

**BEFORE THE PUBLIC UTILITY COMMISSION**

**OF OREGON**

**UM 2057**

In the Matter of

ST. LOUIS SOLAR, LLC,

Complainants,

v.

PORTLAND GENERAL ELECTRIC  
COMPANY,

Defendant.

REPLY IN SUPPORT OF MOTION FOR  
LEAVE TO FILE FIRST AMENDED  
COMPLAINT

**I. INTRODUCTION**

St. Louis Solar, LLC (“St. Louis Solar”) has filed this Motion to amend its complaint pursuant to the direction it received at the prehearing conference in this docket. Portland General Electric Company (“PGE”) asserts a different understanding of the guidance received and claims, without support, that St. Louis Solar ignored the Administrative Law Judge’s (“ALJ’s”) advice. PGE also, for the first time, objects to amendment and raises objections against the form of the amended complaint as well as the original complaint, which PGE previously waived.

In this Reply, St. Louis Solar maintains its original arguments and also responds to PGE’s objections. While PGE’s arguments at times go outside of the Commission’s four-part test for amendment, St. Louis Solar responds to those arguments in order to correct PGE’s misperceptions and misstatements of procedural rules and Oregon caselaw. St. Louis Solar respectfully requests that the Motion to amend be granted, because all four of the Commission’s

factors weigh in favor of amendment and PGE’s other arguments against amendment (or for an alternative amendment) are without merit.

St. Louis Solar notes that there is unanimous agreement between PGE and St. Louis Solar, as well as the ALJ, that at least some form of amended complaint should occur. PGE opposes the specific amended complaint filed by St. Louis Solar, but also maintains its request for an amended complaint to be filed. The issue is that PGE wants to be able to control and dictate what amended complaint St. Louis Solar should file. When considering whether to grant the Motion, the Commission should recognize that there is no dispute that the preconditions for amending a complaint have been met, and the only question is whether St. Louis Solar can amend the complaint in the manner it wants to prosecute this case, or if PGE gets to veto the specific changes that it finds unacceptable.

## **II. PROCEDURAL BACKGROUND**

The relevant procedural filings and events are as follows: On February 3, 2020, St. Louis Solar filed its original Complaint in this proceeding.<sup>1</sup> The parties then jointly filed three motions to extend time for PGE to file its answer, at least two of which were for the purpose of providing the parties time to discuss settlement.<sup>2</sup> On May 26, 2020, PGE filed its Answer, Affirmative Defenses, and Counterclaims.<sup>3</sup> On June 5, 2020, St. Louis Solar filed a Motion to Dismiss, or, in the Alternative, to Strike PGE’s Counterclaims (the “Motion to Dismiss”).<sup>4</sup> Both parties then

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<sup>1</sup> Complaint (Feb. 3, 2020).

<sup>2</sup> Joint Motion to Extend Time at 1 (Feb. 20, 2020); Joint Motion to Extend Time at 1 (Mar. 31, 2020); Joint Motion to Extend Time at 1 (May 15, 2020).

<sup>3</sup> Answer, Affirmative Defenses, and Counterclaim (May 26, 2020).

<sup>4</sup> St. Louis Solar’s Motion to Dismiss, or, in the Alternative, to Strike PGE’s Counterclaims (June 5, 2020).

engaged in motions practice and filed several documents.<sup>5</sup> At a prehearing conference on July 15, 2020, the ALJ encouraged St. Louis Solar to amend its Complaint to reflect new facts and to clarify the issues in dispute.<sup>6</sup> Further, the ALJ expressed a preference for the pending Motion to Dismiss and related filings to be abated until after the pleadings were amended.<sup>7</sup> Per the ALJ's Ruling on July 30, 2020, the Motion to Dismiss and related filings are currently in abeyance indefinitely.<sup>8</sup> On August 26, 2020, St. Louis Solar filed this Motion for Leave to File First Amended Complaint ("Motion to Amend").<sup>9</sup> On September 10, 2020, PGE filed its Response opposing St. Louis Solar's Motion to Amend.<sup>10</sup> The only issue currently presented to the Commission is whether to grant St. Louis Solar's Motion to Amend, which PGE previously requested and now opposes.<sup>11</sup>

