

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2164

ZENA SOLAR, LLC.

Complainant,

vs.

PORTLAND GENERAL ELECTRIC
COMPANY,

Defendant.

ORDER

**DISPOSITION: TEMPORARY INTERIM RELIEF EXTENDED; EXPEDITED
FURTHER PROCEEDINGS IN THE FORM OF A HEARING AND
ORAL ARGUMENTS SPECIFIED; DECLINE TO ADDRESS
MOTION FOR PARTIAL SUMMARY JUDGMENT**

I. BACKGROUND

Zena Solar, LLC (Zena Solar) is a community solar project. An interconnection agreement (IA) is fully executed between Portland General Electric Company and Zena Solar, and Zena Solar is currently first on the capacity tier waitlist for Oregon's Community Solar Program (CSP). Zena Solar does not have a power purchase agreement (PPA) to sell its project's output, as a standard contract with PGE was terminated in 2020 to allow Zena Solar to pursue pre-certification under the Oregon CSP. Limited PGE capacity in the CSP currently prevents completion of the pre-certification. We note that CSP capacity has expanded following the issuance of Order No. 21-1317 in docket UM 1930 to 160 MW.

The IA permits Zena Solar to conduct an independent system impact study (iSIS), which Zena Solar did. The iSIS contains four alternative findings, and Zena Solar seeks implementation of certain alternative findings as replacements for particular PGE requirements. PGE evaluated the alternative findings and concluded that no IA amendments were required, but offered to amend the IA to remove a requirement to replace an in-line fuse with an electronic recloser bank. Zena Solar refused, asking instead that the company agree to remove the IA's specified 3V0 sensing scheme to instead use existing substation relay in a broken delta VT configuration. PGE rejected the proposal with the explanation that it would not be consistent with the company's standardized approach to 3V0 protection, result in significant cost savings, or provide functionally equivalent mitigation due to the introduction of complexity and risk.

When Zena Solar missed a payment required by the IA, PGE sent a notice of default on February 17, 2021. PGE later extended the cure period under the IA through August 31, 2021.

On April 9, 2021, Zena Solar filed a notice of an intent to file a complaint for enforcement of an interconnection agreement pursuant to OAR 860-082-0085(2). On May 24, 2021, Zena Solar filed a complaint against PGE for enforcement of the IA. The complaint raises two main issues: 1) whether certain system upgrades associated with the installation of 3V0 protection at PGE's Wallace Substation identified by PGE in the IA are necessary under Oregon's Small Generator Interconnection rules; and 2) if so, whether PGE's specific requirements and the associated costs are reasonable and consistent with good utility practice. Zena Solar's complaint seeks an order directing PGE to make certain amendments to the IA, including the IA timeline.

Zena Solar also filed, the same day, a motion for interim relief and preliminary injunction.¹ This motion seeks to prevent PGE from terminating the IA during the complaint process to cause Zena Solar to lose its first place queue position. On June 2, 2021, the parties filed a joint motion requesting the establishment of an initial procedural schedule alternative to that prescribed by OAR 860-082-0085(10). They requested a prehearing conference date two weeks after a date specified for PGE to file testimony. They also requested that there be no prior conference under OAR 860-082-0085(10), as they asked that the questions of whether such a conference should occur and if so, when, be addressed at the prehearing conference. An administrative law judge (ALJ) ruling, issued on June 4, 2021, granted the joint motion and adopted the requested procedural plan.

On July 2, 2021, PGE responded to the motion for interim relief and preliminary injunction. On that same day, Zena Solar filed a reply in support of its motion for relief and preliminary injunction on July 23, 2021. Between August 12, 2021, and August 20, 2021, several filings were made by the parties addressing Zena Solar's motion for interim relief and a preliminary injunction: on August 12, 2021, PGE filed a request for leave to file a surreply in opposition to this motion with the surreply; on August 16, 2021, Zena Solar filed a motion to file a surreply supporting its motion for interim relief and a preliminary injunction with the surreply; PGE filed a response opposing Zena Solar's motion for leave on August 19, 2021; on August 20, 2021, Zena Solar filed a reply to PGE's response.

On September 1, 2021, Zena Solar's motion for interim relief and a preliminary injunction was granted in part, providing interim relief to Zena Solar for a period of 30 days to provide time for the Commission's full consideration of the initial motion on its merits. PGE was directed to not terminate Zena Solar's IA for a period of the first of either: 1) 30 days from the date of the ruling; or 2) the Commission's resolution of Zena Solar's motion for interim relief and preliminary injunction.

