

IN THE COURT OF APPEALS OF THE STATE OF OREGON

In the Matter of:

**PORTLAND GENERAL ELECTRIC
COMPANY,**

Defendant-Petitioner,

v.

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

Complainants-Respondents,

and

**THE PUBLIC UTILITY
COMMISSION OF OREGON,**

Respondent.

PUC Docket No. UM 1805

CA Case No. _____

**PETITION FOR JUDICIAL
REVIEW OF ORDER OF THE
PUBLIC UTILITY
COMMISSION OF OREGON**

Petitioner seeks judicial review of the Public Utility Commission of Oregon's Orders Nos. 18-079, dated March 5, 2018, which denied reconsideration of Order 17-465, which in turn amended and clarified Order No. 17-256. A copy of each of those Orders is attached.

This petition for judicial review is timely filed because it was filed within 60 days of Order No. 18-079, which is dated March 5, 2018. ORS 183.482.

The parties to this proceeding before the Court of Appeals are:

Petitioner:

Portland General Electric Company
121 SW Salmon Street
Portland, OR 97204

Respondents:

Northwest and Intermountain Power Producers Coalition
Community Renewable Energy Association
Renewable Energy Coalition
c/o Irion A. Sanger
Sidney Villanueva
Sanger Law, PC
1117 SE 53rd Avenue
Portland, OR 97215

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

Petitioner Portland General Electric Company is represented by:

Anna M. Joyce, OSB #013112
Markowitz Herbold PC
1211 SW Fifth Ave., Ste. 3000
Portland, OR 97204
(503) 295-3085
annajoyce@markowitzherbold.com

Respondent Northwest and Intermountain Power Producers Coalition,
Community Renewable Energy Association and Renewable Energy Coalition
are represented by:

Irion A. Sanger, OSB #003750
irion@sanger-law.com
Sidney Villanueva, OSB #161653

sidney@sanger-law.com
Sanger Law, PC
1117 SE 53rd Avenue
Portland, OR 97215
(503) 756-7533

Respondent the Public Utility Commission is represented by:

Attorney General of the State of Oregon
Office of the Solicitor General
400 Justice Building
1162 Court Street, NE
Salem, OR 97301-4096

Petitioner seeks review of the Public Utility Commission's final order in Docket No. UM 1805, denying Petitioner's request for rehearing or reconsideration and request to amend Order No. 17-465, which amended and clarified Order No. 17-256.

Petitioner was a party to the proceedings in Docket No. UM 1805.

Petitioner is willing to work with the Public Utility Commission to shorten the record to eliminate unnecessary or irrelevant material.

Pursuant to ORS 183.482(8)(a), (b), and (c), Petitioner requests that the Court of Appeals reverse Public Utility Commission Order Nos. 18-079, 17-465, and 17-256 because they rely on erroneous interpretations of law, are

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outside the range of discretion delegated to the agency by law, and/or are not supported by substantial evidence in the record.

Dated this 3rd day of May, 2018.

MARKOWITZ HERBOLD PC

By: *s/ Anna M. Joyce*

Anna M. Joyce, OSB #013112
1211 SW 5th Ave., Ste. 3000
Portland, OR 97204
annajoyce@markowitzherbold.com
(503) 295-3085

*Attorney for Defendant-Petitioner
Portland General Electric Company*

CERTIFICATE OF SERVICE AND FILING

I hereby certify that I served the foregoing **PETITION FOR JUDICIAL REVIEW OF ORDER OF THE PUBLIC UTILITY COMMISSION OF OREGON** on May 3, 2018, on the parties listed below in the manner indicated:

Irion A. Sanger
Sidney Villanueva
Sanger Law, PC
1117 SE 53rd Avenue
Portland, OR 97215

- U.S. Mail
- Facsimile
- Hand Delivery
- Email
- Court of Appeals CM/ECF

Counsel for Complainant-Respondent

Attorney General of the State of Oregon
Office of the Solicitor General
400 Justice Building
1162 Court Street, NE
Salem, OR 97301-4096