### III. LEGAL STANDARD

Under ORS 756.500(4), the Commission can order the amendment of a complaint prior to the completion of taking evidence in a case. Under OAR 860-001-0000, the Commission

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<sup>5</sup> PGE's Response to St. Louis Solar's Motion to Dismiss or, in the Alternative, to Strike PGE's Counterclaims (June 22, 2020); St. Louis Solar's Reply In Support of its Motion to Dismiss, Or, in the Alternative, to Strike PGE's Counterclaims (June 29, 2020); PGE's Motion to Strike or, in the Alternative, For Leave to File Sur-Reply to St. Louis Solar's Motion to Dismiss or, in the Alternative, to Strike PGE's Counterclaims (July 14, 2020); PGE's Sur-Reply to St. Louis Solar's Motion to Dismiss or, in the Alternative, to Strike PGE's Counterclaims.

<sup>6</sup> *E.g.*, Prehearing Conference at 14:41-14:47.

<sup>7</sup> *Id.* at 25:32-25:40.

<sup>8</sup> Ruling at 1 (July 30, 2020).

<sup>9</sup> Motion for Leave to File First Amended Complaint (Aug. 26, 2020) [hereinafter Motion to Amend].

<sup>10</sup> PGE Response Opposing St. Louis Solar's Motion for Leave to Amend Complaint (Sept. 10, 2020) [hereinafter PGE Response].

<sup>11</sup> *See* Prehearing Conference at 8:36-9:10 (July 15, 2020) (PGE's statement that PGE had previously asked St. Louis Solar to amend the complaint to reflect events that occurred after it was filing, and that PGE believed some claims in dispute were moot).

follows the ORCPs in contested case proceedings unless they are inconsistent with the Commission's rules, an order, or an ALJ ruling. Under ORCP 23A, a pleading may be amended by a party once as a matter of course at any time before a responsive pleading is served, and, after a responsive pleading is served, a party may amend the pleading only by leave of the court or by written consent of the adverse party. Leave shall be freely given when justice so requires.<sup>12</sup> The Commission has previously cited four factors in connection with its consideration of a motion seeking leave to amend a complaint: 1) the proposed amendment's nature and relationship to the existing pleadings; 2) prejudice to the opposing party; 3) timing; and 4) the merit of the proposed amendment.<sup>13</sup>

#### IV. ARGUMENTS

In its Motion to Amend, St. Louis Solar argued for amendment because the four factors cited by the Commission all support amendment. Specifically, St. Louis Solar argued the nature and relationship to the existing pleadings support amendment, because the First Amended Complaint: 1) provides greater specificity as to facts and claims raised in the original complaint; 2) provides additional facts regarding events that occurred after the filing of the original complaint (specifically, that PGE placed St. Louis Solar's facility in service and deemed it to have achieved commercial operations); and 3) requests damages as an alternative relief to the specific performance requested in the original complaint. The last addition is based on St. Louis

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<sup>12</sup> ORCP 23A.

<sup>13</sup> *See Nw. Pub. Commc'ns Council v. Qwest Corp.*, Order No. 09-155 at 8 (May 4, 2009) (referring to *Forsi v. Hildahl*, 194 Or App 648, 652 (2004)); *see also, e.g., Waconda Solar v. PGE*, Docket No. UM 1971, Ruling at 2 (July 31, 2019).

Solar’s understanding of the nature of alleged counterclaims filed by PGE in this proceeding.<sup>14</sup>

Although these changes may appear numerous, St. Louis Solar noted that they provide specificity and clarity.

On the other three factors, St. Louis Solar argued that they also support amendment, noting: 1) there is no prejudice to the opposing party, because the case is in its early stages, and PGE will have an opportunity to provide an answer to each amendment to the complaint; 2) the timing of amendment is appropriate in light of the prehearing conference on July 15, 2020, during which the ALJ expressed a preference for the parties to confer and for St. Louis Solar to amend the Complaint to clarify the issues in dispute, and in light of subsequent conferrals with PGE since that date regarding amendment;<sup>15</sup> and 3) amendment is meritorious because it clarifies the issues in dispute and should further a speedy resolution of this proceeding. St. Louis Solar maintains the above arguments in this filing.

