

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1805

NORTHWEST AND INTERMOUNTAIN)	
POWER PRODUCERS COALITION;	)	RESPONSE OF NORTHWEST AND
COMMUNITY RENEWABLE ENERGY	)	INTERMOUNTAIN POWER
ASSOCIATION and RENEWABLE	)	PRODUCERS COALITION;
ENERGY COALITION,	)	COMMUNITY RENEWABLE
	)	ENERGY ASSOCIATION and
Complainants,	)	RENEWABLE ENERGY COALITION
	)	TO PORTLAND GENERAL
v.	)	ELECTRIC COMPANY’S (1)
	)	MOTION TO STRIKE, (2) MOTION
PORTLAND GENERAL ELECTRIC	)	TO MAKE MORE DEFINITE AND
COMPANY,	)	CERTAIN, AND (3) MOTION
	)	REQUESTING MORE TIME
Defendant.)	
_____)	

I. INTRODUCTION

Northwest and Intermountain Power Producers Coalition (“NIPPC”), Community Renewable Energy Association (“CREA”), and Renewable Energy Coalition (“Coalition”) (collectively “Complainants”) respectfully request that Oregon Public Utility Commission (“Commission”) Administrative Law Judge (“ALJ”) Allan Arlow deny the (1) Motion to Strike, (2) Motion to Make More Definite and Certain, and (3) Motion Requesting More Time (collectively “Motions”), filed on December 19, 2016. As demonstrated herein, the Complaint comports with the Commission’s rules governing such pleadings, and, therefore, there is no legal basis on which to grant the Motions. Further, granting of any of the Motions would only result in an unnecessary delay in

NIPPC, CREA and REC RESPONSE TO PGE (1) MOTION TO STRIKE, (2) MOTION TO MAKE MORE DEFINITE AND CERTAIN AND (3) MOTION REQUESTING MORE TIME TO RESPOND

resolving the simple and straight forward legal question presented in the Complaint and as identified by ALJ Arlow who succinctly explained that the Complaints have:

raised a straightforward question: Under standard contracts, which provide for a 15-year term of fixed prices based upon a utility's avoided costs, does the term begin on the date that the contract is executed or upon the date that the QF begins to deliver its net output to the utility?¹

Complainants ask that the Commission require PGE to pay QFs fixed prices for 15 years commencing upon power delivery, rather than upon the effective date of the power purchase agreement. The Complaint alleges that PGE's recent interpretation of the 15-year fixed price period: (1) violates Commission orders and policy; and (2) arbitrarily and materially alters the terms of its standard QF agreements without notice to or authorization from the Commission.³ Complainants' Prayer for Relief request that the Commission implement this requirement by cease and desist order. In the alternative only, should the Commission determine that PGE's standard contracts are not consistent with Commission policy, Complainants' Prayer for Relief requests that the Commission order PGE to file revised standard contracts clearly stating that the 15 years of fixed prices run from the delivery of net output.

PGE's Motions ask the Commission to strike both of Complainants' claims even though it admittedly understands the two simple legal questions raised by Complainants (or the even more simple and single clear question framed by ALJ Arlow): 1) does the Commission's policy require 15 years of fixed prices from the time of power deliveries;

³ The Complaint identified two basic legal issues. ALJ Arlow has condensed these into one legal issue in more neutral language getting to heart of the matter.

and 2) do PGE's standard contracts comply with that policy. PGE's Motions incorrectly assume that Complainants seek interpretation of previously executed contracts between specific counter parties when the Complaint makes no such claim.

Prior to filing this Response, Complainants conferred in good faith with PGE seeking PGE's agreement to resolve PGE's procedural objections by Complainants filing an Amended Complaint with minor clarifications to the Prayer for Relief, if PGE agree to withdraw its Motions and file its Answer within 10 days. PGE rejected this approach. PGE appears to be relying upon a strained and incorrect reading of the Complaint and the Commission's rules. Under the Commission's pleading standards as well as the Oregon Rules of Civil Procedure ("ORCP"), defects in pleading that do not affect the substantial rights of the adverse party are to be disregarded.⁴ As detailed below, the Complaint satisfies both the specific legal requirements raised by PGE as well as this ultimate standard, as originally drafted. Thus, PGE's Motions should be denied.