- U.S. Mail
- Facsimile
- Hand Delivery
- Email
- Court of Appeals CM/ECF

Counsel for Respondent

I further certify that I filed the foregoing **PETITION FOR JUDICIAL REVIEW OF ORDER OF THE PUBLIC UTILITY COMMISSION OF OREGON** with the Appellate Court Administrator on May 3, 2018, via:

- Oregon Appellate Court eFiling system
- U.S. ordinary first class mail, the original and ___ copies to: State Court Administrator, Appellate Courts Records Section, 1163 State Street, Salem, OR 97301-2563
- [other:] _____, the original and ___ copies to: State Court Administrator, Appellate Courts Records Section, 1163 State Street, Salem, OR 97301-2563

s/ Anna M. Joyce

Anna M. Joyce, OSB #013112
Of Attorneys for Defendant-Petitioner

**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.

ORDER

DISPOSITION: APPLICATIONS DENIED

We deny the request for rehearing or reconsideration and request to amend Order No. 17-465 filed by Portland General Electric Company (PGE).

I. INTRODUCTION

This order represents our third clarification of matters we originally addressed in Order No. 05-584 with regard to the date upon which the 15-year period of fixed prices paid to qualifying facilities (QFs) begin under standard contracts.

First, in Order No. 17-256, we affirmed our policy that the 15-year fixed price period begins with commercial operation, and indicated that PGE's standard contracts must, "on a going-forward basis, [] provide for 15 years of fixed prices that commence when the QF transmits power to the utility."¹ We also concluded that PGE's standard contracts had not violated any statute, rule or Commission order regarding when the 15-year fixed price period because we had approved PGE's prior standard contract filings.

Second, in Order No. 17-465, we addressed complainants' request for clarification of the scope and applicability of Order No. 17-256. We clarified that we had neither examined nor addressed specific terms and conditions of any past PGE QF contract, either in standard form or executed agreement. We also clarified that our decision that PGE had

¹ Order No. 17-256 at 3 (Jul 13, 2017).

not violated any Commission statute, rule, or order with regard to its prior contracts was based solely on the fact that we had approved PGE's standard contracts under Order No. 05-584, and was not based on a review of any standard contract.

PGE now seeks reconsideration or amendment of Order No. 17-465 because, in its view, our decision requires an examination and interpretation of the company's standard contract forms. PGE explains that:

Order No. 17-465 made it clear for the first time that the Commission did not interpret PGE's then-effective standard contract forms (the July 2017 forms) as part of rendering its decision in Order No. 17-256.²

PGE contends, however, that Order No. 17-465 did not make the self-evident but required determination that the July 2017 forms themselves limited the availability of fixed prices to the first 15 years immediately following contract execution, thus requiring revision on a going-forward basis. For these reasons, PGE contends that our decision is lacking substantial reason unless we affirmatively decide that the company's "July 2017 forms limited the availability of fixed prices to the first 15 years immediately following contract execution and therefore needed to be revised to comply with the Commission's new policy."³

In the alternative, PGE asks that we amend Order No. 17-465 to render an interpretation of PGE's standard contract forms in effect in July 2017 and conclude that those forms limited the availability of fixed prices to the first 15 years following contract execution.

Complainants oppose PGE's requests. Complainants contend that parties with executed standard contracts should be free to adjudicate individual contract disputes with PGE in the appropriate forum. Complainants contends that reopening the proceeding "would in fact be an attempt by PGE to impact the interpretation of executed versions of those forms."⁴

Complainants further contend that we lack the authority to interpret past contracts pursuant to a declaratory ruling, or to bind a non-party with respect to the interpretation of a contract to which it is a party. Complainants also argue that we lack the jurisdiction to resolve QF contract disputes.⁵

² Portland General Electric Company's Application for Rehearing or Reconsideration and Application to Amend Order 17-465 at 6 (Jan 12, 2018).

³ *Id.* at 6-7.

⁴ Complainants' Response to Portland General Electric Company's Application for Rehearing or Reconsideration and Application to Amend Order 17-465 at 2 (Jan 29, 2018).

⁵ On February 5, 2018, PGE filed a Reply to Complainants' Response, to which Complainants filed a Motion to Strike on February 8, 2018. Pursuant to OAR 860-001-0720(4), PGE's Reply is stricken as an unauthorized pleading.