PGE argues in opposition that the first three factors in the Commission’s four-part test weigh against granting amendment.<sup>16</sup> Specifically, PGE argues that St. Louis Solar “ignored” guidance from ALJ to “streamline” the original Complaint and instead added “needless complexity” by: 1) increasing the length of the complaint; 2) increasing the number of prayers for relief; 3) “add[ing] facts and legal theories” that could have been asserted in the original complaint but were not; and 4) “add[ing] facts and legal theories” that could have been asserted

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<sup>14</sup> St. Louis Solar has filed a motion to dismiss PGE’s alleged counterclaims and reserves its right to seek a decision on that motion, which is currently being held in abeyance.

<sup>15</sup> *See* St. Louis Solar’s Status Report and Motion to Hold the Case in Abeyance Indefinitely at 1 (July 29, 2020); *see also* Ruling at 1 (July 30, 2020).

<sup>16</sup> PGE Response at 4 (Sept. 10, 2020) (listing the first three factors as factors that weigh against amendment).

after St. Louis Solar interconnected but were not.<sup>17</sup> PGE also argues that the resulting pleading violates the ORCPs.<sup>18</sup> PGE asks that the Commission deny the Motion to Amend and, instead, order St. Louis Solar to file a *different* amended complaint.<sup>19</sup>

St. Louis Solar here responds to four issues in PGE’s filing. First, PGE and St. Louis Solar have a different understanding of the Prehearing Conference at which the parties and ALJ discussed the possibility of St. Louis Solar amending the complaint; therefore, St. Louis Solar provides additional documentation in this filing.

Second, the First Amended Complaint does not add “needless complexity” as PGE asserts. The First Amended Complaint appropriately reflects the facts and claims at issue in this dispute, as St. Louis Solar understands them.

Third, neither the original Complaint nor the First Amended Complaint violate the ORCPs, which PGE misstate. Even if the documents violate the ORCPs, they satisfy the Commission’s more liberal pleading standards. Further, PGE waived its right to object when it filed its Answer even if the original Complaint was procedurally in error.

Fourth, and finally, PGE’s silence on the fourth factor and PGE’s request for a different amended Complaint demonstrate the First Amended Complaint is meritorious and the Motion to Amend should be granted. For all of these reasons, St. Louis Solar respectfully requests that the Motion to Amend be granted.

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<sup>17</sup> *Id.* at 3-4. St. Louis Solar notes that the time period PGE refers to as “last spring” was in fact spring 2020 and not spring 2019.

<sup>18</sup> *Id.* at 4.

<sup>19</sup> *Id.* at 6.

**A. The Record Supports St. Louis Solar’s Understanding of the Guidance from the ALJ, Which PGE Understands Differently**

St. Louis Solar has a different understanding of the guidance from the ALJ at the Prehearing Conference. PGE repeatedly asserts that the ALJ encouraged St. Louis Solar to “simplify” and “streamline” its complaint.<sup>20</sup> Further, PGE claims St. Louis Solar “ignored” this direction by adding new material, including factual allegations regarding events that occurred after the complaint was filed.<sup>21</sup>

The recording supports St. Louis Solar’s understanding and justifies the changes in the First Amended Complaint. The ALJ stated several times that the complaint should be amended to: 1) reflect the facts that occurred after the complaint was filed; and 2) to clarify the relief requested.<sup>22</sup> On the relief, specifically, PGE stated that it did not understand whether the original complaint sought to amend the termination date in the power purchase agreement.<sup>23</sup> There was

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<sup>20</sup> *Id.* at 1-3.

<sup>21</sup> *Id.* at 3-4.

<sup>22</sup> Prehearing Conference at 14:28-14:47 (July 15, 2020) (“[It] would be useful, so that we are dealing with... rather than having to look at a counterclaim alleging the facts upon which the original complainant would be relying, it would be best to have the original complaint amended to reflect its understanding of the current facts”), 16:00-16:14 (clarifying that the suggestion was for the complainant to “amend the complaint so that you have the facts that are alleged are the facts that do indeed exist at this time and then to specifically say what relief is being sought”), 17:27-18:14 (“My thought is this. Since the parties do not essentially agree or we have no written record at least of what the current factual circumstances are and because it looks like the relief being requested by the complainant is not understood by PGE to have been requested, I think it may be appropriate for the parties to ‘reset’ by amending the complaint and amending the answer so we have a better sense of what is it that the parties are seeking to have the Commission resolve”), 20:46-21:09 (“[I]n light of the fact that the facts have changed and there is uncertainty as to what the relief being sought is, it would be best for the complainant to amend the complaint to reflect current circumstances and to reflect its latest request for relief so that we can then move on from that point”).