II. LEGAL STANDARD

To understand the legal labyrinth set out in PGE's Motions, one must carefully examine Oregon's statutory provisions, including two separate sets of statutory rules. First, the Commission's own rules, which govern complaint proceedings before the Commission and were last updated through an official rulemaking process that began in 2009. Second, Oregon's Rules of Civil Procedure, which govern the process used in

⁴ ORCP 12B ("The court shall, in every stage of an action, disregard any error or defect in the pleadings or proceedings which does not affect the substantial rights of the adverse party."); see also ORCP 12A ("All pleadings shall be liberally construed with a view of substantial justice between the parties.").

judicial proceedings, and were established by the legislature in the early 1980s.¹²

1. The Commission Rules Are More Lenient Than Oregon Court Rules

Oregon Revised Statutes (“ORS”) 756.500 to 756.610 set out a simple framework for complaint, hearing, and investigation procedures for the Commission. Pursuant to ORS 756.500(3), a “complaint shall state all grounds of complaint on which the complainant seeks relief” and “the prayer of the complaint shall pray for the relief to which the complainant claims the complainant is entitled.” Thus, Oregon’s statutory requirements for filing a complaint before the Commission are not complicated and do not include any specific code pleading requirements.

The Commission has, however, established additional rules governing its pleading requirements under Oregon Administrative Rule (“OAR”) 860-001-0400. These rules provide more detailed requirements. OAR 860-001-0400 states “complaints, and other initiating pleadings must include: [parties’ contact information]; A clear and concise statement of the authorization, action, or relief sought; Appropriate references to the statutory provision or other authority under which the filing is made; and Other information as required by the Commission’s rules.”¹³ As OAR 860-001-0400, illustrates the Commission’s rules are also simple, basic, and straightforward.

¹² Fredric R. Merrill, The Oregon Rules of Civil Procedure- History and Background, Basic Application, and the “Merger” of Law and Equity, 65 OR. L. REV. 527, 527 (1986) (“On January 1, 1980 and January 1, 1982, a relatively dramatic change took place in the rules governing civil proceedings in the Oregon state trial courts.”).

¹³ OAR 860-001-0400(2).

The Commission's rules do not include any additional pleading requirements with respect to the number of claims alleged or the number of remedies sought. As such, the Commission's rules do not require the relief requested for each claim be separately stated. Moreover, OAR 860-001-0000(1) states,

These rules govern practice and procedure before the Public Utility Commission of Oregon (Commission). The Commission will liberally construe these rules to ensure just, speedy, and inexpensive resolution of the issues presented. The Oregon Rules of Civil Procedure (ORCP) also apply in contested cases and declaratory ruling proceedings unless inconsistent with these rules, a Commission order, or an Administrative Law Judge (ALJ) ruling.

Thus, although the ORCPs also apply, they expressly do not apply when they are inconsistent with the Commission's own rules. And OAR 860-001-0000(1) suggests that any ORCP provisions that might preclude "just, speedy and inexpensive resolution" should be carefully scrutinized with respect to consistency with the Commission's rules.

The Commission's rules for filing complaints against regulated utilities are different than Oregon's court rules because they are intended for different audiences. The vast majority of complaints filed against PGE at the Commission are consumer complaints by pro se customers of regulated utilities, and are meant to be handled expeditiously. Requiring hyper-technical pleading rules would set a dangerous precedent that could permit PGE to collaterally attack customer complaints. The detailed analysis below of PGE's arguments that are based on convoluted reliance upon various ORS provisions and strained readings of ancient case law, makes this point painfully clear. There is simply no way a pro se customer would ever be able to obtain Commission

resolution of their dispute if they needed to comply with PGE's view of how a complaint must be filed.

2. The ORCPs Should Be Interpreted Consistent with the Commission's More Lenient Rules

Even though the procedural requirements for Oregon's courts are not as forgiving as the Commission's, the court's rules are also meant to be read liberally with an eye towards justice. So, where these two sets of rules have different requirements, the more liberal rule should govern. Several of Oregon's court rules are invoked in PGE's Motions, including ORCP 16B, 18B, 18D, 21D, and 21E, none of which require any revisions to the Complaint.

To begin with, ORCP 21D states that courts may require amendment to pleadings "when the allegations of a pleading are so indefinite or uncertain that the precise nature of the charge, defense, or reply is not apparent." This is obviously a broad and subjective question, and falls under the court's discretion.