II. DISCUSSION

PGE's application is denied. We find no grounds to either grant reconsideration under OAR 860-001-0720, or amend Order No. 17-465 under ORS 756.568.

Contrary to PGE's contention, our decision in Order No. 17-465 did not require a prerequisite interpretation of PGE's standard contracts. The scope of this proceeding was framed by complainant's initial filing requesting that we affirm our policy that the 15-year period of fixed prices for standard contracts commences at the time the qualifying facility begins operations. Complainants did not seek interpretation of any executed contract, and in fact clarified that we may resolve their complaint "without altering or revising any existing contracts or PGE's current standard contract."⁶

We answered complainants' request in Order No. 17-256, where we affirmed and made explicit our policy adopted in Order No. 05-584: "Prices paid to a QF are only meaningful when a QF is operational and delivering power to a utility. Therefore, we believe that, to provide a QF the full benefit of the fixed price requirement, the 15-year term must commence on the date of power delivery."⁷ As we made clear in Order No. 17-465, our decision to affirm our policy did not require, and was not based on, an examination of "any past QF contract, either in standard form or executed agreement."⁸

We also reject PGE's characterization that our decision constituted the adoption of a "new policy." Rather, as requested by complainants, our decision was simply to affirm the policy with respect to the commencement date for the 15-year period of fixed prices. This policy, which had been reflected explicitly in standard contract forms for PacifiCorp and Idaho Power Company, had been, up until the filing of PGE's most recent standard contracts, neither a source of controversy nor litigation by either a QF or a utility.

For these reasons, we reject PGE's arguments that our Order No. 17-465 was incomplete or erroneous. Our order merely affirmed Commission policy, and did not require the interpretation or review of any standard contract form.

We emphasize, however, that we continue to stand ready to interpret individual standard contract forms as they are brought to us and, accordingly, reject complainants' current argument that we lack primary jurisdiction over both the parties and the subject matter of executed standard contracts. Complainants' argument is inconsistent with their initial complaint, in which they recognized our authority to review standard contracts:

To the extent the Complaint requires interpretation of contractual obligations incurred prior to the filing of this complaint (Prayer for Relief Pars. 1 & 2), the Commission possesses primary or concurrent jurisdiction over interpretation of such contracts.⁹

⁶ Complaint at 3 (Dec 6, 2016).

⁷ Order No. 17-256 at 4 (Jul 13, 2017).

⁸ Order No. 17-465 at 4 (Nov 13, 2017).

⁹ Complaint at 6 (Dec 6, 2016).

Furthermore, as we recently stated in Order No. 18-025, the compliance and interpretation of the terms and conditions in standard contracts that are the result of our policy decisions to implement PURPA are rightfully within our primary jurisdiction:

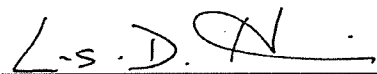
By law, the Commission sets the terms and conditions for contracts between QFs and public utilities. The terms and conditions of those contracts relate directly to the regulated rates and services of utilities subject to our oversight. The complaint raises an issue related to a provision of a standard power purchase agreement, which we reviewed and established consistent with our own orders and rules to implement state and federal PURPA policy. As such, we have the expertise and the authority to review the terms and conditions of the contract developed at the Commission after litigated proceedings.

PURPA is a federal statute that places the states in charge of implementing FERC's regulations pertaining to determining avoided costs and to setting rates paid to QFs. The obligation to enter into a PURPA contract is not governed by common law concepts of contract law, but rather an obligation created by statutes, regulations, and this Commission's administrative rules.¹⁰

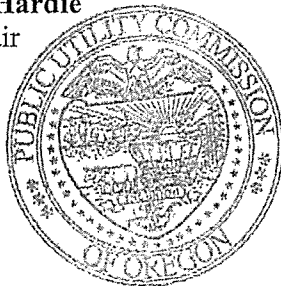
III. ORDER

IT IS ORDERED that the Application for Rehearing or Reconsideration and Application to Amend Order No. 17-465, filed by Portland General Electric Company, is denied.

