

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1805

NORTHWEST AND INTERMOUNTAIN)	
POWER PRODUCERS COALITION,)	
COMMUNITY RENEWABLE ENERGY)	NORTHWEST AND
ASSOCIATION and RENEWABLE)	INTERMOUNTAIN POWER
ENERGY COALITION,)	PRODUCERS COALITION,
Complainants,)	COMMUNITY RENEWABLE ENERGY
v.)	ASSOCIATION and RENEWABLE
)	ENERGY COALITION’S MOTION TO
)	STRIKE
)	
PORTLAND GENERAL ELECTRIC)	
COMPANY,)	
)	
)	
Defendant.)	
_____)	

I. INTRODUCTION

Pursuant to ORS 860-001-0420, the 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 strike the Reply filed by Portland General Electric (“PGE”) on February 5, 2018. The Commission’s rules do not permit replies to a response to an application for reconsideration, unless requested by the Commission. PGE neither sought nor provided any justification to waive this requirement.

II. LEGAL STANDARD

The Commission’s rules for rehearing and reconsideration are governed by OAR

860-001-0720, which expressly prohibits replies. Pursuant to OAR 860-002-0720(4), “[r]epplies to a response are not permitted unless requested by the ALJ.” The Commission has explained that “[a]dhereing to that limit is important so that the Commission has time to carefully consider the application and render a decision within the sixty-day time limit.”¹ That said, where “an applicant feels that its position has been wrongly construed” by the response to its application for reconsideration or rehearing, “it may move for leave to file another brief, but that motion will be considered in light of the time constraints on the Commission.”²

A similar prohibition exists in OAR 860-001-0420(5), which prohibits the moving party from filing a reply to a procedural motion unless permitted by the ALJ. The Commission has considered whether an impermissible reply under that standard offers a “factual or legal rationale—such as newly-discovered evidence or recently issued federal or state decision—that would justify an additional round of argument” that may warrant the Commission’s consideration.³

III. MOTION

The Commission’s rules governing rehearing and reconsideration bar PGE from submitting a reply, unless requested by the ALJ, and PGE’s violation of that prohibition unnecessarily clutters the official record.⁴ PGE has not filed a motion for leave to file a

¹ Re US Cellular Application for Designation as an Eligible Telecommunications Carrier, Docket No. UM 1084, Order No. 04-599 at 2-3 (2004).

² Id.

³ Surprise Valley Electrification Corp. v. PacifiCorp, Docket No. UM 1742, Ruling at n.2 (Apr. 29, 2016) (disregarding PacifiCorp’s limited reply and denying its motion to suspend the procedural schedule).

⁴ OAR 860-002-0720(4) (“Replies to a response are not permitted unless requested by the ALJ”).

third brief in this case, and the parties did not agree to the extra filing. PGE’s Reply forces Complainants to choose between either allowing PGE to disregard the Commission’s rules to its advantage, or undergoing the expense and burden of filing even more pleadings that should have been unnecessary.⁵ The Commission should not consider any of the arguments in PGE’s impermissible third round of briefing, and strike PGE’s Reply in its entirety.

PGE’s Reply does not identified any factual or legal rationale that would warrant submission of a reply. There is no newly-discovered evidence or recently issued federal or state decision that would warrant an exception from the Commission’s rules. On the contrary, this is PGE’s second round of reconsideration filings, and PGE has had ample opportunity to make its points against nonparties who have been summarily denied participation on rehearing.

In light of this, Complainants kindly reiterate their request that the Commission check PGE’s unfettered litigious approach in this proceeding.⁶

IV. CONCLUSION

For the reasons stated above, the Commission should strike PGE’s Reply.

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⁵ See Complainant’s Response at 4-6 (detailing the “procedural nightmare” this case has been despite its straightforward question”).

⁶ Id. at 6 (“The Commission needs to put an end to PGE’s efforts to circumvent the Commission’s direction as well as exhaust the parties with relentless and never ending legal pleadings and arguments.”).

Dated this 8th day of February 2018.

Respectfully submitted,

A handwritten signature in black ink that reads "Irion Sanger". The signature is written in a cursive style with a large initial "I".

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Of Attorneys for Northwest and Intermountain
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