

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1805

NORTHWEST AND INTERMOUNTAIN)	
POWER PRODUCERS COALITION,)	
COMMUNITY RENEWABLE ENERGY)	
ASSOCIATION and RENEWABLE)	
ENERGY COALITION,)	COMPLAINANTS’ RESPONSE TO
)	PORTLAND GENERAL ELECTRIC
)	COMPANY’S EXPEDITED
)	REQUEST FOR A STAY
Complainants,)	
)	
v.)	
)	
PORTLAND GENERAL ELECTRIC)	
COMPANY,)	
)	
Defendant.)	
_____)	

I. INTRODUCTION

Northwest and Intermountain Power Producers Coalition (“NIPPC”), the Community Renewable Energy Association (“CREA”), and Renewable Energy Coalition (the “Coalition”) (collectively “Complainants”) hereby submit their response in opposition to Portland General Electric Company’s (“PGE”) request for an expedited stay of Complainants’ petition for clarification (“Complainants’ Clarification”) and rehearing or reconsideration (“Complainants’ Reconsideration”) of Order No. 17-256. The Complainants have made two separate and independent requests that the Oregon Public Utility Commission (“Commission” or “OPUC”): 1) clarify a point of confusion regarding its Order No. 17-256 (i.e., the Commission should not alter the order, but explain what it meant); and 2) reconsider or rehear its decision in Order No. 17-256 (i.e., the Commission should change the order).

The Commission should deny PGE’s request for a stay of its obligation to respond to the Complainants’ Clarification because PGE does not explain why it needs additional time to respond to the request to explain what its order meant. As PGE admits, Complainants’ Clarification is an “original” request. Thus, there is no reason to delay any response given the significant harm that the confusion regarding Order No. 17-256 is causing in the Oregon qualifying facility (“QF”) market.

In addition, the Commission should also deny PGE’s request for a stay of its obligation to respond to the Complainants’ Reconsideration because it assumes that it may not need to respond to the Complainants until after PGE’s objection to the petition to intervene of NewSun Solar Projects¹ is resolved. PGE is incorrect, and it will need to respond to the Complainants’ separate Reconsideration regardless of whether NewSun Solar Projects petition to intervene is granted. As PGE must fully respond regardless and PGE has not stated any other reason it needs more time, PGE should be required to timely respond to the Complainants’ Reconsideration.

II. BACKGROUND

On September 11, 2017, Complainants filed a motion for clarification and application for rehearing or reconsideration of Order No. 17-256. By Commission rule, PGE is allowed, but not required, to file a response to the Complainants’ Clarification and Reconsideration within 15 days, which in this case would be by September 26, 2017.² On September 19, 2017, PGE filed a pleading that it titled as follows: “REQUEST TO STAY RESPONSE TO PETITIONERS’

¹ The NewSun Solar Projects are Dayton Solar I LLC, Starvation Solar I LLC, Tygh Valley Solar I LLC, Wasco Solar I LLC, Fort Rock Solar I LLC, Fort Rock Solar II LLC, Alfalfa Solar I LLC, Fort Rock Solar IV LLC, Harney Solar I LLC, and Riley Solar I LLC. PGE refers to them as “Petitioners.”

² OAR 860-001-0720(4).

JOINT MOTION FOR CLARIFICATION AND APPLICATION FOR REHEARING OR RECONSIDERATION AND COMPLAINANT’S PETITION FOR CLARIFICATION AND APPLICATION FOR REHEARING OR RECONSIDERATION UNTIL PETITIONERS’ JOINT PETITION TO INTERVENE OUT OF TIME IS RESOLVED.” PGE asks for an “immediate” stay of its opportunity to file a response to the Complainants’ Clarification, Complainants’ Reconsideration, and the NewSun Solar Projects’ two separate motions for clarification and applications for rehearing or reconsideration (“NewSun Energy Applications”).³

III. RESPONSE

Complainants oppose PGE’s request for a stay. Granting PGE’s Motion will significantly harm QFs with existing contracts with PGE because it will delay resolving a point of confusion raised by Complainants’ Clarification, and will only delay (rather than avoid the need to) resolve the Complainants’ Reconsideration. PGE has not explained why it needs to stay the deadline for PGE to respond to *Complainants’* Clarification, and it does not provide a plausible explanation for a stay of the deadline to respond to the *Complainants’* Reconsideration.