Next, three different rules pertain to pleadings that involve multiple claims. First, ORCP 21E permits courts to "order stricken: (1) any sham, frivolous, or irrelevant pleading or defense or any pleading containing more than one claim or defense not separately stated; (2) any insufficient defense or any sham, frivolous, irrelevant, or redundant matter inserted in a pleading." Second, ORCP 16B requires "[e]ach separate claim or defense shall be separately stated" and "[w]ithin each claim alternative theories of recovery shall be identified as separate counts." This rule permits alternative, and even inconsistent, claims, so long as they are distinct and separate. Third, although ORCP 18B permits "relief in the alternative or of several different types," it does not

expressly require “a prayer for each claim should be set forth” as the Oregon Civil Pleadings and Practice recommends.¹⁴ Worth noting, ORCP 18 also prohibits “unnecessary repetition” when asserting a claim for relief.¹⁵

III. RESPONSE ARGUMENT

The Complaint identified two simple, separately-stated legal questions, which means the rules evoked by PGE do not warrant considering the Complaint deficient.¹⁶ PGE’s Motions either misstate the pleading requirements, misunderstand the Complaint, or both. PGE seems to be concerned with remedies that the Complaint is not seeking and Complainants are not interested in expanding the scope of this proceeding. PGE’s Motions and Comments make clear that the nature of the Complaint was understood by PGE. As such, there is no basis for requiring any amendment to the Complaint and no justification for delaying PGE’s answer.

Complainants simple response is: 1) the Commission’s rules were fully complied with; 2) PGE’s Motions do nothing to show we did not comply with the rules, therefore there is no legal basis to grant the motions; and 3) delay harms QFs and ratepayers by allowing PGE continue violating Commission policy.

¹⁴ See PGE’s Motions at n. 13 (citing Oregon Civil Pleading and Practice (2012 rev.) at § 19.2-7).

¹⁵ Compare ORCP 18B (which PGE claims implicitly requires a separate prayer for each claim for relief) with ORCP 18A (which expressly prohibits unnecessary repetition).

¹⁶ Or as noted by ALJ Arlow, the questions identified in the Complaint can be even further simplified into a single “straightforward question: Under standard contracts, which provide for a 15-year term affixed prices based upon a utility’s avoided costs, does the term begin on the date that the contract is executed or upon the date that the QF begins to deliver its net output to the utility?” Ruling at 2 (Jan. 19, 2017).

PGE's Motions and PGE's Comments and Recommendations Regarding

Declaratory Ruling ("PGE's Comments")¹⁷ ask a number of questions designed to add confusion and delay the case:

- The Motions ask whether Complainants want the Commission to amend its prior orders.¹⁸ Complainants do not.
- The Motions ask whether Complainants want PGE to draft new form agreements for Commission approval.¹⁹ Complainants do not believe this is necessary, as stated in the Complaint, if PGE simply acts consistently with the Commission's policy.²⁰
- The Motions ask whether Complainants want the Commission to reform or otherwise impose wholesale contract interpretation on PGE's previously executed contracts.²¹ To be clear, Complainants do not because that is unnecessary.
- PGE's Comments suggest that PGE's superseded standard contracts are non-justiciable as moot.²² They are not moot and are justiciable, because they provide factual evidence of PGE's arbitrary business practices.
- PGE's Comments posit that PGE's previously executed standard contracts make this claim non-justiciable due to a failure to join indispensable parties.²³ They do not, because the Complainants do not seek Commission interpretation of any previously executed contracts, but only the generic contract terms approved by the Commission.²⁴

¹⁷ PGE's Comments (Jan. 5, 2015).

¹⁸ PGE's Motions at 3.

¹⁹ Id.

²⁰ The Complainants have requested alternative relief that PGE be required to draft new agreements, but only if the Commission determines that PGE's standard contracts violate the Commission's policies. As the Complainants believe that is unnecessary because the standard contracts are consistent with the Commission policy requiring 15 years of fixed prices from delivery of net output.

²¹ Id.

²² PGE's Comments at 4.

²³ Id.

²⁴ Complainants are not fully responding to any alleged mootness or non-justiciability arguments because they have not been raised other than a comment by PGE that it will seek to raise yet another potential procedural argument in an effort to defer consideration of the simple legal question(s) at issue.

