

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1987

In the Matter of

PORTLAND GENERAL ELECTRIC
COMPANY,

Request to Update its Schedule 201 and
Standard Power Purchase Agreements.

RULING

DISPOSITION: MOTION TO LIFT SUSPENSION DENIED

I. SUMMARY

In this ruling, we deny Portland General Electric Company's motion to lift the suspension in these proceedings because we conclude that administrative efficiency is best served by continuing to focus on the resolution of our rulemaking proceedings in docket AR 631. There, we will address the procedures, terms, and conditions associated with qualifying facilities, including standards contracts for all utilities. We understand and share PGE's sense of urgency, and ask that AR 631 be prioritized for prompt resolution.

II. PROCEDURAL HISTORY

On December 23, 2019, the Commission issued a ruling suspending these proceedings, finding that first focusing on the resolution of our rulemaking proceedings in docket AR 631 to address the procedures, terms, and conditions associated with qualifying facilities for standards contracts for all utilities would be administratively efficient. We directed Staff to file a status report in this docket within six months of the ruling, or when the rules are adopted in docket AR 631, whichever occurs first, including a recommendation on whether to lift the suspension in these proceedings. We stated that after an opportunity for parties to respond, we would determine how and when to resume these proceedings to decide any issues that may remain.

On July 28, 2020, Staff filed a status report indicating that Staff intended to release a proposal for updated contract terms in docket AR 631 by the end of September 2020. In its report, Staff stated that it intended to address many of the changes proposed in this docket in docket AR 631 and requested that the Commission continue to suspend these proceedings. No party filed a response to Staff's status report.

On December 31, 2020, PGE filed a motion requesting that the Commission lift the suspension and schedule a prehearing conference in these proceedings. Between January 13 and 20, 2021, Northwest & Intermountain Power Producers Coalition, the Renewable Energy Coalition, and the Community Renewable Energy Association (collectively, the QF Parties), Staff, NewSun Energy LLC (NewSun), and Obsidian Renewables, LLC (Obsidian) filed responses to PGE's motion. On January 26, 2021, PGE filed a reply. On January 28, 2021, Staff filed a supplement to its response, comprised of a matrix of PGE's revisions, amended to include a column in which Staff identifies which of PGE's proposed revisions are related to issues that Staff anticipates addressing in docket AR 631. On January 28 and February 1, 2021, respectively, NewSun and Obsidian each filed a sur-reply accompanied by a motion for leave to reply to PGE's reply. On February 3, 2021, PGE filed a sur-sur-reply along with a motion for leave to reply to Obsidian's sur-reply.¹

Pursuant to OAR 860-001-0090(1)(j), the ALJ has certified PGE's motion to lift the suspension in these proceedings to the Commission for our consideration and disposition.

III. DISCUSSION

PGE requests that the Commission lift the suspension in this docket, pointing to a lack of progress in docket AR 631. Additionally, PGE argues that it will remove any issues from these proceedings that are slated to be addressed in docket AR 631. Staff neither supports nor opposes PGE's motion, but expresses doubt that it would be administratively efficient to lift the suspension. NewSun and the QF parties oppose PGE's motion and contend that the circumstances justifying the suspension have not materially changed. Obsidian argues that PGE's proposed revisions must be established by rule, and are appropriately addressed in docket AR 631, not through a contested case process.

In its motion, PGE asserts that there has been little progress in docket AR 631 since suspension of this docket and it likely will continue to move slowly. PGE argues that while Staff has indicated it will move the docket forward early this year, many of the issues in docket AR 631 are inextricably tied to other dockets, and may continue to be delayed until those dockets are resolved. PGE notes the value of focusing Commission and party resources on the generic rulemaking, but argues that continuing the suspension will result in additional qualifying facilities signing the current standard contracts, and thus further litigation, draining the resources of PGE, qualifying facilities, and the Commission. PGE argues that lifting the suspension, and approving new standard contracts that are clear and comprehensive in this docket will avoid that harm. NewSun

¹ In their motions for leave to reply, NewSun, Obsidian, and PGE each indicated they had attempted to confer with the other parties regarding their positions. No party objected, and we accept the sur-replies, and sur-sur-reply in the interest of completeness.

opposes PGE's motion and argues that there is no pressing need to do so given that PGE's current standard contract is financeable and PGE has very few new complaints against it.

Staff acknowledges PGE's frustration with the delays in the rulemaking process, but notes events occurring in 2019 and 2020 were pertinent to the development of Staff's proposal in docket AR 631. Staff and the QF Parties note that the Federal Energy Regulatory Commission's (FERC) rules impact Oregon's implementation of the Public Utility Regulatory Policies Act of 1978 (PURPA), and informed Staff's proposal in docket AR 631. They note that FERC's orders in its most recent rulemaking regarding Qualifying Facility Rates and Requirements Implementation Issues Under PURPA in FERC Docket No. RM19-15 were not issued until July 16, 2020, and November 19, 2020.

