

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2322

In the Matter of

PILOT ROCK SOLAR 1, LLC, an Oregon limited liability company; PILOT ROCK SOLAR 2, LLC, an Oregon limited liability company; TUTUILLA SOLAR, LLC, an Oregon limited liability company; BUCKAROO SOLAR 1, LLC, an Oregon limited liability company; and BUCKAROO SOLAR 2, LLC; an Oregon limited liability company;

Complainants,

vs.

PACIFICORP, dba PACIFIC POWER, an Oregon corporation,

Defendant,

Pursuant to ORS 756.500.

ORDER

DISPOSITION: MOTION FOR INTERIM RELIEF DENIED

On August 23, 2024, complainants Pilot Rock Solar 1, LLC, and Pilot Rock Solar 2, LLC, (together, the Pilot Rock Projects) filed a motion for interim relief. In particular, the Pilot Rock Projects seek an order that defendant PacifiCorp, dba Pacific Power take all actions necessary to preserve its ability to interconnect the Pilot Rock Projects in Calendar Year 2024, pending the Commission's final order in the above complaint.

The Pilot Rock Projects argue in their motion that PacifiCorp has stopped work to "punish" the complainants for filing the complaint. They further state that the projects have sourced a tax finance investor provided that they achieve commercial operation in 2024. They continue:

Should the Pilot Rock Projects not achieve commercial operation in 2024, they will lose their current long-term finance offer, and may need to find a different investor. This will cause the construction loans to default, or incur significant additional charges. Failure to deliver in 2024, will at minimum double the underwriting and legal costs, and delay interconnection by many months.¹

PacifiCorp filed a response on August 30, 2024. It states that it actually stopped work because the Pilot Rock Projects failed to make contractually obligated payments. It cites to the Commission-approved interconnection agreements, which state: “Failure to comply with the selected payment schedule will result in immediate contractual breach, work stoppage, and slip of the milestone schedule on a day-for-day basis.”² It also states that the current Pilot Rock Project interconnection agreement includes target commercial on-line dates of September 30, 2025 and that, while the Pilot Rock Projects have asked for a 2024 date, they do not have a contractual right to it.

When we evaluate requests for interim relief, we are conscious of the fact that it is an extraordinary remedy. In the absence of specific rules, we look to the OCRP 79(A)(1)(a) states that injunctive relief will be granted:

When it appears that a party is entitled to relief demanded in a pleading, and such relief, **or** any part thereof, consists of restraining the commission **or** continuance of some act, the commission **or** continuance of which during the litigation would produce injury to the party seeking the relief[.]

The Oregon Supreme Court has stated that:³

When determining whether to issue a preliminary injunction, courts consider, among other things, the likelihood that the party requesting the injunction will ultimately prevail on the merits of its claim and whether, if the injunction is not issued, the party will be irreparably harmed during the litigation of the claim. *State ex rel. v. Mart*, 135 Or 603, 613, 283 P 459 (1931); *City of Portland v. Baker*, 8 Or 356, 365 (1880). Courts also balance the harm to the movant against harm to the opposing party and the public if the injunction is issued. *State ex rel. v. Duncan*, 191 Or 475, 500, 230 P2d 773 (1951); *Booth-Kelly Lumber Co. v. Eugene*, 67 Or 381, 384, 136 P 29 (1913).

¹ Pilot Rock Projects Motion for Interim Relief (Aug. 23, 2024).

² PacifiCorp Response at 2-3, n 5 (Aug. 30, 2024).

³ *Elkhorn Baptist Church v. Brown*, 366 Or 506, 518-19 (2020).

Here, the Pilot Rock Projects have demonstrated irreparable harm in the disruption of its funding if the project is not connected in 2024. However, the harder question is whether it has demonstrated likelihood of success on the merits. The Pilot Rock Projects have alleged systematic delays by PacifiCorp that made it impossible to get a 2024 interconnection date. In particular, complainants allege that PacifiCorp substantially delayed executing complainants' Community Solar Power Purchase Agreements, first by losing their application and then by tying their execution to completion of complainants' Interconnection Agreements. Further, it alleges that the construction milestone and progress payment schedule contained in its agreements is substantially slower compared to similar Community Solar projects. PacifiCorp responds that Pilot Rock signed a contract with an online date in 2025 and that it has caused delays itself by failing to make contractually required progress payments.

Regardless of competing allegations about the cause of delays, the presence of a contract agreeing to an online date in 2025 makes us unable to determine for purposes of interim relief that Pilot Rock is likely to prevail on the merits. While we are sympathetic to the dilemma they face, at the end of the day the projects signed contracts with September 2025 commercial on-line dates. We understand that complainants have asked for 2024 commercial on-line dates in their complaint, but we must decide a motion for interim relief based on a preliminary assessment of the merits. And the facts before us now—contracts with September 30, 2025 dates—do not justify the extraordinary step of granting the interim relief requested.

Critical to our decision is that it is not clear that the delays alleged by complainants are alone sufficient to explain the delays the projects have experienced. The projects began the interconnection process many years ago—PacifiCorp's witness Kristopher Bremer characterized their process at hearing as "stop and start."⁴ While PacifiCorp does seem to have contributed to those delays—*e.g.*, by not monitoring an email address to which the complainants sent the application—the record does not show that PacifiCorp is the only contributor to the delays. PacifiCorp testified, for instance, that it offered accelerated CODs in December of 2023, and that complainants never responded to that offer for acceleration.⁵ At this juncture, we find it likely that both parties contributed to the delays in question and we do not have the evidence before us necessary to find that the projects would have been interconnected in 2024 but for the action of PacifiCorp.

We also rely on the fact that complainants have not made the progress payments contemplated by those contracts. PacifiCorp appears to have stopped worked pursuant to

⁴ Transcript 76:17.

⁵ PAC/100, Bremer/26-27.

the contracts themselves. Pending a final determination from us that our rules should be waived, and the contracts altered, we do not find it appropriate to order that work be resumed in the absence of progress payments made.

Finally, in making this determination, we rely also on the effects such a decision may have on other applicants in the interconnection queue who have made timely progress payments. If PacifiCorp would need to cease work on those projects in order to interconnect the Pilot Rock Projects on an expedited basis, as it has represented it would have to do, that that would be an inequitable outcome.

ORDER

IT IS ORDERED that complainants' motion for interim relief is denied.

Made, entered, and effective Sep 24 2024 .

Megan W. Decker

Megan W. Decker
Chair

Letha Tawney

Letha Tawney
Commissioner

Les Perkins

Les Perkins
Commissioner