- PGE’s Comments postulate that Complainants’ seek modification of existing Commission orders beyond the time period for requesting rehearing or reconsideration.²⁵ The Complainants do not request the Commission amend its policy, but to re-affirm its already adopted policy.

Both PGE’s Motions and Comments succinctly summarizes the dispute and correctly describes the relief requested by Complainants, which means there is no reason to make the Complaint more definite and certain. PGE cites no rule to support its assertions that the Complaint should be amended to clarify what Complainants are *not* alleging and requesting. Likewise, an overly broad description of the Commission’s jurisdiction has no bearing on the specific allegations claimed, so there is no reason to strike any portion of the Complaint. Finally, and contrary to the assertions made by PGE, the Prayer for Relief complies with all of Oregon’s regulatory and statutory requirements. In short, these Motions would have no practical effect and can only complicate and delay an otherwise simple and straightforward proceeding.

1. This Case Should Be Processed Expeditiously

Current and future QFs are being harmed by PGE’s actions, and any delay only benefits PGE by reducing the amount of non-utility owned generation that it needs to purchase. QFs that are currently negotiating or have already entered into contracts are harmed because the ambiguity over whether they are eligible for 15 or as little as 11 years of fixed prices will make it more difficult, and sometimes impossible, to obtain appropriate financing. QFs that are currently negotiating contracts may also be harmed should PGE require them to formally or informally agree to take less than 15 years of

²⁵ PGE’s Comments at 4.

fixed prices to finalize their power purchase agreements.

The Commission has demonstrated its ability to act fast to protect utilities from “harm” associated with the need to buy power from QFs, and should therefore also act quickly to help QFs who are being harmed by utilities. For example, the Commission quickly lowered the eligibility cap for solar QFs and provided the “immediate relief” requested by Idaho Power Company.²⁶ The Commission also temporarily eliminated Idaho Power’s obligation to enter into standard contracts above 100 kW just 18 days after alleging harm associated with an alleged avalanche of new wind projects (which failed to ever materialize).²⁷

The Commission has the responsibility to stop the utilities when they are harming QFs. Specifically, the Commission has been directed by the legislature to “[i]ncrease the marketability of electric energy produced by qualifying facilities located throughout the state” and to “[c]reate a settled and uniform institutional climate for qualifying facilities in Oregon.”²⁸ PGE’s openly-acknowledged business practice of only offering less than

²⁶ Re Idaho Power Company Application to Lower Standard Contract Eligibility Cap and to Reduce the Standard Contract Term, Docket No. UM 1725, Order No. 16-129 (Mar. 29, 2016).

²⁷ Re Idaho Power Company Request for Approval to Lower the Standard Contract Eligibility Cap for QFs (UE 244), Request for an Investigation into the Standard Contract Eligibility Cap for QFs (UM 1575), Docket Nos. UE 244 and UM 1575, Order No. 12-042 at 1, Appendix A at 2 (Feb. 14, 2012).

²⁸ ORS 758.515 (establishing policy for the State of Oregon); see also Re Investigation Relating to Electric Utility Purchases from QFs, Docket No. UM 1129, Order No. 05-584 at 16 (May 13, 2005) (“We continue to adhere to the policy, as articulated in Order No. 91-1605, that standard contract rates, terms and conditions are intended to be used as a means to remove transaction costs associated with QF contract negotiation, when such costs act as a market barrier to QF development.”).

15 years of fixed prices decreases the marketability of QFs contracting with PGE and creates an inconsistent institutional climate for QFs in Oregon. Thus, the Commission should act quickly to relieve the harm caused by PGE.

2. PGE's Motions Are Not Supported by the Law

PGE stretches to support its position by relying on obscure case law and treatises that describe the law rather than the law itself. For example, Section 19 of the Oregon Civil Pleading and Practice Manual covers joinder, consolidation, and severance of claims in complaints and also recommends a separate prayer for each claim be set forth, with specific reference to ORCP 18B. But, ORCP 18B itself has no such requirement. In its entirety, ORCP 18B states, “[a] demand of the relief which the party claims; if recovery of money or damages is demanded, the amount thereof shall be stated; relief in the alternative or of several different types may be demanded.” Thus, PGE’s reliance on ORCP 18B is misguided.

