

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1869

In the Matter of

SSD CLACKAMAS 1 LLC

Complainant,

v.

PORTLAND GENERAL ELECTRIC
COMPANY,

Defendant.

SSD CLACKAMAS 1 LLC'S
RESPONSE TO PGE'S MOTION FOR
STAY OR EXTENSION OF TIME TO
RESPOND TO COMPLAINANT'S
MOTION FOR PARTIAL SUMMARY
JUDGMENT

SSD Clackamas 1 ("Clackamas 1") respectfully requests that the Administrative Law Judge ("ALJ") deny Portland General Electric Company's ("PGE") Motion for Stay or Extension of Time to Respond to Complainant's Motion for Partial Summary Judgment ("PGE Motion"). Clackamas 1 requests that the Oregon Public Utility Commission issue a final order regarding its Partial Motion for Summary Judgment before the end of April 2018 because PGE is expected to propose a significant avoided cost rate reduction on May 1, 2018, and PGE has taken the position that, if a settlement is not reached, then Clackamas 1 will only be able to sell power at the new and lower avoided cost rates in effect after the May 2018 update. Clackamas 1 needs to make critical legal and business decisions regarding the issues in this proceeding prior to the May 2018 update, and the outcome of the Partial Motion for Summary Judgment could have a material impact on those decisions. Clackamas 1 does not oppose a one week extension of time for PGE

to file its response, if the Commission can issue an order resolving the Partial Motion for Summary Judgment by April 23, 2018.

The primary purpose of Clackamas 1's Partial Motion for Summary Judgment is to gain clarity regarding the May 1 update and its impact on Clackamas 1's rights to current rates. Therefore, any delay past May 2018 will moot most (but not all) of Clackamas 1's Partial Motion for Summary Judgment.

PGE is correct that Clackamas 1 and PGE are continuing settlement negotiations, and Clackamas 1 believes that it was inappropriate for PGE to unilaterally reveal the details regarding the confidential settlement negotiations. Without agreeing or disagreeing with PGE's characterization of the settlement process, Strata only notes that settlement discussions began in October 2017, they have yet to reach a final settlement, and it is unclear whether the case will reach a final settlement or need to be resolved through litigation. PGE has stated that it may take "week" to complete a settlement, and there is no guarantee that the parties will ultimately reach a settlement. Therefore, Clackamas 1 urges the ALJ to set a schedule that allows for an expeditious resolution of this case in the event that settlement is not reached.

Clackamas 1 has been negotiating with PGE for over four months, and, if settlement is not reached, then PGE is expected to argue that Clackamas 1 will only be eligible for the post-May 2018 updated avoided cost rates. This is meaningful because, if Clackamas 1 had filed its Partial Motion for Summary Judgment in October 2017 rather than engage in settlement discussions, then it could have obtained a resolution of the disputed issues and been able to make informed legal and business decisions prior to the May 2018 update.

PGE stated "that if the Complainant prevails on its motion, it will secure today's rates whether a ruling on the motion is issued later this month or after PGE's May 1 rate update has

become effective. As a result, PGE believes there is no urgent need to resolve Complainant's pending motion for partial summary judgment.”¹ PGE’s statement is highly misleading because it fails to account for the possibility that Clackamas 1 may lose its Partial Motion for Summary Judgment. In the event that settlement is not reached and Clackamas 1 does not prevail on its motion, then Clackamas 1 may be effectively penalized and potentially subject to even lower rates because of its good faith efforts to resolve the issues in this proceeding. It is not “inefficient and unnecessary” for PGE to obtain resolution of the Partial Motion for Summary Judgment simply because the parties “hope to finalize [a settlement] within weeks.” If the parties do not actually reach a settlement within weeks, then resolving the Partial Motion for Summary Judgment prior to the May 2018 update may be critically important for Clackamas 1.

Since the filing of its Partial Motion for Summary Judgment, Clackamas 1 has consistently and repeatedly informed PGE that it would not agree to an extension of time for PGE to respond to the Partial Motion for Summary Judgment until either: 1) a final settlement is reached; or 2) PGE agrees that Clackamas 1 is at least eligible for the currently effective avoided cost rates. There would be no reason for a prompt resolution of the Partial Motion for Summary Judgment before the May 2018 update, if PGE simply removes the threat that PGE will argue that Clackamas 1 will only be eligible for the post-May 2018 update rates.

To be clear, Clackamas 1’s need for a prompt resolution of its Partial Motion for Summary Judgment is **only** because PGE is reserving its rights to argue that Clackamas 1 is harmed because a final order is not issued before May 2018. Clackamas 1 does not take umbrage that PGE is reserving all of its legal rights; however, if PGE is not willing to insulate

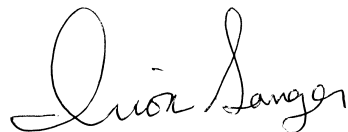
¹ PGE Motion at 2.

Clackamas 1 for any continued delays, then PGE should be required to litigate this proceeding expeditiously.

PGE also requests additional time because its workload in other proceedings, and “would require an extension of time to respond to Complainant’s motion for partial summary judgment even if there was no agreement in principle to settle the Strata cases.”² Clackamas 1 is sympathetic to the work load needs of opposing counsel, and is not opposed to a one week extension of time for PGE to file its response, if that extension of time does not impact the ability of the Commission to issue a ruling before the end of April 2018. A one week extension would result in PGE’s response due on March 19 and Clackamas 1’s reply due March 26. Regardless of the extension of time, Clackamas 1 requests that the Commission issue its final order no later than April 23, so that Clackamas 1 can make legal and business decisions prior to PGE filing its May 2018 update.

Dated this 8th day of March, 2018.

Respectfully submitted,



Irion A. Sanger
Marie Barlow
Sanger Law, PC
1117 SE 53rd Avenue
Portland, OR 97215
Telephone: 503-756-7533
Fax: 503-334-2235
irion@sanger-law.com

Of Attorneys for SSD Clackamas 1 LLC

² PGE Motion at 3-4.