The general thrust of PGE’s argument is that the *NewSun Solar Projects* should be denied intervention, and according to PGE, after that happens, the NewSun Solar Projects’ motion for clarification and rehearing or reconsideration will become moot, necessitating no response from PGE. The biggest hole in PGE’s logic appears at the end of its motion where it acknowledges that, in addition to the NewSun Solar Projects, the *Complainants* have also filed their separate Clarification and Reconsideration petitions. PGE does not even mention the existence of the Complainants’ Clarification and Reconsideration until page 3, and it appears to have been added

³ PGE’s Request for Stay of Time to Respond at 3.

as an afterthought. This may be because, regardless of PGE’s arguments regarding the NewSun Applications, PGE will still need to address the Complainants’ filings and should be required to timely respond.

PGE does not explain that, even if the NewSun Solar Projects are denied intervention, that denial cannot moot either of the separate Complainants’ Clarification or Reconsideration requests because Complainant’s are original parties to this proceeding. PGE does not argue otherwise. Instead, PGE’s sole argument is that staying the deadline to respond to Complainants’ separate filing would be “[i]n the interest of administrative efficiency.”⁴ PGE’s argument is unpersuasive and should be rejected.

Complainants were considering filing a separate reconsideration or rehearing request of Order No. 17-256. Once they became aware that NewSun Solar Projects’ were intending to file their application for rehearing or reconsideration, then Complainants discussed either filing a their own more robust and thorough rehearing or reconsideration or joining NewSun’s Applications. As explained by Complainants in their Reconsideration: “In the interest of limiting the filings that must be reviewed by the Commission, Complainants adopt and incorporate by reference the same arguments made by the NewSun Solar Projects, without repeating all of those detailed arguments in this filing.”⁵ The Complainants merely wanted to reduce the burden upon the Commission and not raise duplicative arguments, and did so by adopting the NewSun Solar Projects arguments. Given that Complainants are parties to this proceeding, PGE will be required to respond in full to the NewSun Projects Applications regardless of whether or not the

⁴ Id. at 3-4.

⁵ Complainants Reconsideration at 12.

NewSun Projects' intervention is granted. Therefore, PGE's entire basis for needing more time (that it may not need to respond if NewSun Projects' intervention is denied) is based on an erroneous understanding of its obligations.

In addition, if PGE's request for an open-ended stay of its right to respond is accepted, it is possible that the Commission will be unable to render a decision on reconsideration or rehearing within the 60-day deadline in the statute.⁶ Finally, while not provided as a matter of right, Complainants may seek leave to submit a reply to any PGE response to their Clarification or Reconsideration, which may be prevented if PGE obtains twice as much time as regularly permitted.

PGE recognizes that "Complainants' petition for clarification raises original arguments" and its Motion has two sentences stating that "PGE has proposed that it respond to Complainants' petition for clarification by October 10, 2017. Complainants are not willing to agree to this proposal."⁷ Complainants have searched PGE's four-page motion, and have failed to find any independent basis for why it should not timely respond to their petition to clarify the meaning of Order No. 17-256. Therefore, at a minimum, PGE should not be allowed any additional time to file a response to Complainants' Clarification.

PGE fails to note that the Commission's Order No. 17-256 is causing harm to QFs which have previously entered into contracts with PGE. As the Complainants' complaint did not seek to interpret prior standard contract forms or executed contracts, QFs with executed contracts were not aware that their rights, duties and obligations may be interpreted in this proceeding.

⁶ OAR 860-001-0720(6); ORS 756.561.

⁷ PGE's Motion at 4.

Suddenly, dozens of QF contracts are implicated, and the Commission should resolve the Clarification on an expedited basis, rather than further delay final resolution of this proceeding.

Although there are undoubtedly numerous other reasons to deny PGE's demand for immediate and open-ended relief, PGE's failure to provide any plausible basis to stay its deadline to respond to Complainants' Clarification Reconsideration is fatal to PGE's request.

IV. CONCLUSION

For the reasons listed above, PGE should not be provided any additional time to respond to Complainants' Clarification and Reconsideration.

Dated this 20th day of September 2017.

Respectfully submitted,



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