

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1931

PORTLAND GENERAL ELECTRIC
COMPANY,

Complainant,

vs.

ALFALFA SOLAR I LLC , DAYTON
SOLAR I LLC, FORT ROCK SOLAR I LLC,
FORT ROCK SOLAR II LLC, FORT ROCK
SOLAR IV LLC, HARNEY SOLAR I LLC,
RILEY SOLAR I LLC, STARVATION
SOLAR I LLC, TYGH VALLEY SOLAR I
LLC, WASCO SOLAR I LLC,

Defendants.

RULING

DISPOSITION: DEFENDANTS' MOTION FOR CLARIFICATION DENIED AND
MOTION IN THE ALTERNATIVE FOR CERTIFICATION
DISMISSED AS MOOT

I. SUMMARY

In this ruling, I deny the motion filed on behalf of Alfalfa Solar I LLC, Dayton Solar I LLC, Fort Rock Solar I LLC, Fort Rock Solar II LLC, Fort Rock Solar IV LLC, Harney Solar I LLC, Riley Solar I LLC, Starvation Solar I LLC, Tygh Valley Solar I LLC, and Wasco Solar I, LLC (defendants or NewSun QFs), seeking clarification of my ruling of August 23, 2018. I further dismiss as moot the alternative request of NewSun QFs to certify my ruling to the Commission for its consideration.

II. DISCUSSION

On August 23, 2018, I denied the NewSun QFs' previous motions for summary disposition, expedited schedule, and oral argument and directed the parties to engage in prehearing discovery with respect to particular matters within a

specified timeframe.¹ On August 31, 2018, NewSun QFs filed the instant motion to which Portland General Electric Company (PGE) responded on September 17, 2018.

A. Positions of the Parties

In support of its motion for clarification, NewSun QFs state that they are uncertain as to whether my ruling intended to foreclose the parties from seeking summary disposition after the conclusion of the initial discovery process or whether the ruling was intended to be a final determination that the contracts at issue are ambiguous as to the period of fixed pricing. NewSun QFs assert that no party to this proceeding has yet identified any disputed fact material to interpreting the NewSun power purchase agreements (PPAs) and that it is premature to determine whether a genuine issue exists as to any material fact. They therefore assert that it may still be appropriate to seek summary disposition after the conclusion of the initial discovery process.

The defendants further request that, in the event that the administrative law judge intended to preclude them from seeking summary disposition at some future time, the question be certified to the Commission for disposition pursuant to OAR 860-001-0110.

In response, PGE states that the August 23, 2018 ruling does not preclude the parties from filing additional motions for summary judgment and does not preclude the Commission from making its own determination regarding whether the New Sun QFs' PPAs are ambiguous. As a result, PGE contends that there is no need to clarify or to certify the August 23 ruling.

B. Resolution

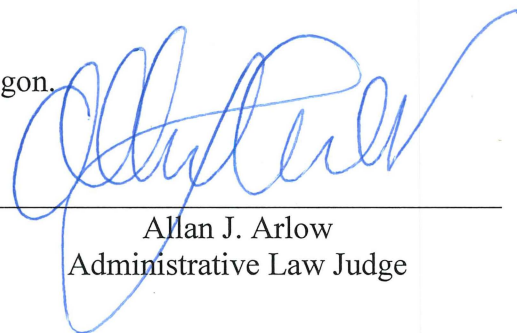
NewSun QFs assert concern that they have been precluded from filing motions for summary judgment at some future point. However, as PGE acknowledges, there are no procedural impediments facing the defendants with respect to this matter. Nothing in our rules prevents NewSun QFs from raising previous arguments after discovery has been completed and testimony offered into evidence, even though similar or identical summary judgment motions may have been denied by the presiding administrative law judge earlier in the same proceeding. The Oregon Rules of Civil Procedure are similarly silent on the issue of reconsideration of an administrative law judge's interlocutory ruling. In light of the conclusion that NewSun QFs are in no way precluded from filing summary judgment motions in the future, the requested relief is unnecessary.

¹ My ruling of August 23, 2018, provided an extensive recitation of history of these proceedings prior to that date and will therefore not be repeated here.

III. RULING

1. The motion for clarification is denied.
2. The request in the alternative for certification of the question to the Commission pursuant to OAR 860-001-0110 is dismissed as moot.

Dated this 1st day of November, 2018, at Salem, Oregon.



Allan J. Arlow
Administrative Law Judge