

BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UM 1877-UM 1882, UM 1884-UM 1886, UM 1888-UM 1890

BOTTLENOSE SOLAR, LLC (UM 1877);
VALHALLA SOLAR, LLC (UM 1878);
WHIPSNAKE SOLAR, LLC (UM 1879);
SKYWARD SOLAR, LLC (UM 1880);
LEATHERBACK SOLAR, LLC (UM 1881);
PIKA SOLAR, LLC (UM 1882);
COTTONTAIL SOLAR, LLC (UM 1884);
OSPREY SOLAR, LLC (UM 1885);
WAPITI SOLAR, LLC (UM 1886);
BIGHORN SOLAR, LLC (UM 1888);
MINKE SOLAR, LLC (UM 1889);
HARRIER SOLAR, LLC (UM 1890),

Complainants,

vs.

PORTLAND GENERAL ELECTRIC
COMPANY,

Defendant.

**PORTLAND GENERAL ELECTRIC
COMPANY'S MOTION TO STRIKE
AND MOTION TO SUSPEND PGE'S
REPLY TO COMPLAINANTS'
RESPONSE TO PGE'S MOTION FOR
SUMMARY JUDGMENT**

Expedited Consideration Requested

I. INTRODUCTION

Portland General Electric Company ("PGE") respectfully moves to strike certain language in Complainants' March 9, 2018 response to PGE's motion for summary judgment on the grounds that the language violates the process agreed to and adopted by the Administrative Law Judge ("ALJ") during the February 9, 2018 pre-hearing conference in these cases. PGE also respectfully requests that the ALJ issue an immediate procedural ruling: (a) staying PGE's deadline to file its reply to Complainants' March 9, 2018 response, and (b) adopting an expedited schedule to resolve PGE's motion to strike (PGE has proposed an expedited schedule below). Once a ruling is issued on PGE's motion to strike, PGE requests that the ALJ approve a schedule

that allows PGE two weeks to file its reply in support of its January 25, 2018 motion for summary judgment.

I. BACKGROUND

On January 25, 2018, PGE filed a motion for summary judgment in the above-captioned proceedings. Rather than timely respond to the motion for summary judgment, Complainants sought a ruling from the ALJ staying their obligation to respond. On February 9, 2018, the ALJ held a pre-hearing conference and granted Complainants a one-month extension (until March 9, 2018) to respond. The parties then conferred regarding a deadline for PGE's reply and agreed to March 30, 2018, on the condition that Complainants agreed not to file their own motion for summary judgment before PGE's deadline to file its reply. The ALJ's March 13, 2018 prehearing conference report specifically stated: "First date on which Complainants may file a Motion for Summary Judgment[:] March 30, 2018."

On March 9, 2018, Complainants filed their response to PGE's motion for summary judgment, but that response included two requests that the Commission deny PGE's motion for summary judgment *and grant summary judgment in favor of Complainants*. PGE believes this request plainly contradicts the procedural schedule approved by the ALJ, which prohibits Complainants from moving for summary judgment before PGE files its reply.

On March 14 and 15, 2018, PGE raised this issue with Complainants and asked them to stipulate that their response was not requesting that the Commission grant summary judgment in Complainants' favor and to agree to the withdrawal of the sentences or clauses in the response asking the Commission to grant summary judgment in favor of Complainants. The Complainants have refused to do so.

II. MOTION TO STRIKE

As a consequence of the above facts, PGE respectfully moves for an order or ruling that Complainants' March 9, 2018 response violates the procedural schedule approved by the ALJ on February 9, 2018, to the extent it requests that the Commission grant summary judgment in favor

of Complainants. PGE further requests that the ALJ or Commission order stricken from Complainants' March 9, 2018 response the following language indicated with strike through:

On page 1 of the Response:

The Oregon Public Utility Commission (the "Commission" or "OPUC") should deny PGE's motion, ~~and instead grant summary judgment to the Complainants.~~

On page 10 of the Response:

PGE is not entitled to summary judgment, ~~and the Commission should instead grant summary judgment to the Complainants.~~

In the alternative, PGE requests that the ALJ or Commission clarify that Complainants' March 9, 2018 response will not be treated as a motion or request for summary judgment and that the language identified above will be given no effect.

PGE respectfully requests expedited consideration of this motion. PGE proposes the following expedited schedule:

- (a) The ALJ issue an immediate ruling that PGE's deadline to reply is stayed pending resolution of this issue and providing;
- (b) Complainants are allowed until Wednesday, March 21, 2018, to file a response to this motion to strike;
- (c) PGE is allowed to file a reply on this motion to strike on Thursday, March 22, 2018; and
- (d) The ALJ will target Friday, March 23, 2018, to issue a ruling on the motion to strike.

Once a ruling is issued, PGE requests additional time from the date of that ruling to file its reply in support of its January 25, 2018 motion for summary judgment (and, if necessary, its response to Complainants' request for summary judgment). Consulting with opposing counsel regarding this issue and preparing this motion to address Complainants' apparent request for summary judgment in its March 9, 2018 response has consumed PGE's time and resources over several working days, which is exactly what the prohibition on filing a motion for summary judgment before PGE filed its reply was supposed to prevent. Because PGE needs to understand

whether it is (1) replying to Complainants' response to PGE's motion for summary judgment, or (2) replying to Complainants' response *and* responding to Complainants' apparent request for summary judgment, PGE should be granted additional time to reply. In the event this motion is granted in PGE's favor, PGE requests that its response be due two weeks from the date of the ALJ's order (and no sooner than April 6, 2018). In the event PGE also needs to submit a response to Complainants' request for summary judgment, PGE requests that its reply and response be due no sooner than four weeks from the date of the ALJ's order. The grant of this additional time is especially important because the week of March 26, 2018, is spring break in the Portland Public School system and PGE's lawyers and staff have long-standing vacation plans during that week.

PGE has discussed this motion with counsel for Complainants and Complainants do not support expedited consideration.

DATED this 19th day of March, 2018.

Respectfully submitted,



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