

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 1894

In the Matter of

PORTLAND GENERAL ELECTRIC  
COMPANY,

Complainant,

v.

PACIFIC NORTHWEST SOLAR, LLC,

Defendant.

RULING

DISPOSITION: MOTION TO DISMISS DENIED

**I. SUMMARY**

I deny the Motion to Dismiss the Complaint of Portland General Electric Company (PGE) against Pacific Northwest Solar, LLC (PNW).

**II. BACKGROUND AND PROCEDURAL HISTORY**

In the first half of 2016, PNW executed power purchase agreements (PPAs) with PGE for six solar qualifying facilities (QFs). The avoided costs included in the PNW PPAs were those the Commission approved on August 25, 2015, and the initial delivery dates for these PPAs is November 1, 2017.

On May 8, 2017, PNW contacted PGE and stated that it would be increasing the nameplate capacity rating for one of the contracting QFs—the Butler QF—from 4 MW to 10 MW. Then, on June 23, 2017, PNW sent PGE a letter that requested nameplate capacity changes to four of its six QFs, including the Butler QF.

PGE and PNW Solar disagreed as to whether Section 4.3 of the PPAs permits a QF to materially change its nameplate capacity unilaterally while retaining its right to previous avoided cost prices. To resolve that issue, PGE filed, on August 31, 2017, a Complaint and Request for Dispute Resolution with the Commission.

PNW filed a Motion to Dismiss the complaint on September 19, 2017. On October 4, 2017, PGE filed a response to the PNW Motion to Dismiss, and on October 11, 2017, PNW filed a reply to the PGE Motion.

### III. POSITIONS OF THE PARTIES

PNW states that the complaint should be dismissed because the Commission lacks personal jurisdiction over the defendant because PNW is neither a utility nor a party to a dispute about rates or terms of service. PNW argues that the Commission is not an agency with broad, general jurisdiction but is limited by specific provisions of its enabling statutes, none of which address the instant fact pattern and that the dispute therefore belongs elsewhere. PNW argues that the Commission only has jurisdiction to hear complaints brought against a utility by a QF, but not the other way around. Furthermore, PNW asserts that the Commission's rules do not contemplate the type of dispute brought by PGE and PGE has failed to allege an appropriate statutory basis or other authority for relief.

In response, PGE contends that PNW has subjected itself to Commission jurisdiction by entering into an agreement with PGE under a PPA developed and approved by the Commission to implement state and federal statutes. PGE states that these activities are plainly regulated by the Commission because revising nameplate capacities unilaterally will have a clear impact on PGE's rates. Thus, PGE contends the Commission has jurisdiction under ORS 756.500. Additionally, PGE notes that the language of the PPA executed by PNW contains a provision granting the Commission jurisdiction over the parties with respect to the terms and conditions of the agreement. Finally, PGE states that the Commission has jurisdiction over PNW because the sale of QF electricity is regulated by the Commission.

### IV. DISCUSSION

The motion to dismiss is denied. The Commission has both the authority and the primary jurisdiction over the parties and subject matter to resolve this dispute.

First, PNW does not dispute the fact that the Commission has authority to regulate PGE pursuant to ORS 756.040 and to regulate the terms and conditions of PPAs pursuant to ORS 758.535. The terms and conditions of PGE's PPA with PNW are a direct result of the exercise of that authority.

Second, PNW subjected itself to Commission jurisdiction by executing the PPA. The PPAs entered into by PNW with PGE were developed and filed in compliance with Order No. 05-584 and subsequent orders to implement state and federal PURPA statutes. Section 17 of the PGE-PNW PPA explicitly acknowledges our authority over the terms and conditions of the agreement by stating, in part, the following:

SECTION 17: GOVERNMENTAL JURISDICTION AND AUTHORIZATIONS

This Agreement is subject to the jurisdiction of those governmental agencies having control over either Party or this Agreement. \* \* \*

Third, ORS 756.500, which governs the Commission's complaint and investigation procedures, authorizes PGE's filing seeking resolution of its dispute with PNW. ORS 756.500(5) provides that "any public utility \* \* \* may make complaint as to *any matter affecting its own rates or service \* \* \**" without being subject to any interpretation as a possible limitation by any language in ORS 756.500(1).<sup>1</sup> Avoided cost prices paid for QF-supplied electricity, the costs associated with interconnection with a QF and the administrative costs involved in managing the contractual relationship all impact the utility's revenues and expenses, which, in turn, have an impact on recovery of costs through rates charged to customers via power cost annual update tariffs and power cost adjustment mechanisms.

**V. RULING**

I deny the Motion to Dismiss the Complaint of Portland General Electric Company against Pacific Northwest Solar, LLC.

Dated this 27th day of October, 2017, at Salem, Oregon.



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Allan J. Arlow  
Administrative Law Judge

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<sup>1</sup> See *Roats Water System, Inc. v. Golfside Investments, LLC and Oregon Public Utility Commission*, 225 Or App 618 (2009), in which the utility filed a complaint against a customer for the payment of residential development charges in accordance with PUC-approved water service tariffs after the customer had made changes to the previously designated uses of the property.