testimony aims to prove that PGE acted unreasonably, PGE contends its actions were appropriate. Accordingly, the nature of paragraph 177, and its relationship to the existing pleadings is similar. In other words, the new claim has a clear nexus to the existing claim, as each may be reasonably considered by employing the same evidence.

For this same reason, addition of this claim is not prejudicial to Madras Solar. Even though the amendment arrives at a later point in these proceedings, the substance of the claim is an integral part of the resolution of interrelated issues already in the proceedings.

With respect to the claim set forth in paragraph 178, I deny PGE's motion at this time as the studies have not been completed and submitted in this docket and a specific interconnection cost has not been alleged. Though interconnection costs are undoubtedly a significant issue in this case, PGE must make its claims consistent with our rules for form and content. PGE requests that the Commission "conclude that Madras is obligated to pay for the costs identified in the Facilities Study."<sup>16</sup>

ORCP Rule 18 states in part, that when a pleading asserts a claim for relief, "if recovery of money or damages is demanded, the amount thereof shall be stated \* \* \*." Amended paragraph 178 is listed under the heading *PGE's Second Claim for Relief—Interconnection Studies*. The claim for relief—designation of costs identified in the Facilities Study—does not provide an amount for the Commission to consider. Therefore, this claim for relief is denied.<sup>17</sup>

A claim for relief is ultimately a request for action on behalf of the Commission. The party opposing the claim may make argument, and present any relevant evidence, indicating why the requested relief is inappropriate, impractical, or should be denied as a matter of law or fact. In response the Commission may grant the relief request, deny it, or among other justifications decide that the question is not ripe and that no action regarding the relief should be taken.

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<sup>16</sup> PGE Amended Answer at paragraph 178 (Jan 3, 2020).

<sup>17</sup> Default judgment awarding monetary relief in an insurance dispute was erroneous because the complaint did not state the amount of damages sought. *PGE v. Ebasco Servs.*, 353 Ore. 849, 306 P.3d 628, 2013 Ore. LEXIS 493, 2013 WL 3864327.

## **MADRAS SOLAR MOTION FOR CLARIFICATION**

Because I grant PGE's amended counterclaim to resolve the validity of the Company's interconnection studies, I find Madras Solar's motion for clarification moot.<sup>18</sup> As described above, the Commission must determine whether PGE's conduct in these circumstances was reasonable. The Commission cannot do so without including an evaluation of the disputed interconnection issues. Madras Solar opined that without clarification, Commission review of interconnection issues could be prejudicial to its interests. In addition, Madras Solar further states that certain dispute resolution procedures have not been exhausted, and therefore addressing interconnection issues in this case at this time may be improper. I address each of these concerns below.

### ***Addressing Relevant Interconnection Issues will not Prejudice Madras Solar***

In its motion for clarification, Madras Solar states that resolution of "a wide variety of interconnection issues that have not been previously raised in this case" would be prejudicial.<sup>19</sup> Madras provides three potential subsets of issues that may be addressed. In essence, these may be summarized as issues that "will impact the disputed PPA terms," issues raised by the parties, and "the entire universe of interconnection issues generally."

As described above, the boundaries of the case and issues within is defined by the evidence and the pleadings, now amended, as presented by the parties. Both PGE and Madras Solar provided information and assertions on elements that define the interconnection issues that will be relevant in resolving the dispute. As further noted, the parties have raised issues that require the consideration of the interconnection process as a part of resolving this case.

### ***Dispute Resolution Process***

Granting PGE's amended claim does not foreclose the parties' abilities to continue with the QF-LGIP process. That process may be pursued concurrently while matters in this case are addressed. I request that the parties continue to work towards resolution of certain interconnection matters in the QF-LGIP process during the pendency of this case.

The parties should continue to attempt to find a resolution under the QF-LGIP process, and this case will move forward with the expectation that the dispute resolution process may narrow the issues to be resolved in this case.

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<sup>18</sup> Madras Solar Motion for Clarification of ALJ Ruling at 1 (Jan 17, 2020).

<sup>19</sup> *Id.*, at 2.

## CONCLUSION

At this time I do not change the procedural schedule. This ruling accepts one of PGE's amendments to its counterclaim, finding that the amendment is consistent with the previous pleadings and issues discussed in this case. Accordingly, at this time I do not find justification to amend the procedural schedule.

Dated this 7<sup>th</sup> day of February, 2020, at Salem, Oregon.

A handwritten signature in blue ink, appearing to read "Nolan Moser", is positioned above a horizontal line.

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Nolan Moser  
Chief Administrative Law Judge