

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1805

NORTHWEST AND
INTERMOUNTAIN POWER
PRODUCERS COALITION,
COMMUNITY RENEWABLE
ENERGY ASSOCIATION, and
RENEWABLE ENERGY COALITION,

Complainants,

vs.

PORTLAND GENERAL ELECTRIC
COMPANY,

Defendant.

RULING

Pursuant to ORS 756.500.

**DISPOSITION: DECLARATORY RULING PROCEDURE REJECTED
AS VIOLATION OF STATUTE; COMPLAINANTS TO
RESPOND TO PENDING MOTIONS**

Summary

In this ruling, I find that the issues for Commission determination raised in this complaint may not be resolved through a declaratory ruling proceeding under ORS 756.450. A date of February 5, 2017 is set for the complainants to respond to the defendant's motion to strike and to make more definite and certain.

Background

On December 6, 2016, Northwest and Intermountain Power Producers Coalition, the Community Energy Association, and the Renewable Energy Coalition (complainants) filed the instant complaint under ORS 756.500 against Portland General Electric Company (PGE). The complainants represent or generally support the interests of Qualifying Facilities (QFs) who seek to sell electricity to electric utilities under standard contracts pursuant to the Public Utility Regulatory Policies Act (PURPA).

The complaint 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?

On December 16, 2016, PGE filed a motion to strike the complaint and for the Commission to order the complainants to make their claims and allegations more definite and certain.

At the December 22, 2016 prehearing conference, I asked the parties to address the appropriateness of resolving the issues raised in the complaint via a declaratory ruling. In response to my request, complainants, PGE, and Staff all submitted comments.

Applicable Law

ORS 756.450 authorizes the Commission to issue declaratory rulings. The statute provides, in pertinent part:

On petition of any interested person, the Public Utility Commission may issue a declaratory ruling with respect to the applicability to any person, property, or state of facts of any *rule or statute* enforceable by the commission. (emphasis added).

Positions of the Parties

Relying on the emphasized language above, Staff contends that “a declaratory ruling is an appropriate mechanism for applying Commission rules and statutes to a set of facts, but is not an appropriate mechanism for the application of Commission orders.”¹ Staff's argument is supported by an examination of the language in the statute governing declaratory rulings and the appropriate legal analysis of the question.

In particular, Staff cites the recent case in which Cypress Renewables, LLC (Cypress Creek) had filed a petition for declaratory ruling confirming that Order No. 11-505 required another utility to offer QFs a non-standard contract with prices based on a renewable avoided cost price stream. The Commission declined to substantively consider Cypress Creek's declaratory ruling petition and instead ordered that the petition be treated as a complaint.² The instant complaint proceeding, in Staff's view, falls into this category as well. Because the complaint does not implicate any Commission rule or statute, Staff contends that the issues raised therein must be resolved via a contested case process.

¹ Staff Comments at 4.

² *In the Matter of Cypress Creek Renewables, LLC Petition for Declaratory Ruling*, Docket No. DR 51, Order No. 16-378 (Oct 12, 2016).

PGE agrees with Staff's analysis and interpretation of ORS 756.450, and points out what it contends are the infirmities in the complaint itself, and urges the Commission to require complainants to respond to its motion to strike and make the complaint more definite and certain.

The complainants believe the question in dispute can be resolved by either a declaratory ruling or complaint and express no preference, "so long as the simple and straightforward questions are addressed * * *."³ Complainants state that they used the complaint process as a vehicle in reliance upon Staff's recommendations.

Ruling

The language of ORS 756.450 is quite straightforward: a declaratory judgment may be issued with respect to the applicability "of any rule or statute enforceable by the commission." Reference to Commission "orders" as being within the ambit of declaratory judgment rulings is conspicuous by its absence and, given that "orders" appears in other related statutes in ORS section 756,⁴ we are left with the clear inference that the omission was an intentional decision. None of the parties contend that the question of the duration of fixed prices in QF contracts is the subject of any statute or rule.

I find that it is not permissible under ORS 756.450 for the Commission to consider the question presented by complainants as a request for a declaratory ruling. The issues raised by complainants shall therefore be considered in the context of a complaint and the statutes and rules associated therewith.

There is currently pending a motion by the defendant to strike both of the claims in the complaint and/or order complainants to make their claims and allegations more definite and certain. Complainants should have an opportunity to respond to the motion prior to the issuance of any ruling thereon. Complainants shall file a response to PGE's Motion to Strike, Make More Definite and Certain, and Motion Requesting More Time to Respond no later than February 5, 2017.

Dated this 19th day of January, 2017, at Salem, Oregon.



Allan J. Arlow
Administrative Law Judge

³ Complainants' Comments at 1.

⁴ See, e.g., ORS 756.180 (1) and (2) which discusses Commission enforcement of "any statute administered by the commission, or any rule, regulation, requirement, *order*, term or condition issued thereunder..." (emphasis added).