On September 8, 2021, an ALJ ruling granted all requests for the admission of filings regarding the motion for interim relief and preliminary injunction, and confirmed that the motion was substantively ready for consideration. The ruling directed the parties to submit two rounds of comments on the following issues: 1) the applicability of OAR 860-082-0085(1); and 2) how PGE's motion for partial summary judgment should be handled in context of the rest of the procedural schedule. Parties submitted the first round of comments on September 21, 2021, and the second round on September 28, 2021.

¹ The Small Generator Interconnection Rules require an interconnection customer seeking enforcement of an IA to file any affirmative motion for relief simultaneously with the complaint. *In Re Rulemaking to Adopt Rules Related to Small Generator Interconnection*, Docket No. AR 521, Order No. 09-196 at 6, Appx A at 28 (Jun 8, 2009); see OAR869-082-0085(3)(g).

II. PARTIES' POSITIONS

A. Interim Relief

It seems to be “the first time anyone has asked the Commission what should happen to an interconnection customer’s queue position during a complaint for enforcement of an IA,” Zena Solar observes.² Zena Solar also notes that while the Small Generator Interconnection Rules require an interconnection customer seeking enforcement of an IA to simultaneously file the complaint and any affirmative motion for relief, they do not set forth a standard for evaluation of the latter. Zena Solar concludes that interim relief pending a complaint about enforcement of an IA presents a question of first impression for which there is no controlling legal standard. Different standards have been applied to award some form of interim relief in other types of cases before the Commission, Zena Solar observes, and we have wide regulatory latitude to grant Zena Solar’s motion for interim relief. Moreover, as Zena Solar is first in the interconnection queue and waitlist to be pre-certified in the CSP, we are presented with a “case study” about how to address the novel question, and Zena Solar urges us to consider general public policy considerations in addition to its specific needs. Zena Solar argues that the balance of hardships in this case favors interim relief for Zena Solar, as there is no harm to PGE if Zena Solar receives such relief, and the only project behind it in the queue supports Zena Solar’s request.³

Both parties agree that the Oregon Rules of Civil Procedure (ORCP) are applied in our cases, unless inconsistent with our specific rules, one of our orders, or the ruling of an administrative law judge.⁴ Both parties also agree that we have applied ORCP 79A standards for preliminary injunctions to requests for interim relief. We recognized our authority to direct a utility under ORCP 79A to provide an injunction pending a dispute, Zena Solar indicates.⁵ They disagree, however, as to whether it is the only standard available for evaluating interim relief.

We have applied different legal standards to evaluate whether to award interim relief other than a preliminary injunction, Zena Solar asserts. For example, in 2015, the first (of three orders) granted “narrow, targeted, and proportionate” interim relief to utilities and their customers; the awarded interim relief not by injunction but by lowering the eligibility cap on QFs for power purchase agreements (PPAs).⁶ Zena Solar indicates that the primary question was whether providing interim relief doing would prevent specific, imminent harm to utility customers from potentially significant cost impacts.⁷ Most recently, Zena Solar states, we waived and revised PacifiCorp’s large generator interconnection serial queue process on the basis of good cause and without factual findings.

² Zena Solar’s Reply in Support of its Motion for Interim Relief and Preliminary Injunction at 2.

³ Zena Solar’s Motion at 1, fn 1 citing Declarations of Jonathan Nelson and Colin Murphy (the respective developers).

⁴ Zena Solar’s Motion for Interim Relief and Preliminary Injunction at 4; PGE’s Response at 6, fn 29 citing OAR 860-001-0000(1).

⁵ *Id.* at 4, fn 6, citing *Rio Communications v. US West Communications*, Docket No. UC 410, Order No. 99-349, LEXIS at *7-8 (May 24, 1999).

⁶ *Id.* at 7, fn 22 citing *In Re Idaho Power Company Application to Lower Standard Contract Eligibility Cap and to Reduce the Standard Contract Term for Approval of Solar Integration Change in Resource Sufficiency Determination*, Docket No. UM 1725, Order No. 15-199 at 7 (Jun 23, 2015).

⁷ *Id.*, fn 23 citing Docket No. UM 1725, Order No. 15-199 at 6-7; *see also In Re PacifiCorp, dba Pacific Power, Application to Reduce the QF Contract Term and Lower the QF Standard Contract Eligibility Cap*, Docket No. UM 1734, Order No. 15-241 at 3 (Aug 14, 2015); *see also In Re PGE Application to Lower the Standard Price and Standard Contract Eligibility Cap for Solar QFs*, Docket No. UM 1854, Order No. 17-310 at 7 (Aug 18, 2017); fn 24 citing *In Re PacifiCorp, dba Pacific Power, Updates Standard Avoided Cost Purchases from Eligible Qualifying Facilities*, Docket No. UM 1729, Order No. 18-289 at 5 (Aug 9, 2018).

