OREGON SOLAR + STORAGE INDUSTRIES ASSOCIATION

Oregon Public Utility Commission
201 High Street SE, Suite 100
Salem, OR 97301-3398

March 9, 2021

Re: AR 641 – Informal Phase Comments re Discovery, Data Requests, Confidentiality

Dear Chair Decker, Commissioner Tawney and Commissioner Thompson,

Oregon Solar + Storage Industries Association (OSSIA) submits these comments in response to ALJ Nolan Moser's February 24, 2020 request for feedback on the Oregon Public Utility Commission's (PUC) rules regarding discovery, data requests, and confidentiality. In light of the impact of Commission proceedings on the general public, OSSIA urges the Commission to view these procedural updates as an opportunity to reduce barriers to public participation. While protecting privileged information is important, transparency in these proceedings is vital to support the long-term engagement of underrepresented communities.

OSSIA appreciates that the PUC is taking up this issue and considering to revise rules to make proceedings at the PUC more accessible. The PUC's quasi-judicial process is complex and intimidating; increased streamlining and transparency will help under-resourced community organizations participate. As a small organization OSSIA struggles to keep up with PUC proceedings and the process surrounding each of them. However, OSSIA has members that are well-versed in these issues and can provide guidance and some volunteer capacity. There are organizations who should play a larger role in PUC proceedings that do not have volunteers to rely on for expertise and capacity. In addition, increased transparency is good for public process overall, to bring to light issues in an easier and more inclusive way.

OSSIA recommends the following with regards to the initial subjects considered:

Public Data Responses: OAR 860-001-0540

OSSIA urges the PUC to require that data requests and responses, both non-confidential and redacted confidential versions, are made public in general matters of utility regulation. To ensure meaningful public participation, the Commission needs to make these processes accessible, first and foremost, by taking every step to make all relevant information available to the public. Currently, requiring a stakeholder group or individual to file an intervention and a request for huddle access, or request information from the other parties, is an inequitable prerequisite for participation for many groups that have fewer resources or less experience in participation. Instead, by making this information available, stakeholders not privileged to access confidential information will still have a comprehensive overview of the proceeding.

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While many dockets before the PUC are contested cases in which two parties are litigating their respective rights, many dockets have broad public interest implications. Rate cases, IRPs, RFPs, rulemakings, or other dockets where the subject of the dispute is a policy issue, has general applicability, or otherwise concerns matters of general utility regulation, all impact a wide variety of stakeholders, many of whom cannot become intervenors in the case. The data produced in those processes should be public and not limited to only groups that have the resources and expertise to intervene. By appropriately safeguarding the public interest in this way, the PUC can guarantee more stakeholders will have a voice in the proceedings.

Confidential Information: OAR 860-001-0070, 860-001-0080

Better sideboards around which types of information qualify as confidential can also facilitate broader stakeholder participation. A designation should be narrowly tailored to encompass only confidential information. However, it is unclear whether the confidentiality designation for public records purposes in OAR 860-001-0070 and a confidentiality designation for general protective orders in OAR 860-001-0080 are intended to cover the same types of information or whether one is intended to be broader or narrower. Additional clarity will improve transparency in a party's decision to designate as well as ensure the PUC takes responsibility to police the utilities' designation of confidential data. Additionally, many stakeholders are reluctant to sign protective orders and so will never have the opportunity to see what information utilities designate as confidential or challenge that designation. There are instances where a trade group may not sign a protective order, but their attorney does, and the over-designation of confidential information can impair that group from being able to effectively communicate with its counsel.

Eliminate Interrogatories and Extend Document Request Deadline: OAR 860-001-0540

OSSIA supports eliminating interrogatories and extending the deadline for document requests to 30 days for non-utility parties. Non-utility parties can be overburdened by discovery due to a lack of resources, time, and personnel. Utilities do not face these constraints. Making these changes will allow non-utility parties the opportunity to fully cooperate and comply with these requests. Moreover, by aligning the PUC process with the Oregon Rules of Civil Procedure (ORCP), participation in PUC proceedings will not be more burdensome for other stakeholders than litigation in Oregon state court. Further limiting this resource burden also encourages other underrepresented voices to participate in more proceedings.

Limit Discovery Requests to Matters in Testimony: OAR 860-001-0500

OSSIA also urges the PUC to limit discovery requests of non-utility intervenors by narrowly tailoring requests only to matters upon which the intervenor has testified. This will also help alleviate the burden of discovery for non-utility parties. The fear of being overly burdened by discovery requests should not prevent underrepresented voices from participating fully in the PUC process. Removing this

barrier will allow parties to better estimate the resources necessary to intervene in a case, thereby encouraging other stakeholders to participate.

Overall, the agency's core aim of protecting the public interest must guide the procedural rules of the PUC to not only ensure a fair and equitable process, but also to incite public confidence in the PUC's decision-making.

Thank you for your consideration, OSSIA looks forward to participating fully.

Sincerely,

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Executive Director

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