Made, entered, and effective MAR 05 2018

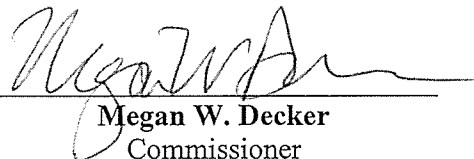


Lisa D. Hardie
Chair





Stephen M. Bloom
Commissioner



Megan W. Decker
Commissioner

A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480-183.484.

¹⁰ *Portland General Electric Company v Pacific Northwest Solar, LLC*, Docket No. UM 1894, Order No. 18-025 at 6. (Jan 25, 2018).

**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.

ORDER

DISPOSITION: PETITION TO AMEND ORDER NO. 17-256 GRANTED;
APPLICATION FOR REHEARING OR RECONSIDERATION
DENIED

I. SUMMARY

In this order, we amend and clarify Order No. 17-256 and deny the request for rehearing or reconsideration filed by Northwest Intermountain Power Producers Coalition, Community Renewable Energy Association and Renewable Energy Coalition (complainants).

II. PROCEDURAL HISTORY

In Order No. 17-256, we clarified Order No. 05-584 with regard to the date upon which the 15-year period of fixed prices paid to qualifying facilities (QFs) may begin under standard contracts. We addressed both a policy question *and* a legal question. The complainants framed the forward-looking policy issue as follows:

Complainants respectfully request the Commission reaffirm its policy and direct PGE to conform its business practices to be consistent with the terms of its standard contract and Commission orders and policy to pay 15 years of fixed prices after the QF begins delivering its net output to the utility. The Commission can resolve this Complaint without altering or revising any existing contracts or PGE's current standard contract, and only needs to confirm that Commission policy and PGE's standard

contract require PGE to pay 15 years of fixed prices after the QF begins delivering its net output.¹

In a subsequent joint filing, complainants and PGE presented the following legal issue: “Has PGE violated any statute, rule or Commission order regarding when the 15-year fixed price period begins under QF standard contracts?”²

We answered the legal question as follows:

Because we approved PGE's standard contract filings that limited the availability of fixed prices to the first fifteen years measured from contract execution, PGE cannot be found to have been in violation of our orders.³

We then addressed the policy question by stating that, we would:

explicitly require standard contracts, on a going-forward basis, to provide for 15 years of fixed prices that commence when the QF transmits power to the utility * * * we believe that, to provide a QF the full benefit of the fixed price requirement, the 15-year term must commence on the date of power delivery.⁴

We further added that, “[h]aving found that PGE’s past standard contracts have not been in violation of our orders, we shall not require that existing executed contracts be revised.”⁵

On September 11, 2017, complainants filed a joint “Petition for Clarification and Application for Rehearing or Reconsideration of Order No. 17-256.” PGE filed a response on October 24, 2017.

III. APPLICABLE LAW

Based on the nature of complainants’ request and the legal authority they cite in support, we interpret the motion as both a request to amend an order under ORS 756.568, and an application for rehearing or reconsideration under ORS 756.561.

ORS 756.568 provides, in part, that:

The Public Utility Commission may at any time, upon notice to the public utility or telecommunications utility and after opportunity to be heard as provided in ORS 756.500 to 756.610, rescind, suspend or amend any order made by the commission.

¹ Complaint at 3 (Dec 6, 2016).

² Joint Filing, Attachment A at 2 (Mar. 10, 2017).

³ Order No. 17-256 at 3.

⁴ *Id.* at 4.

⁵ *Id.*

ORS 756.561(1) provides that:

After an order has been made by the Public Utility Commission in any proceeding, any party thereto may apply for rehearing or reconsideration thereof within 60 days from the date of such order. The commission may grant such a rehearing or reconsideration if sufficient reason therefor is made to appear.

OAR 860-001-0720(3) further provides that we may grant an application for rehearing or reconsideration if the applicant shows that there is:

- (a) New evidence that is essential to the decision and that was unavailable and not reasonably discoverable before issuance of the order;
- (b) A change in the law or policy since the date the order was issued relating to an issue essential to the decision;
- (c) An error of law or fact in the order that is essential to the decision; or
- (d) Good cause for further examination of an issue essential to the decision.

