

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 1805

NORTHWEST AND INTERMOUNTAIN  
POWER PRODUCERS COALITION,  
COMMUNITY RENEWABLE ENERGY  
ASSOCIATION, and RENEWABLE  
ENERGY COALITION,

Complainants,

vs.

PORTLAND GENERAL ELECTRIC  
COMPANY,

Defendant.

ORDER

DISPOSITION: PETITION TO AMEND ORDER NO. 17-256 GRANTED;  
APPLICATION FOR REHEARING OR RECONSIDERATION  
DENIED

**I. SUMMARY**

In this order, we amend and clarify Order No. 17-256 and deny the request for rehearing or reconsideration filed by Northwest Intermountain Power Producers Coalition, Community Renewable Energy Association and Renewable Energy Coalition (complainants).

**II. PROCEDURAL HISTORY**

In Order No. 17-256, we clarified Order No. 05-584 with regard to the date upon which the 15-year period of fixed prices paid to qualifying facilities (QFs) may begin under standard contracts. We addressed both a policy question *and* a legal question. The complainants framed the forward-looking policy issue as follows:

Complainants respectfully request the Commission reaffirm its policy and direct PGE to conform its business practices to be consistent with the terms of its standard contract and Commission orders and policy to pay 15 years of fixed prices after the QF begins delivering its net output to the utility. The Commission can resolve this Complaint without altering or revising any existing contracts or PGE's current standard contract, and only needs to confirm that Commission policy and PGE's standard

contract require PGE to pay 15 years of fixed prices after the QF begins delivering its net output.<sup>1</sup>

In a subsequent joint filing, complainants and PGE presented the following legal issue: “Has PGE violated any statute, rule or Commission order regarding when the 15-year fixed price period begins under QF standard contracts?”<sup>2</sup>

We answered the legal question as follows:

Because we approved PGE's standard contract filings that limited the availability of fixed prices to the first fifteen years measured from contract execution, PGE cannot be found to have been in violation of our orders.<sup>3</sup>

We then addressed the policy question by stating that, we would:

explicitly require standard contracts, on a going-forward basis, to provide for 15 years of fixed prices that commence when the QF transmits power to the utility \* \* \* we believe that, to provide a QF the full benefit of the fixed price requirement, the 15-year term must commence on the date of power delivery.<sup>4</sup>

We further added that, “[h]aving found that PGE’s past standard contracts have not been in violation of our orders, we shall not require that existing executed contracts be revised.”<sup>5</sup>

On September 11, 2017, complainants filed a joint “Petition for Clarification and Application for Rehearing or Reconsideration of Order No. 17-256.” PGE filed a response on October 24, 2017.

### III. APPLICABLE LAW

Based on the nature of complainants’ request and the legal authority they cite in support, we interpret the motion as both a request to amend an order under ORS 756.568, and an application for rehearing or reconsideration under ORS 756.561.

ORS 756.568 provides, in part, that:

The Public Utility Commission may at any time, upon notice to the public utility or telecommunications utility and after opportunity to be heard as provided in ORS 756.500 to 756.610, rescind, suspend or amend any order made by the commission.

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<sup>1</sup> Complaint at 3 (Dec 6, 2016).

<sup>2</sup> Joint Filing, Attachment A at 2 (Mar. 10, 2017).

<sup>3</sup> Order No. 17-256 at 3.

<sup>4</sup> *Id.* at 4.

<sup>5</sup> *Id.*

ORS 756.561(1) provides that:

After an order has been made by the Public Utility Commission in any proceeding, any party thereto may apply for rehearing or reconsideration thereof within 60 days from the date of such order. The commission may grant such a rehearing or reconsideration if sufficient reason therefor is made to appear.

OAR 860-001-0720(3) further provides that we may grant an application for rehearing or reconsideration if the applicant shows that there is:

- (a) New evidence that is essential to the decision and that was unavailable and not reasonably discoverable before issuance of the order;
- (b) A change in the law or policy since the date the order was issued relating to an issue essential to the decision;
- (c) An error of law or fact in the order that is essential to the decision; or
- (d) Good cause for further examination of an issue essential to the decision.

