

**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: APPLICATIONS DENIED

We deny the request for rehearing or reconsideration and request to amend Order No. 17-465 filed by Portland General Electric Company (PGE).

**I. INTRODUCTION**

This order represents our third clarification of matters we originally addressed in Order No. 05-584 with regard to the date upon which the 15-year period of fixed prices paid to qualifying facilities (QFs) begin under standard contracts.

First, in Order No. 17-256, we affirmed our policy that the 15-year fixed price period begins with commercial operation, and indicated that PGE's standard contracts must, "on a going-forward basis, [] provide for 15 years of fixed prices that commence when the QF transmits power to the utility."<sup>1</sup> We also concluded that PGE's standard contracts had not violated any statute, rule or Commission order regarding when the 15-year fixed price period because we had approved PGE's prior standard contract filings.

Second, in Order No. 17-465, we addressed complainants' request for clarification of the scope and applicability of Order No. 17-256. We clarified that we had neither examined nor addressed specific terms and conditions of any past PGE QF contract, either in standard form or executed agreement. We also clarified that our decision that PGE had

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<sup>1</sup> Order No. 17-256 at 3 (Jul 13, 2017).

not violated any Commission statute, rule, or order with regard to its prior contracts was based solely on the fact that we had approved PGE's standard contracts under Order No. 05-584, and was not based on a review of any standard contract.

PGE now seeks reconsideration or amendment of Order No. 17-465 because, in its view, our decision requires an examination and interpretation of the company's standard contract forms. PGE explains that:

Order No. 17-465 made it clear for the first time that the Commission did not interpret PGE's then-effective standard contract forms (the July 2017 forms) as part of rendering its decision in Order No. 17-256.<sup>2</sup>

PGE contends, however, that Order No. 17-465 did not make the self-evident but required determination that the July 2017 forms themselves limited the availability of fixed prices to the first 15 years immediately following contract execution, thus requiring revision on a going-forward basis. For these reasons, PGE contends that our decision is lacking substantial reason unless we affirmatively decide that the company's "July 2017 forms limited the availability of fixed prices to the first 15 years immediately following contract execution and therefore needed to be revised to comply with the Commission's new policy."<sup>3</sup>

In the alternative, PGE asks that we amend Order No. 17-465 to render an interpretation of PGE's standard contract forms in effect in July 2017 and conclude that those forms limited the availability of fixed prices to the first 15 years following contract execution.

Complainants oppose PGE's requests. Complainants contend that parties with executed standard contracts should be free to adjudicate individual contract disputes with PGE in the appropriate forum. Complainants contends that reopening the proceeding "would in fact be an attempt by PGE to impact the interpretation of executed versions of those forms."<sup>4</sup>

Complainants further contend that we lack the authority to interpret past contracts pursuant to a declaratory ruling, or to bind a non-party with respect to the interpretation of a contract to which it is a party. Complainants also argue that we lack the jurisdiction to resolve QF contract disputes.<sup>5</sup>

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<sup>2</sup> Portland General Electric Company's Application for Rehearing or Reconsideration and Application to Amend Order 17-465 at 6 (Jan 12, 2018).

<sup>3</sup> *Id.* at 6-7.

<sup>4</sup> Complainants' Response to Portland General Electric Company's Application for Rehearing or Reconsideration and Application to Amend Order 17-465 at 2 (Jan 29, 2018).

<sup>5</sup> On February 5, 2018, PGE filed a Reply to Complainants' Response, to which Complainants filed a Motion to Strike on February 8, 2018. Pursuant to OAR 860-001-0720(4), PGE's Reply is stricken as an unauthorized pleading.

## II. DISCUSSION

PGE's application is denied. We find no grounds to either grant reconsideration under OAR 860-001-0720, or amend Order No. 17-465 under ORS 756.568.

Contrary to PGE's contention, our decision in Order No. 17-465 did not require a prerequisite interpretation of PGE's standard contracts. The scope of this proceeding was framed by complainant's initial filing requesting that we affirm our policy that the 15-year period of fixed prices for standard contracts commences at the time the qualifying facility begins operations. Complainants did not seek interpretation of any executed contract, and in fact clarified that we may resolve their complaint "without altering or revising any existing contracts or PGE's current standard contract."<sup>6</sup>

We answered complainants' request in Order No. 17-256, where we affirmed and made explicit our policy adopted in Order No. 05-584: "Prices paid to a QF are only meaningful when a QF is operational and delivering power to a utility. Therefore, 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>7</sup> As we made clear in Order No. 17-465, our decision to affirm our policy did not require, and was not based on, an examination of "any past QF contract, either in standard form or executed agreement."<sup>8</sup>

We also reject PGE's characterization that our decision constituted the adoption of a "new policy." Rather, as requested by complainants, our decision was simply to affirm the policy with respect to the commencement date for the 15-year period of fixed prices. This policy, which had been reflected explicitly in standard contract forms for PacifiCorp and Idaho Power Company, had been, up until the filing of PGE's most recent standard contracts, neither a source of controversy nor litigation by either a QF or a utility.

For these reasons, we reject PGE's arguments that our Order No. 17-465 was incomplete or erroneous. Our order merely affirmed Commission policy, and did not require the interpretation or review of any standard contract form.

We emphasize, however, that we continue to stand ready to interpret individual standard contract forms as they are brought to us and, accordingly, reject complainants' current argument that we lack primary jurisdiction over both the parties and the subject matter of executed standard contracts. Complainants' argument is inconsistent with their initial complaint, in which they recognized our authority to review standard contracts:

To the extent the Complaint requires interpretation of contractual obligations incurred prior to the filing of this complaint (Prayer for Relief Pars. 1 & 2), the Commission possesses primary or concurrent jurisdiction over interpretation of such contracts.<sup>9</sup>

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

<sup>7</sup> Order No. 17-256 at 4 (Jul 13, 2017).

<sup>8</sup> Order No. 17-465 at 4 (Nov 13, 2017).

<sup>9</sup> Complaint at 6 (Dec 6, 2016).

Furthermore, as we recently stated in Order No. 18-025, the compliance and interpretation of the terms and conditions in standard contracts that are the result of our policy decisions to implement PURPA are rightfully within our primary jurisdiction:

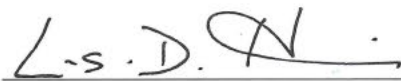
By law, the Commission sets the terms and conditions for contracts between QFs and public utilities. The terms and conditions of those contracts relate directly to the regulated rates and services of utilities subject to our oversight. The complaint raises an issue related to a provision of a standard power purchase agreement, which we reviewed and established consistent with our own orders and rules to implement state and federal PURPA policy. As such, we have the expertise and the authority to review the terms and conditions of the contract developed at the Commission after litigated proceedings.

PURPA is a federal statute that places the states in charge of implementing FERC's regulations pertaining to determining avoided costs and to setting rates paid to QFs. The obligation to enter into a PURPA contract is not governed by common law concepts of contract law, but rather an obligation created by statutes, regulations, and this Commission's administrative rules.<sup>10</sup>

### III. ORDER

IT IS ORDERED that the Application for Rehearing or Reconsideration and Application to Amend Order No. 17-465, filed by Portland General Electric Company, is denied.

Made, entered, and effective MAR 05 2018



**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.

<sup>10</sup> *Portland General Electric Company v Pacific Northwest Solar, LLC*, Docket No. UM 1894, Order No. 18-025 at 6. (Jan 25, 2018).