Moreover, Section 17 of that same treatise, which covers Oregon code pleading, has no such requirement. Instead, Section 17 states “Under ORCP 12, ‘[a]ll pleading shall be liberally construed with a view of substantial justice between the parties,’ and ‘[t]he court shall, in every stage of an action, disregard any error or defect between the pleadings or proceedings which does not affect the substantial rights of the adverse party.’” Thus, PGE’s Motions cite to a practice tip for attorneys in Oregon rather than a legal requirement. And taken in its entirety, Oregon’s Civil Pleading and Practice Manual supports denial of PGE’s Motions because amending the Complaint would not affect PGE’s substantial rights.

PGE likewise stretches for case law to support its Motions. For example, PGE cites to Vaughn v. Spence, 133 P.2d 242, 245, 170 Or. 440 (1943) to suggest that Complainants failed to comply with the Oregon’s code pleading requirements.²⁹ This ancient case, which was issued prior to the development of Oregon’s Rules of Civil Procedure and has never been cited in a published decision since 1943, also happens to be completely off-point. Vaughn regarded a dispute over the existence and ownership of two stock certificates.³⁰ The plaintiff’s complaint referred to a probate proceeding as the source of facts alleged in the complaint regarding plaintiffs’ interests in these stocks. The defendant denied plaintiff’s assertions in its answer and also alleged a different set of facts that, if true, would have established that there was no way the plaintiffs could have had an interest in the stock certificates.³¹ Rather than amend the complaint to deny or otherwise respond to the newly alleged facts in the answer, plaintiffs merely demurred and then later effectively asked the court to take judicial notice of the entire probate record to prove the existence of ownership of the two stock certificates.³³ The court held that the plaintiffs could not simply refer to the probate proceeding to establish their interests and had to affirmatively dispute the new facts alleged in defendants’ answer, by attaching those documents or affirmatively re-alleging the detailed contents of those

²⁹ PGE’s Motions at 8.

³⁰ Specifically, whether plaintiff Mary M. Vaughn purchased one stock certificate from the administrator of the estate of John A. Trotter and whether plaintiff bank acquired another stock certificate through devise. Vaughn, 133 P.2d at 243.

³¹ Because, according to the answer, the corporation at issue did not issue stock. Vaughn at 244.

³³ At that time a demurrer was treated as the equivalent of a motion to dismiss which assumes those new facts are true. See Black’s Law Dictionary; Alfieri v. Solomon, 358 Or. 383 n. 17 (2015).

documents in an amended complaint. PGE's cited statement addresses the need to directly incorporate materials referenced in the complaint under code pleading, as it existed prior to the development of the Oregon Rules of Civil Procedure.

For this case to even potentially apply here, over 60 years later and in modern times, PGE would need to file a counter claim for declaration that Complainants are wrong on some related factual basis that defeats Complainants' underlying claim, and Complainants would then need to then file a motion to dismiss that counter claim assuming the truth of PGE's allegations asserted in that claim without properly obtaining judicial notice of or alleging contrary facts. That is not the current posture of this case, and thus, PGE's quote is completely out of context.

Additionally, PGE suggests that the complaint must re-allege the provisions of each of PGE's standard contracts as they have existed throughout time. But Vaughn does not support that notion either, because the thrust of the Complaint is to ask the Commission to enforce its policies developed in generally applicable orders. In any event, the relevant portions of PGE's past and current standard contracts have been cited in the Complaint.³⁴ Alternatively, PGE seems to suggest that Complainants should file a motion for leave to amend that attaches all the standard contracts to the amended complaint, which would literally be thousands of pages of documents available in the PUC's records and website, and is also not supported by Vaughn.³⁵

³⁴ Complaint at 9-11, 13.

³⁵ The Vaughn court also stated, "we know of no method whereby a bulky set of court papers in the form of probate records could properly be made a part of pleadings in another case. Undoubtedly, much of the probate records in the proceeding known as the Estate of John A. Trotter, deceased, is immaterial to the

Finally, PGE’s Motions provide a quotation stating, “Under the ORCP, a ‘claim for relief is a series of factual allegations that form the legal basis for a single remedy or form of relief.’”³⁶ Even though the Motions offered this reference as a direct quote, PGE did not provide a citation. The quote appears to quote from the ORCP directly, but it does not. It is a quotation from the recommendations (but not requirements) in the Oregon Civil Pleading and Practice guide for attorneys explaining the ORCP.³⁷ PGE repeats this language in italics later (rather than quoting the actual rule language, which does not define a claim for relief so narrowly) to suggest that the Complaint has not provided a clear understanding of the charges PGE faces because the Complaint requested three remedies for two different claims.³⁸

PGE’s Motions support this contention with another quotation from Section 19 of the Oregon Civil Pleading and Practice, namely that Complainants “must state each claim for relief separately and identify each theory of recovery within that claim as separate counts.”³⁹ Both the treatise and PGE then cite to Navas v. City of Springfield, 857 P2d 867, 870, 122 Or App 196 (1993), which underscores the fact that both Navas and the

issues concerning these alleged certificates. Hence, there could be not occasion for making the entire probate record a part of the complaint in this case. Parties cannot plead their evidence.” Vaughn at 245.