IV. DISCUSSION

A. Positions of the Parties

Complainants specifically request that we clarify our order by stating that we did not interpret PGE's previously effective standard contract forms or any fully executed standard agreements. They claim that our order is vague and ambiguous with respect to binding interpretations on different versions of the standard contract form made available to QFs, because neither they nor PGE asked us to interpret prior standard contract forms or fully executed contract forms.⁶

Complainants are concerned that, in relying on the order, PGE could argue that we have provided a binding interpretation of the language of every QF contract on the issue of the start date of 15-year fixed prices. Complainants focus on two provisions in our order. First, they point to our language stating that we had earlier approved "PGE's standard contract filings that limited the availability of fixed prices to the first fifteen years measured from contract execution." Second, they point to our declaration that, "[h]aving found that PGE's past standard contracts have not been in violation of our orders * * *." Complainants note that we failed to identify any particular standard contract form on which to base these conclusions, explaining that the prior standard contract terms are highly variable.

PGE responds that we dismissed the underlying complaint based on our finding that PGE's contracts had been previously approved by the Commission and could thus not be found in violation of our orders, and that our clarification was clearly addressing our

⁶ Petition at 2 (Sept 11, 2017).

policy on a going-forward basis. PGE sees complainants' petition as essentially an attempt to relitigate the issue.

B. Resolution

We grant complainants' request to amend Order No. 17-256 and clarify that, although we concluded that PGE had not violated any Commission order with regard to its prior standard contracts, we did not interpret any terms of those standard contract forms or executed contracts.

In reaching our decision in Order No. 17-256, we relied on the fact that this Commission had repeatedly reviewed and approved PGE's standard contract forms submitted following our decision in Order No. 05-584 that QFs should receive 15 years of fixed prices. For that reason, we could not find that PGE's standard contract forms were in violation of Commission order.

In so doing, however, we neither examined nor addressed the specific terms and conditions of any past QF contract, either in standard form or executed agreement. We recognize that the actual terms of PGE's standard contract forms have varied over time, and we did not undertake a review of all those forms prior to rendering our decision.

To clarify this decision, we amend the last paragraph on page 3 of Order No. 17-256 to read, as follows:

Because we approved PGE's standard contract filings that may have limited the availability of fixed prices to the first fifteen years measured from contract execution, PGE cannot be found to have been in violation of our orders. Accordingly, PGE's motion to dismiss the complaint should be granted.

We also amend the third paragraph on page 4 of Order No. 17-256 to read, as follows:

In this decision, we do not address any existing executed contracts or PGE's current or existing standard contracts. Having found that PGE's past standard contracts have not been in violation of our orders, we shall not require that existing executed contracts be revised. However, PGE should promptly file revisions to Schedule 201 which shall include a revised standard contract PPA with language consistent with our requirement that the 15-year term affixed prices commences when the QF transmits power to the utility.

We deny complainants' request for rehearing or reconsideration of Order No. 17-256. Complainants' application does not meet the criteria set forth in OAR 860-001-0720(3). First, complainants do not allege that there is any new evidence that is essential to the decision that was unavailable before the order was issued, as required by subsection (a). Neither do they claim that there has been a change in law or policy since the issuance of Order No. 17-256, as required by subsection (b), nor do they claim an error of law or fact

in the order that is essential to the decision, as required by subsection (c). Finally, we find that, for the reasons discussed above with respect to pre-existing contracts, the complainants have failed to demonstrate good cause for further examination of an issue essential to the decision, as required by subsection (d).

V. ORDER

IT IS ORDERED that:

1. Order No. 17-256 entered July 13, 2017, is amended as indicated above.
2. The remainder of Order No. 17-256 is unchanged.
3. Complainants' Petition for Clarification is granted to the extent indicated above and denied in all other respects.
4. Complainants' Application for Rehearing or Reconsideration of Order No. 17-256 is denied.

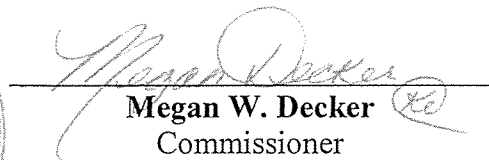
Made, entered, and effective NOV 13 2017



Lisa D. Hardie
Chair



Stephen M. Bloom
Commissioner



Megan W. Decker
Commissioner

A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480-183.484.