<sup>23</sup> *Id.* at 8:27-8:35 (statement by PGE).

no discussion or indication from PGE that any relief other than the termination date was unclear. On the contrary, PGE correctly noted that it understood the complaint to be “asking for an extension of the 15-year fixed price period,” which is indeed the core request of the complaint.<sup>24</sup>

The First Amended Complaint adds material regarding events that occurring after the original complaint was filed, removes material that is no longer at issue, and states the relief requested as of this date. These changes are *precisely* what the ALJ encouraged at the meeting.

There was also discussion at the Prehearing Conference of one other category of changes, specifically the request for alternative relief in the form of damages. St. Louis Solar noted at the Prehearing Conference that it had sought clarity from the Commission as to its willingness to exercise jurisdiction over damages as part of St. Louis Solar’s Motion to Dismiss PGE’s alleged counterclaims (which raise the damages issue).<sup>25</sup> The ALJ stated that his preference was for the Commission not to face that issue until after the pleadings were amended.<sup>26</sup> Thus, lacking any clarity that it did *not* need to ask for the alternative relief, St. Louis Solar included that in the amended complaint.

To sum up, PGE frames the Prehearing Conference as discussing a far more limited set of changes to the complaint than were actually discussed. Ultimately, PGE objects to St. Louis Solar making changes that the ALJ explicitly encouraged. St. Louis Solar respectfully requests that the changes it made pursuant to the ALJ’s guidance be allowed.

Finally, even if St. Louis Solar misunderstood the ALJ’s guidance regarding the specific amendments or if St. Louis Solar made more changes than the ALJ suggested, there is no dispute

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<sup>24</sup> *Id.* at 8:08-8:20 (statement by PGE).

<sup>25</sup> *Id.* at 19:26-19:53 (statement of St. Louis Solar).

<sup>26</sup> *Id.* at 19:55-21:09 (statement of the ALJ).



between PGE and St. Louis Solar that an amendment should occur. PGE's objection is that St. Louis Solar made more changes than PGE wanted (and that PGE claims that the ALJ suggested). At a minimum, St. Louis Solar made many of the changes that PGE requested and the ALJ suggested, and St. Louis Solar, as the plaintiff in this proceeding, should be permitted simultaneously to make changes that better fit the procedural posture and information available today.

**B. The First Amended Complaint Does Not Add "Needless Complexity"**

Besides the changes specifically discussed at the Prehearing Conference, St. Louis Solar made one other category of changes to the original complaint, specifically St. Louis Solar refined the factual allegations regarding events that occurred prior to filing. These amendments are consistent with a normal amendment process; typically a complainant decides itself, without any suggestion from an ALJ or request by the defendant, whether or not to amend and if so what to amend. In this case, St. Louis Solar revised these facts to add more detail and specificity. Some of the changes could have, theoretically, been included in the original Complaint. However, St. Louis Solar filed the original complaint in effect as an emergency filing to avoid the PPA being terminated. It is St. Louis Solar's intent that the added specificity clarifies the significance of the earlier events for the claims being asserted. Other changes were made to reflect PGE's responses in the Answer, sometimes by adopting PGE's language and striking the original allegation in order to reduce factual disputes. St. Louis Solar hoped this would avoid unnecessary disputes. While the complaint is now longer, these changes were for clarity, and St. Louis Solar respectfully requests that these changes also be allowed.

**C. Neither the Original Nor the First Amended Complaint Violate the ORCPs, which PGE Misstate**

PGE next argues that the Commission should deny St. Louis Solar's motion to amend because, PGE claims, the First Amended Complaint is improperly pleaded. Setting aside the fact that this argument is in fact *irrelevant* under the Commission's four-part test, St. Louis Solar here responds to PGE's claims. First, PGE misstates the pleading requirements. Second, even if the pleading violates the ORCPs, they comply with the Commission's more liberal pleading requirements. Third, even if there is a format error, PGE has elsewhere recognized such requirements as being merely superficial. Finally, even if the pleading did fail the pleading requirement, PGE waived its right to object. PGE's arguments are therefore without merit, and St. Louis Solar's Motion to Amend should be granted.