³⁶ PGE’s Motions at 5.

³⁷ See § 19.2-5(a) Multiple Claims; the Oregon State Bar, which publishes the Oregon Civil Pleading and Practice, has describes it as a “resource for analyzing the ORCPs” that “includes practice tips on how to use them.” Oregon Civil Pleading and Practice Order Form at 2 (2006 rev.).

³⁸ PGE later undercuts this assertion by explaining that it understands exactly what the Complaint intended (“Presumably, Complainants intend this prayer to apply to both claims.”). PGE’s Motions at 5.

³⁹ Id. at 5 and note 9.

treatise are addressing a completely different context—alternative theories of liability. In Navas, claimant brought a claim under a breach of fiduciary duty statute that actually precluded his recovery and the trial court permitted him to change his claim to a breach of contract claim. The reviewing court reversed, noting,

Defendant is entitled to rely on the theory pleaded by the plaintiff to frame the issues to be tried. The rule is that a complaint must separately state each claim and within each claim, it must identify alternative theories of recovery as separate counts. ORCP 18A. Generally, a trial court has no authority to render a decision on an issue not framed by the pleadings.

Navas illustrates that parties may rely on the pleadings to prepare for their day in court. The only way this case and alleged requirements could apply here is that PGE would have made its entire case only to have Complainants attempt to allege an entirely new theory of liability during the Commission’s hearing based on an implicitly plead claim. The Complaint sets out two separately stated claims and the Complainants have no interest in adding any additional theories of liability. Thus, Navas is also taken out of context and does not support PGE’s Motions.

3. The Complaint is Clear and Does Not Support PGE’s Motions

Even assuming that PGE is correct that its narrow interpretation of the ORCP rules apply, PGE’s argument fails on the merits because PGE’s violation of the Commission’s policy is clear from the Complaint. PGE’s Motions claim to be confused by two short and discrete sections of the Complaint. First, whether the Prayers for Relief refer to each claim for relief. Second, whether the Complainant’s description of the Commission’s jurisdiction implies additional claims or prayers for relief should be considered. Despite alleging confusion on these two points, the Motions and Comments

themselves confirm that there is no confusion on these subjects. For clarity's sake, Complainants confirm that the Prayer for Relief refers to each claim and the description of the Commission's jurisdiction does not suggest any additional claims or remedies should be considered. A more detailed analysis is presented below.

a. The Dispute Does Not Need to be Clarified

The Complaint asks two simply asks the Commission to interpret its own policy and PGE's standard contracts, but does not ask the Commission to interpret any of PGE's previously executed contracts. Since at least 2015, PGE has had a business practice that violates the Commission's policies and PGE has arbitrarily applied its Commission-approved standard contract offer. The certainty of this allegation is confirmed by PGE's concise summary in the Motions and PGE's own argument in another proceeding.⁴⁰ The Complaint merely asks the Commission to order PGE to conform its business practices with the Commission's policies.

The Complaint does not, as PGE's Motions posit, ask the Commission to interpret any of PGE's previously executed contracts and Complainants do not wish to unnecessarily broaden the scope of this proceeding by litigating specific contracts. The Complaint acknowledges that parties are free to make alternative contract arrangements with PGE (that do not match PGE's standard contract) by excluding contracts where QFs have demonstrated contrary intent from its Prayer for Relief. However, absent such express language, the Complainants assume that PGE's standard contracts would naturally conform with Commission policy. As is, the Motion to Make More Definite

⁴⁰ Id. at 2-3.

and Certain should be denied, because interpreting individual contracts is not warranted.

