

ISSUED: September 8, 2009

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1438

In the Matter of

SWALLEY IRRIGATION DISTRICT

Complainant,

vs.

PACIFICORP, dba PACIFIC POWER

Respondent.

RULING

**DISPOSITION: APPLICABILITY OF OAR 860-029-0100
DETERMINED; MOTION TO DISMISS AND
ALTERNATIVE MOTION TO MAKE MORE
DEFINITE AND CERTAIN DENIED; PACIFIC
POWER'S ANSWER DUE SEPTEMBER 18, 2009**

On August 31, 2009, PacifiCorp, dba Pacific Power (Pacific Power) filed a motion in response to a complaint filed by Swalley Irrigation District (Swalley). Pacific Power first seeks expedited determination of whether OAR 860-029-0100 applies to the complaint. Pacific Power then moves to either dismiss the complaint for failing to comply with the procedural requirements set forth in that rule or, alternatively, to make it more definite and certain in order to comply with those requirements.

On September 4, 2009, Swalley filed a response to Pacific Power's motion. Swalley contends that, because its dispute with Pacific Power relates to a standard contract with a qualifying facility (QF) of under 10 megawatts (MWs), OAR 860-029-0100 does not apply. For that reason, Swalley contends Pacific Power's motion must be denied.

DISCUSSION

As Swalley correctly notes, Order No. 08-355, which adopted OAR 860-029-0100, clarified that the dispute resolution procedures set forth in the rule were "intended to clarify the scope of complaint proceedings relating to *negotiated* Qualifying

Facility (QF) power purchase agreements.” (Emphasis added.) These negotiated agreements apply only to QFs of over 10 MWs.

During the rulemaking, Sorensen Engineering expressly requested that the dispute resolution procedures proposed in the rule be available to QFs of 10 MWs or less. The Commission acknowledged the request, but declined to adopt it. *See* Order No. 08-355 at 2.

In this case, Swalley seeks to develop a 750 kilowatt generation facility as a QF. Because the proposed facility is under 10 MWs, the provisions of OAR 860-029-0100 do not apply.

I acknowledge Pacific Power’s motion was prompted by the Administrative Hearings Division’s indication that Swalley’s complaint was subject to the rule and that the due date for Pacific Power’s answer was due in 10 days, rather than the standard 20 days. That indication was in error, and I regret the inconvenience to the parties.

Pacific Power’s motion to dismiss and alternative motion to make more definite and certain are denied. As agreed to by the parties, Pacific Power’s answer is due September 18, 2009.

Dated at Salem, Oregon, this 8th day of September 2009.



Michael Grant
Chief Administrative Law Judge