#### IV. DISCUSSION

##### A. Positions of the Parties

Complainants specifically request that we clarify our order by stating that we did not interpret PGE's previously effective standard contract forms or any fully executed standard agreements. They claim that our order is vague and ambiguous with respect to binding interpretations on different versions of the standard contract form made available to QFs, because neither they nor PGE asked us to interpret prior standard contract forms or fully executed contract forms.<sup>6</sup>

Complainants are concerned that, in relying on the order, PGE could argue that we have provided a binding interpretation of the language of every QF contract on the issue of the start date of 15-year fixed prices. Complainants focus on two provisions in our order. First, they point to our language stating that we had earlier approved "PGE's standard contract filings that limited the availability of fixed prices to the first fifteen years measured from contract execution." Second, they point to our declaration that, "[h]aving found that PGE's past standard contracts have not been in violation of our orders \* \* \*." Complainants note that we failed to identify any particular standard contract form on which to base these conclusions, explaining that the prior standard contract terms are highly variable.

PGE responds that we dismissed the underlying complaint based on our finding that PGE's contracts had been previously approved by the Commission and could thus not be found in violation of our orders, and that our clarification was clearly addressing our

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<sup>6</sup> Petition at 2 (Sept 11, 2017).

policy on a going-forward basis. PGE sees complainants' petition as essentially an attempt to relitigate the issue.

## B. Resolution

We grant complainants' request to amend Order No. 17-256 and clarify that, although we concluded that PGE had not violated any Commission order with regard to its prior standard contracts, we did not interpret any terms of those standard contract forms or executed contracts.

In reaching our decision in Order No. 17-256, we relied on the fact that this Commission had repeatedly reviewed and approved PGE's standard contract forms submitted following our decision in Order No. 05-584 that QFs should receive 15 years of fixed prices. For that reason, we could not find that PGE's standard contract forms were in violation of Commission order.

In so doing, however, we neither examined nor addressed the specific terms and conditions of any past QF contract, either in standard form or executed agreement. We recognize that the actual terms of PGE's standard contract forms have varied over time, and we did not undertake a review of all those forms prior to rendering our decision.

To clarify this decision, we amend the last paragraph on page 3 of Order No. 17-256 to read, as follows:

Because we approved PGE's standard contract filings that may have limited the availability of fixed prices to the first fifteen years measured from contract execution, PGE cannot be found to have been in violation of our orders. Accordingly, PGE's motion to dismiss the complaint should be granted.

We also amend the third paragraph on page 4 of Order No. 17-256 to read, as follows:

**In this decision, we do not address any existing executed contracts or PGE's current or existing standard contracts.** Having found that PGE's past standard contracts have not been in violation of our orders, we shall not require that existing executed contracts be revised. However, PGE should promptly file revisions to Schedule 201 which shall include a revised standard contract PPA with language consistent with our requirement that the 15-year term affixed prices commences when the QF transmits power to the utility.

We deny complainants' request for rehearing or reconsideration of Order No. 17-256. Complainants' application does not meet the criteria set forth in OAR 860-001-0720(3). First, complainants do not allege that there is any new evidence that is essential to the decision that was unavailable before the order was issued, as required by subsection (a). Neither do they claim that there has been a change in law or policy since the issuance of Order No. 17-256, as required by subsection (b), nor do they claim an error of law or fact

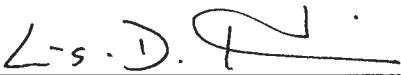
in the order that is essential to the decision, as required by subsection (c). Finally, we find that, for the reasons discussed above with respect to pre-existing contracts, the complainants have failed to demonstrate good cause for further examination of an issue essential to the decision, as required by subsection (d).

**V. ORDER**

IT IS ORDERED that:

1. Order No. 17-256 entered July 13, 2017, is amended as indicated above.
2. The remainder of Order No. 17-256 is unchanged.
3. Complainants' Petition for Clarification is granted to the extent indicated above and denied in all other respects.
4. Complainants' Application for Rehearing or Reconsideration of Order No. 17-256 is denied.

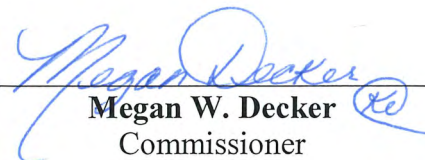
Made, entered, and effective NOV 13 2017.



**Lisa D. Hardie**  
Chair



**Stephen M. Bloom**  
Commissioner



**Megan W. Decker**  
Commissioner

A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480-183.484.