b. The Prayer for Relief Does Not Need to be Amended

PGE’s Motions suggest the Complaint should be amended to request relief for each claim separately while simultaneously demonstrating that doing so is not necessary. The Motions contend that the structure of the Prayer for Relief is so confusing that PGE is not certain about what has been claimed and what kind of remedies have been requested. Yet, the Prayer for Relief obviously applies to both claims and therefore does not require additional clarification. The Motions accurately assumes as much in its description of what it describes as “confusion”.⁴¹ Oregon’s statutes, rules, and case law do not preclude requesting more than one claim or alternative claims for relief. To begin with, Oregon’s case law does not even consider the prayer as part of the complaint,⁴² so it is hard to see how the “deficiencies” PGE suggests in the Prayer for Relief could lead to uncertainty about the nature of the Complaint. Moreover, amending the Complaint to clarify what has already been correctly assumed by PGE would have no practical effect on this proceeding going forward and is therefore not supported by ORCP 12.

To be clear, the Complaint’s Prayer for Relief sets out three specific remedies, which PGE correctly understands are tied to success on either of the two claims, and none

⁴¹ Id. at 6 (“Complainants’ [sic.] appear to plead that their “Second Claim for Relief” also forms the basis of the three remedies requested in the prayer for relief”

⁴² See Finch v. Miller Creditthrift, 531 P.2d 892, 893, 271 Ore. 271 (1975) (“Despite frequent statements that the prayer is not part of the complaint, we recognize that the prayer is relevant when it ‘tends to explain or qualify’ other parts of the pleading.”); ORCP 13A (defining “pleadings” as “the written statement by the parties of the facts constituting their respective claims and defenses”).

of which requires interpretation of any parties' individual contracts, "meeting of the minds," or intent at the time of signing. The closest the Complaint comes to requiring interpretation of any specific contract to issue the relief requested is the paragraph in the prayer addressing existing contracts (Payer Par. 2), which simply requests a statement of Commission policy that could be applied in future case to any dispute that remains after this case as the proper interpretation of any existing contracts, stating:

Declaring that PGE's standard contract, as interpreted in the regulatory context from which it arose, requires payment by PGE at fixed prices for 15 years after the QF's operation date rather than merely 15 years after the time of contract execution, unless express language is inserted by the QF that demonstrates a contrary intent;

This would set an easily applicable rule going forward but not necessarily an interpretation of any specific individual contract.

PGE also contends that Complainants have improperly consolidated multiple claims into one claim by (apparently) failing to duplicate the Prayers for Relief. But, ORCP 18 prohibits unnecessary repetition. ORCP 21E, which is cited by PGE, permits courts to strike pleadings that contain more than one claim not separately stated, and the Complaint clearly has two separately stated claims. And despite PGE's creative attempt to argue the opposite, neither of Complainants' claims actually include multiple claims or theories for relief. Thus, PGE's Motion to Strike and PGE's Motion to Make More Definite and Certain should both be denied.

c. The Description of the Commission's Jurisdiction Does Not Need to Be Stricken or Clarified

Similarly, PGE's Motion to Strike should be denied because a broad description of the Commission's jurisdiction has no implication on either the specific allegations

made in the claims or the specific relief requested. The Complaint's description of the Commission's jurisdiction is not a substantive allegation and does not require additional clarification. The Complaint merely points out that the Commission's jurisdiction is broad enough to interpret executed contracts to demonstrate that the Commission's jurisdiction is clearly therefore also broad enough to interpret just the general policy without the reformation of any executed contracts.

4. Additional Time to File an Answer is Not Warranted Because PGE Understands the Nature of the Issues It Must Defend

PGE's Motions also request additional time to evaluate "newly clarified claims and to assert ORCP 21 motions before being required to file an answer."⁴³ But, as detailed above, newly clarified claims are not necessary. And since PGE has already asserted ORCP 21 motions against the claims as written, additional time appears unnecessary as well. As PGE has already had additional time to prepare its answer, Complainants believe that the 10 days requested in the Motions should be more than sufficient time for PGE to file its answer. At a minimum, PGE can respond to the vast majority of the Complainants' allegations, and simply deny the two or three paragraphs that the company alleges are confusing.

IV. CONCLUSION

For the reasons described above, the Complainants respectfully request that ALJ Arlow deny the Motions filed on December 19, 2016 or, in the alternative, grant Complainants leave to amend their Complaint.

⁴³ PGE's Motions at 9.

Dated this 24th day of January 2017.

Respectfully submitted,



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