**1. The First Amended Complaint Does Not Violate the ORCPs**

PGE claims the First Amended Complaint violates ORCPs 16C and 18B<sup>27</sup> because, PGE asserts, it does not separately state each claim and each claim does not contain a demand of the relief being sought. However, PGE misunderstands both rules. The First Amended Complaint in fact meets both ORCPs 16C and 18B.

**a. The First Amended Complaint Complies with ORCP 16C**

ORCP 16C states, in relevant part, that "Each separate claim or defense must be separately stated. Within each claim alternative theories of recovery must be identified as separate counts." PGE cites as further support the 1993 case *Navas v. City of Springfield*.<sup>28</sup> In

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<sup>27</sup> PGE says ORCPs 18C and 18A but quotes ORCPs 16C and 18B. St. Louis Solar assumes these were simply typos.

<sup>28</sup> 122 Or App 196 (1993).

that case, the Oregon Court of Appeals found that the complainant could not obtain relief for the claim of a statutory violation and it was inappropriate to provide relief for a contractual breach claim that was never plead.<sup>29</sup> The Court cited ORCP 16C for support that a claim for a statutory violation must be plead separately from a claim for contractual breach.<sup>30</sup>

In contrast to the court's distinction between different types of claims, PGE asserts that the same claim must be separately stated. Where, for example St. Louis Solar alleges a contractual breach claim, PGE appears to allege that St. Louis Solar has in fact alleged multiple claims for contractual breach.<sup>31</sup> Since the purpose of the rule is to allow the defendant to know the nature of claim (statutory, contractual, or otherwise),<sup>32</sup> the First Amended Complaint is satisfactory and making the changes PGE suggest would be unnecessary.

Alternatively, PGE appears to allege that St. Louis Solar should separate its claims to distinguish different counts.<sup>33</sup> Here, PGE conflates St. Louis Solar's factual claims with legal theories of recovery. Oregon courts require separate counts to distinguish between, for example, a legal theory of recovery under warranty versus a theory of recovery under negligence.<sup>34</sup> The purpose is to acknowledge that these legal theories for recovery could be contradictory and are therefore plead separately and, as necessary, in the alternative. However, the ORCPs do not

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<sup>29</sup> *Id.* at 199.

<sup>30</sup> *Id.* at 201.

<sup>31</sup> *E.g.*, Complaint at 28-30 (Third Claim for Relief); PGE Response at 5.

<sup>32</sup> *Navas*, 122 Or App at 201; *see also Lenske v. Staats*, 65 Or App 232, 234-245 (1983) (noting that a breach of contract claim must be plead separately from a tort claim).

<sup>33</sup> PGE Response at 5.

<sup>34</sup> *E.g.*, *McGrath v. White Motor Corp.*, 258 Or 583, 589 (1971) (“[W]e hold that a plaintiff is not attempting to state more than one cause of action when he seeks recovery for the same injury upon different theories, that is, in this case the theories of ‘warranty’ and negligence.”).

require separate counts for *factual* statements. Consistent with ORCP 16C, St. Louis Solar has separated its claims and numbered each paragraph. This is all the separation and organization that is required, therefore the First Amended Complaint complies with ORCP 16C.

**b. The First Amended Complaint Complies with ORCP 18B**

PGE also asserts that the First Amended Complaint violates ORCP 18B, because each claim does not include a demand of the relief sought under that specific claim. PGE misquotes ORCP 18B and misapplies Oregon law.

PGE says that “Each claim must contain ‘[a] demand of the relief which the party claims.’”<sup>35</sup> In fact, ORCP 18B states that “ A *pleading* which asserts a claim for relief, whether an original claim, counterclaim, cross-claim, or third party claim, shall contain . . . [a] demand of the relief which the party claims.”<sup>36</sup> The rule requires a pleading to include a demand for relief, not each claim to do so. PGE’s reading is mistaken.