The QF Parties agree that the Commission should resolve docket AR 631 as soon as possible, but argue that the delay in its completion does not negate the adverse impacts of duplicative litigation that will result if the Commission lifts the suspension in these proceedings. PGE contends that delaying resolution of these proceedings pending the outcome of docket AR 631 is not needed to prevent duplication or conserve party resources, because the two dockets will not address the same issues. The QF Parties argue that the parties should not be subjected to revising the same documents first in these proceedings and then again after the conclusion of docket AR 631. Additionally, while PGE maintains that due to the changes resulting from the workshop process, most of the new provisions should be uncontroversial, the QF Parties and NewSun dispute this position and argue that PGE's filing is a vast, substantial rewrite of its standard contracts, presented as completely new documents.

Obsidian argues that under Oregon law, the Commission must establish the terms and conditions of PGE's standard contracts by rule through a formal rulemaking, and that because such a rulemaking is already underway, lifting the suspension in this docket can serve no lawful purpose. Obsidian also asserts that docket UM 1987 should be dismissed. PGE agrees with Obsidian that ORS 758.535(2)(a) requires that the "terms and conditions" for the purchase of energy and/or capacity from qualified facilities be established by rule, but argues that docket UM 1987 does not involve any policy changes and because the outcome would apply only to PGE, revision of PGE's standard contracts does not require a rulemaking.

IV. RESOLUTION

We decline to lift the suspension in these proceedings. We continue to find that focusing first on the process regarding all standard contracts, rather than a PGE-specific process is administratively efficient, as well as consistent with our goal of uniform and unambiguous standard contract terms across utilities. Any updates to PGE's standard

contracts resulting from policy decisions in docket AR 631 will likely require revising PGE's standard forms at the conclusion of that proceeding. Even limiting this docket to the issues not raised in docket AR 631 would result in two rounds of revisions to the same documents, likely in close proximity. PGE contends that the company initiated this docket to achieve a comprehensive overhaul of its current standard contracts, and replace the current versions with functional contracts that are clear and complete. We believe that the best way of achieving that goal is a single, comprehensive revision to allow for the review of all changes together after the conclusion of docket AR 631.

In our prior ruling, we noted that PGE already has in place approved standard contracts which are subject to our rules and policies and that have been extensively litigated. Additionally, PGE acknowledges that standard contract requests have slowed over the past two years, and fewer complaints have been filed. Accordingly, we find that PGE's interests are not harmed by continuing the suspension of these proceedings pending timely resolution of docket AR 631.

We acknowledge that docket AR 631 has not proceeded within the timeframe anticipated at the time of our previous ruling. While we understand PGE's frustration, there were legitimate and substantive reasons for the delays in Staff's proposal. As noted by the QF Parties, the delays in the AR 631 process to date related to the COVID-19 pandemic and shift to remote work shortly after this docket was suspended, turnover of Staff working on this docket, as well as the timing of completion of FERC's rulemaking. While PGE expresses concern about the potential for further delays to the rulemaking process in docket AR 631, Staff has now released an initial proposal and set out a plan for resolution of that proceeding within a reasonable timeframe, including a workshop on February 17, 2021, to receive participant feedback prior to drafting rules and formal rulemaking to commence later this year. We will require interim Staff updates in these proceedings, as well as an update from PGE when the rules are adopted in docket AR 631, including a recommendation on any remaining issues in this docket.² After an opportunity for parties to respond, we will determine how and when to resume these proceedings to decide any issues that may remain. Staff will provide updates in these proceedings on the progress in docket AR 631 no later than April 16, and August 30, 2021. By August 30, we expect proposed rules to have been filed with the Secretary of State and ready for our adoption in AR 631. If proposed rules have not been filed by that time, then the August 30 update must include a Staff proposal for resuming UM 1987 and reaching Commission resolution no later than the first quarter of 2022.

² Because we decline to lift the suspension, we do not reach Obsidian's arguments regarding dismissal.

V. RULING

WE RULE that:

1. Portland General Electric Company's motion to lift suspension is denied.
2. The procedural schedule in docket UM 1987 remains suspended until further notice.
3. Staff must file updates no later than April 16, 2021, and August 30, 2021, and Portland General Electric Company must file a status report when the rules are adopted in docket AR 631.

Dated this 19th day of February 2021, at Salem, Oregon.



Megan W. Decker
Chair



Letha Tawney
Commissioner