ORDER NO: 17 256

ENTERED: JUL 13 2017

**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.

ORDER

DISPOSITION: MOTION FOR SUMMARY JUDGMENT GRANTED;
ORDER NO. 05-584 CLARIFIED

I. SUMMARY

In this order, we grant the motion for summary judgment of Portland General Electric Company (PGE) and dismiss the complaint filed by Northwest Intermountain Power Producers Coalition (NIPPC), the Community Renewable Energy Association (CREA), and Renewable Energy Coalition (Coalition) (complainants). We find that PGE has lawfully offered standard contracts to operators of qualifying facilities (QFs) that have 15-year periods of fixed prices that begin on the date of execution, rather than on the date that the QF begins to transmit power.

We further conclude, however, that PGE must, on a going forward basis, offer standard contracts in which the 15-year period of fixed prices begins on the date that a QF begins to transmit power to the utility.

II. BACKGROUND

The Public Utility Regulatory Policies Act (PURPA) provides a market for the electricity produced by small power producers and co-generators. Although PURPA is a federal law,

states are responsible for implementing significant aspects of the law, and Oregon has enacted its own complementary legislation in ORS 758.505 *et al.*

In several dockets, we have revised the rates, terms, and conditions for QF power purchase agreements (PPAs) in Oregon. In one of these dockets, UM 1129, by Order No. 05-584, we provided QFs with nameplate capacity of 10 megawatts (MW) and below the opportunity to enter into standard contracts for up to 20 years, with 15-year fixed prices. The following sentence from that order lies at the heart of the dispute between the complainants and PGE:

Given our desire to calculate avoided costs as accurately as possible, and the testimony of several parties that avoided costs should not be fixed beyond 15 years, we are persuaded that standard contract prices should be fixed for only the first 15 years of the 20-year term.¹

III. DISCUSSION

A. Positions of the Parties

Complainants assert that PGE is implementing its standard contracts in a manner inconsistent with Commission policy. Complainants fault PGE for specifying that the 15 years of fixed prices begins when the contract between PGE and the QF is executed. Complainants contend that 15 years of fixed pricing commences when a QF achieves operation, *not* when the contract is executed. Alternatively, if the Commission determines that PGE's standard contracts did not violate any orders, but are still not consistent with Commission policy, Complainants request that we order PGE to file revised standard contracts clearly stating that the 15 years of fixed prices run from the delivery of net output.

Complainants note PGE's practice is inconsistent with that of other Oregon utilities. They emphasize that both PacifiCorp and Idaho Power have Commission-approved standard contracts that specify that the 15-year term of fixed prices begins on the date the QF begins to deliver power to the utility, not contract execution.

Intervenor Renewable Northwest (RNW)² supports the position of the complainants that the start date for the 15-year term of fixed prices begins when the QF starts to deliver power to the utility. RNW states that PGE's interpretation effectively makes it impossible for the QF to receive the full benefit of the 15-year offer and reduces the period of fixed prices that the QF is actually able to utilize. According to RNW, this is obviously not what the Commission must have intended.

¹ *In the Matter of Public Utility Commission of Oregon Staff's Investigation Relating to Electric Utility Purchases from Qualifying Facilities*, Docket No. UM 1129, Order No. 05-584 (May 13, 2005) at 20.

² RNW's December 21, 2016 petition to intervene was granted at the December 22, 2016 prehearing conference and memorialized in the prehearing conference memorandum, December 22, 2016 at 1.

PGE responds that its standard contracts are consistent with Commission policy and ask that the complaint be dismissed. The company argues that we should conclude as a matter of law that our orders and policies allow for a standard contract term to begin when the contract is executed. PGE notes that Order No. 05-584 requires only a 15-year term of fixed prices, and contains no language requiring a utility to pay fixed prices for 15 years from power delivery.