Further, PGE misapplies a relevant case. PGE cites the 1975 case *International Health & Life Insurance Co. v. Lewis* for the statement that “[t]he prayer is not a part of the cause of suit or action.”<sup>37</sup> PGE asserts the court in this case “reject[ed] demand for equitable relief that appeared in prayer but not body of complaint,” therefore demonstrating (according to PGE) that the demand for relief must appear in each claim.<sup>38</sup> In fact, the court in that case faced the question of whether the underlying proceeding (not claim) was legal or equitable in nature. The court determined that the proceeding was legal, despite language in the Defendant’s prayer for “such

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<sup>35</sup> PGE Response at 5.

<sup>36</sup> ORCP 18B (emphasis added).

<sup>37</sup> 271 Or 35, 39 (1975); *see* PGE Response at 6.

<sup>38</sup> PGE Response at 6 n.11.

other and further relief as the Court shall deem equitable.”<sup>39</sup> The court wrote that “The prayer is not a part of the cause of suit or action and, therefore, does not determine the claim of equitable jurisdiction.”<sup>40</sup> Thus, the court was not rejecting a specific demand as PGE suggests but was evaluating the entirety of the proceeding. PGE’s reading was mistaken.

PGE also overlooks other relevant guidance from Oregon courts. In 1975, the Oregon Supreme Court stated that “Despite frequent statements that the prayer is not part of the complaint, we recognized that the prayer is relevant when it ‘tend[s] to explain or qualify’ other parts of the pleading.”<sup>41</sup> The Oregon Supreme Court cited its 1973 decision in *March v. Davidson*, in which it stated that “the prayer may be regarded as the equivalent of a factual statement of the relief which the plaintiff claims or the amount of damage which she has sustained.”<sup>42</sup>

To sum up, PGE misreads the ORCP to apply to each claim rather than the pleading as a whole. Further, PGE misinterprets Oregon caselaw, which demonstrate that the prayer is an adequate statement of the relief requested. St. Louis Solar’s First Amended Complaint complies with both the ORCPs and Oregon caselaw, and the Motion to Amend should be granted.

**2. Even if the Pleading Was Procedurally Flawed under the ORCPs, the Pleading Meets the Commission’s More Liberal Pleading Requirements**

Even if the First Amended Complaint does not meet the ORCPs, it satisfies the Commission’s liberal pleading requirements. The Commission’s rules govern and are “liberally

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<sup>39</sup> *Int’l Health & Life Ins.*, 271 Or at 39.

<sup>40</sup> *Id.* at 38-39.

<sup>41</sup> *Finch v. Miller*, 271 Or 275, 275 (1975).

<sup>42</sup> 265 Or 532, 537 (1973).

construe[d] . . . to ensure just, speedy, and inexpensive resolution of the issues presented.”<sup>43</sup> The Commission applies the ORCPs “unless inconsistent” with the Commission’s own rules, orders, or ALJ rulings.<sup>44</sup> The Commission has specific requirements for pleadings which do not include any pleading requirements with respect to the number of claims alleged or the number of remedies sought. As such, the Commission’s rules do not require the revisions PGE now demands. PGE’s assertions that the First Amended Complaint violates ORCP 16C and 18A are therefore without merit.

St. Louis Solar notes that requiring hyper-technical pleading rules would set a dangerous precedent that could permit PGE to collaterally attack customer complaints. There is simply no way a pro se customer would ever be able to obtain Commission resolution of their dispute if they needed to comply with PGE’s view of how a complaint must be filed.

**3. Even if the First Amended Complaint Violates the Commission’s Pleading Requirements, Any Procedural Flaw is Minor**

Even if the First Amended Complaint did not meet the Commission’s liberal pleading requirements but instead failed to comply as PGE claims, the error is minor. PGE has itself categorized ORCP 16C’s requirements as “purely superficial.”<sup>45</sup> In *PGE v. Pacific Northwest Solar*, PGE filed a complaint without numbered paragraphs or any of the relevant structure required under ORCP 16C.<sup>46</sup> Pacific Northwest Solar objected and moved to dismiss.<sup>47</sup> PGE asserted the motion “elevates form over function” and should not prevent the Commission from

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<sup>43</sup> OAR 860-001-0000(1)

<sup>44</sup> *Id.*

<sup>45</sup> *PGE v. Pacific Northwest Solar*, Docket No. UM 1894, PGE’s Response to Pacific Northwest Solar’s Motion to Dismiss at 10 (Oct. 4, 2017).