B. Applicability of OAR 860-082-0085(10) and Further Proceedings

OAR 860-082-0085 establishes a specific process for the resolution of a complaint for enforcement of an IA. OAR 860-082-0085(10) mandates a case management conference to address the process, with a primary purpose of facilitating a determination about whether the complaint's issues can be determined on the pleadings and submissions, or whether further proceedings are necessary. Under the rule, the ALJ may either submit the matter to the Commission for resolution based on the complaint, answer, and testimony, or determine that further proceedings are appropriate.

The parties agreed early that further proceedings would be appropriate, but wanted to wait until after initial pleadings were complete to address the form of those proceedings; the management conference was delayed for this reason. Specifically, they wanted to determine whether discovery, additional testimony, and an evidentiary hearing were needed, or whether motions for summary judgment could resolve the dispute or some portion of it.

The parties do not now agree about what the nature of further proceedings should be. PGE requests the opportunity to narrow the issues by a motion for partial summary judgment to address claims that PGE argues are barred for various reasons, but Zena Solar opposes delaying the process by several weeks to address such a motion. The parties agree that as many claims involve highly technical issues, there needs to be an opportunity for cross examination. Zena Solar requests the opportunity for discovery and additional testimony, as well.

III. RESOLUTION

By agreement at the beginning of this docket, the parties postponed the management conference until after submission of initial pleadings and testimony. A management conference is currently scheduled for September 30, 2021. In advance of this management conference, the parties submitted comments regarding whether there should be further proceedings and if so, the nature of such. These comments were intended to facilitate decisions regarding further proceedings in this docket.

On September 8, 2021, the issue of whether interim relief should be granted to Zena Solar during the pendency of this docket was submitted to us for consideration. As this issue is already before us, and it is highly interconnected with questions related to further proceedings in this case, we undertake all of them in this order.

The novel issue raised by Zena Solar's motion is the appropriate effect on an interconnection customer's queue position pending an IA enforcement complaint. In other words, Zena Solar asks whether an interconnection customer should have the assurance that it may file a complaint for IA enforcement without losing its queue position during the pendency of the case. Although granting an injunction under ORCP 79A would indirectly resolve this question for Zena Solar by preventing PGE from terminating the IA and thereby stopping the removal of Zena Solar from the CSP queue, we prefer to more directly address the question in context of general policy considerations, as well as Zena Solar's particular circumstances. For this reason, we find this question is best addressed by determining whether interim relief in some form other than an injunction should be awarded to Zena Solar.

This consideration must be evaluated in context of OAR 860-082-0085 and its particular process for complaints for IA enforcement. The rule is based on an awareness that such complaints warrant specific procedures, including provisions intended to expedite resolution of the disputes. We explicitly acknowledge in this order that one reason to efficiently conduct complaints for IA enforcement is to avoid unintended consequences such as an interconnection customer being removed from a queue during the pendency of a complaint, or from discouraging an interconnection customer from bringing a complaint due to a fear of losing a queue position.

We find, therefore, that it was appropriate for Zena Solar to request interim relief, and we partially grant Zena Solar's motion. We do not award an injunction, but we extend the interim relief that we granted on August 31, 2021, to December 10, 2021, by which time we plan to issue a final decision in this docket on an accelerated procedural schedule further addressed below. We make this determination in part based on a finding of no harm to other projects in the queue behind Zena Solar, as the lower queued project so attests, and the fact that our schedule for the proceeding will ensure interim relief is limited.

We determine to move this case forward on an expedited basis treating the parties' proposed further procedures as motions under OAR 860-082-0085(12). Further proceedings are necessary, but we truncate those to include only a hearing, briefs, and oral argument, all to be completed no later than November 19, 2021. The prehearing conference scheduled for September 30, 2021, will be used to establish a schedule with dates and times for these events. We decline to take up PGE's motion for summary judgment, and will instead rely on the proceedings ordered above to resolve the case. We expect briefing and the oral argument to address the legal issues that would be raised in a partial summary judgment and decline to separately address those issues as we acknowledge the significant delay that would result. Noting that Zena Solar did not file a request for discovery under OAR 860-082-0085(11), we decline to move backwards in this docket by allowing discovery at this stage of the proceedings.

Made, entered, and effective Sep 29 2021.



Megan W. Decker
Chair



Letha Tawney
Commissioner



Mark R. Thompson
Commissioner