PGE also notes that the Commission has repeatedly reviewed and approved its standard contract forms. For example, PGE notes that its first standard contract approved by the Commission in Order No. 07-065 specified the date of execution of the standard contract as the 15-year fixed prices start date. PGE adds that no party ever objected to subsequent standard contract filings that “unambiguously provided for a maximum term of 20-years measured from contract execution and unambiguously limited the availability of fixed prices to the first 15-years of that term.”³

B. Resolution

When we concluded that QFs should receive 15 years of fixed prices under standard contracts in Order No. 05-584, we did not specify the date on which that 15-year term begins. Rather, as we later explained in Order No. 06-538, we acknowledged that utilities might not use identical standard contract templates:

In Order No. 05-584, we specifically declined to adopt a model standard contract form. Instead, we indicated that each utility should draft its own standard contract. We expected each standard contract form to contain terms and conditions that were consistent with the resolution of issues in Order No. 05-584, or past orders, as appropriate. We did not expect terms to be identical across all standard contract forms. We also recognized that standard contracts would contain terms addressing issues that were not addressed in the first phase of the docket, nor in any prior proceeding. We expected, however, that all of the terms in a standard contract, individually and collectively, would be consistent with, or in the spirit of, our general conclusions about implementation of PURPA.⁴

Due to this fact, Oregon utilities have filed, and we have approved, standard QF contracts that have used, as the triggering event, both the date of contract execution and the date of power delivery.

Because we approved PGE’s standard contract filings that limited the availability of fixed prices to the first fifteen years measured from contract execution, PGE cannot be found to have been in violation of our orders. Accordingly, PGE’s motion to dismiss the complaint should be granted.

³ *Id.* at 1.

⁴ Order No. 06-584 at 8 (Sept 28, 2006).

We take this opportunity, however, to clarify our policy in Order No. 05-584 to explicitly require standard contracts, on a going-forward basis, to provide for 15 years of fixed prices that commence when the QF transmits power to the utility.⁵ Standard contracts, whether prepared by PGE, Idaho Power or PacifiCorp, all contain QF performance benchmark event dates that must be achieved before the QF can offer power to the utility.

The 15-year period of fixed prices is, of necessity, tied to these benchmarks. Prices paid to a QF are only meaningful when a QF is operational and delivering power to the utility. Therefore, we believe that, to provide a QF the full benefit of the fixed price requirement, the 15-year term must commence on the date of power delivery.

Having found that PGE's past standard contracts have not been in violation of our orders, we shall not require that existing executed contracts be revised. However, PGE should promptly file revisions to Schedule 201 which shall include a revised standard contract PPA with language consistent with our requirement that the 15-year term of fixed prices commences when the QF transmits power to the utility.

IV. ORDER

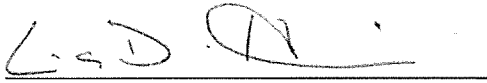
IT IS ORDERED that:

1. The complaint filed by Northwest Intermountain Power Producers Coalition, the Community Renewable Energy Association and Renewable Energy Coalition against Portland General Electric Company is dismissed.

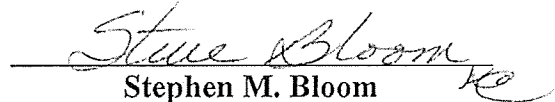
⁵ See *In the Matter of Public Utility Commission of Oregon Investigation into Qualifying Facilities Contracting and Pricing*, Docket No. UM 1610 Phase II, Order No. 15-130, entered April 16, 2015, adopting a stipulation of the parties, including, among others, PGE, the Coalition and CREA. Among the provisions described at page 2 of the order is the agreement that the scheduled commercial operation date chosen by the QF must be within three years of the date of the execution of the standard contract, subject to certain conditions.

2. Within five business days of the date of this order, Portland General Electric Company shall file revisions to Schedule 201 of its tariffs consistent with this order.

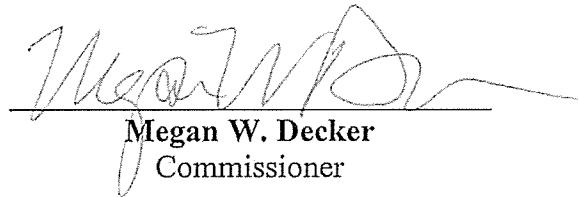
Made, entered, and effective JUL 13 2017.



Lisa D. Hardie
Chair



Stephen M. Bloom
Commissioner



Megan W. Decker
Commissioner

A party may request rehearing or reconsideration of this order under ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480 through 183.484.