<sup>46</sup> Docket No. UM 1894, Complaint (Aug. 31, 2017).

<sup>47</sup> Docket No. UM 1894, Pacific Northwest Solar’s Motion to Dismiss (Sept. 19, 2017).

applying its liberal pleading requirements to ensure the “just, speedy, and inexpensive resolution of the issues presented.”<sup>48</sup> The ALJ in that case denied the motion to dismiss.<sup>49</sup> The ALJ should similarly find that the First Amended Complaint meets the Commission’s liberal pleading requirements and grant the Motion to Amend.

**4. Even if the First Amended Complaint Violates the Commission’s Pleading Requirements, PGE Waived its Right to Object**

Assuming the ORCPs apply, PGE waived its right to object to any deficiency under them. In its Response, PGE argues that not only the First Amended Complaint but also the *original* complaint failed to meet the ORCP requirements.<sup>50</sup> PGE could have filed a motion to make more definite and certain before filing its Answer to the original complaint but did not do so.<sup>51</sup> By not doing so, PGE waived its right to make such a motion.<sup>52</sup> Instead of engaging with St. Louis Solar’s Motion to Amend under the Commission’s four-part test, PGE now tries to slip in arguments it waived regarding the clarity of the original complaint. By filing its Answer to the original Complaint, PGE effectively stated that it understood the filing and was not harmed by any procedural deficiency. PGE cannot un-file its Answer and raise these arguments now. The Commission should therefore consider the Motion to Amend on its own merits and grant the Motion to Amend because all four of the Commission’s four factors support amendment.

St. Louis Solar notes here that PGE never raised these procedural concerns before filing its Response, despite discussing amendment at the prehearing conference and being informed by

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<sup>48</sup> Docket No. UM 1894, PGE’s Response to Pacific Northwest Solar’s Motion to Dismiss at 2, 9-10 (Oct. 4, 2017).

<sup>49</sup> Docket No. UM 1894, Ruling at 1 (Oct. 27, 2017).

<sup>50</sup> PGE Response at 5.

<sup>51</sup> ORCP 21D.

<sup>52</sup> *Id.* (“Upon motion made by a party *before responding* to a pleading”) (emphasis added).

St. Louis Solar that it would file an amended complaint. Had PGE raised its concerns *prior* to St. Louis Solar filing, St. Louis Solar may have been able to address PGE’s concerns in a timely and cost-effective manner. In other words, even though St. Louis Solar disagrees with PGE, it might have made revisions to avoid this type of unnecessary procedural dispute if St. Louis Solar had been aware that PGE might make these arguments. If St. Louis Solar is forced to make unnecessary changes now, it will do so at significant cost and further delay to the proceeding.

**D. PGE Does Not Dispute that Amendment is Meritorious**

St. Louis Solar notes that PGE does not appear to contest whether the First Amended Complaint satisfies the fourth factor in the Commission’s four-part test, specifically the merit of the amendment.<sup>53</sup> On the contrary, PGE appears to request that the Motion to Amend be denied so that a *different* amended pleading may be produced (at St. Louis Solar’s expense).<sup>54</sup> This is contradictory. PGE both opposes and simultaneously requests an amended complaint. The Commission can grant the Motion to Amend or deny it and proceed with the original complaint. That is the choice raised by St. Louis Solar’s Motion to Amend.

PGE’s silence and contradictory request demonstrate that amendment is warranted because the amendment is meritorious. While PGE is free to express concerns that the additional facts of PGE’s wrongdoing are harmful and potentially prejudicial to PGE’s defense, the fact is that it is appropriate for St. Louis Solar to amend its complaint, as the ALJ recommended.

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<sup>53</sup> PGE Response at 4 (asserting three of the factors weigh against amendment and making no statement on the fourth).

<sup>54</sup> *Id.* at 6 (“[T]he Commission should deny the motion to amend and instruct St. Louis Solar to separately state its claims and include in each claim a demand for relief”).



**V. CONCLUSION**

For the reasons stated above, leave should be granted to amend the complaint.

Dated this 17th day of September 2020.

Respectfully submitted,



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