

**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 SECOND AMENDED  
COMPLAINT

**I. INTRODUCTION**

Complainant St. Louis Solar, LLC (“St. Louis Solar”) files this Reply pursuant to OAR 860-001-0420(5) in support of its Motion for Leave to File Second Amended Complaint (“Motion to Amend”) and respectfully asks that the Oregon Public Utility Commission (“Commission”) grant leave to file Complainant’s Second Amended Complaint against Defendant Portland General Electric Company (“PGE”). On October 5, 2020, the Administrative Law Judge (“ALJ”) directed St. Louis Solar to file an amended complaint that would not prejudice PGE. The ALJ provided guidance on fact-specific revisions that would be allowed. St. Louis Solar has complied with the ALJ’s Ruling. PGE objects to three items for allegedly going beyond the ALJ’s fact-specific guidance. PGE, however, does not argue that the three items prejudice PGE, and, in fact, they do not. Since the Second Amended Complaint satisfies both the Commission’s test for granting amendment and the ALJ’s Ruling, St. Louis Solar respectfully requests that the Commission grant leave to file.

Because the three disputed items do not present any prejudice to PGE, St. Louis Solar asks the ALJ to explain any decision to strike the three amendments as PGE requests, especially the two prayers for relief. The first amended prayer (Paragraph 367) sought relief based on several potential dates, and St. Louis Solar has amended it to specify a single date. This reduces the request for relief and reduces the complexity of this case. To be clear, the Paragraph was and is an *alternative* request for relief, and St. Louis Solar reserves its right to argue for the alternative requests as stated now or as may be clarified by future discovery. If the ALJ disagrees that St. Louis Solar can seek only part of any relief originally requested, St. Louis Solar asks that the ALJ clarify what limitations will apply.

The second amended prayer (Paragraph 377) seeks a refund of interconnection costs wrongly incurred. St. Louis Solar inserted the Paragraph to seek costs wrongly incurred *after* the Complaint was filed. Striking this Paragraph could thus deprive St. Louis Solar of relief for something that occurred after the Complaint was filed, which is contradictory to the ALJ's Ruling.

PGE objects that Paragraph 377 can be interpreted to create a "new" request for a refund of costs wrongly incurred prior to the filing of the Complaint. To the extent that a request for refunds is new, this is because it is related to new information, and within the context of the ALJ's order allowing new claims and prayers based on new information. In addition, PGE's interpretation is incorrect because a request for refunds is *not* new. The Complaint already contained such a request. The Complaint (as amended) identifies three cost categories for which St. Louis Solar seeks refunds, which St. Louis Solar sought to clarify with its amended

Introduction:

- The first type of refunds are for the alleged delay damages. This was plead in the Legal Claims and Prayers for Relief, and was not substantively revised in the Second Amended Complaint. PGE’s Response raises no objections regarding St. Louis Solar’s request for a refund of alleged delay damages.
- The second type of refunds are those that St. Louis Solar seeks for the costs associated with interconnection work that PGE should have performed but did not. St. Louis Solar’s original complaint identified this in its Legal Claims, but inadvertently omitted it from its Prayers for Relief. St. Louis Solar believes it is appropriate for the newly added Paragraph 377 to correct this omission, although St. Louis Solar believes the request is already captured in the generic claim for relief requesting that the Commission grant any other such relief as deemed necessary.
- The third type of refunds are for costs associated with interconnection work that was unnecessary for PGE to safely interconnect St. Louis Solar. St. Louis Solar did not include a request for refunds for these costs in the Complaint because this work was performed after St. Louis Solar filed its complaint, and it could not have been included.

Paragraph 377, as currently written, covers both the second and third types of refunds at issue in this case. Again, PGE objects to the inclusion of both, even though the second type was raised in the original Complaint and the third type was new and could not have been raised in the original Complaint. PGE appears to have overlooked the existing request for the second type of refunds, likely because it was inadvertently excluded from the Prayers for Relief in the Complaint; however, it was included in the Legal Claims. However PGE is not prejudiced by

the existing request. Indeed, PGE appears to be aware of both the existing and new requests, since PGE objects to at least some sub-sections of the amended Introduction but not specifically to the new sub-sections distinguishing these two requests (sub-sections C and D).

St. Louis Solar declined to specify a time period in Paragraph 377 in response to PGE because having Paragraph 377 cover both requests is most clear and efficient. Indeed, earlier in this proceeding, PGE asked that all requests for relief be stated in both the Legal Claims and the Prayers for Relief for the sake of clarity. In addition, having Paragraph 377 cover one request but not the earlier one would likely only create confusion and contradiction. Thus, it is appropriate for Paragraph 377 to cover both the newly raised and the previously raised requests.

If the ALJ strikes Paragraph 377, then St. Louis Solar asks that the ALJ explain the basis for the decision. First, the ALJ should explain why St. Louis Solar cannot seek relief for facts arising after the complaint was filed. Second, the ALJ should explain why a complainant cannot seek relief requested in the Legal Claims section of the original Complaint if the request is not duplicated in the original Prayers for Relief section.<sup>1</sup> According to PGE, the Prayer for Relief is not part of the Complaint.<sup>2</sup> St. Louis Solar asks the ALJ to clarify the following question: is the

---

<sup>1</sup> Notably, when past pleadings have not included either Legal Claims or Prayers for Relief, the Commission has allowed the complainant to pursue its remedies, but in a second phase of the proceeding. See *Blue Marmot V LLC v. PGE*, Docket No. UM 1829, Prehearing Conference Memorandum and Ruling at 3-4 (Jan. 31, 2020) (“The Commission intends that contested case rights may not be disregarded for the sake of convenience or efficiency. . . . Using the Phase II methodology thus promotes efficiency for the parties and the Commission Staff, as well.). Here, no Phase II is necessary, because this case is in its early stages. Requiring the parties to adjudicate the issue of refunds for wrongs and omissions that occurred prior to the filing of the complaint would be consistent with the administration of justice and the *Ramsey* criteria.

<sup>2</sup> St. Louis Solar disagrees with PGE’s extreme view that the Prayers for Relief section is irrelevant, but the parties agree that material in the Legal Claims section is relevant.

omission of a Prayer for Relief a bar to obtaining relief for information included the Legal Claims, especially once it is identified early in the proceeding?

The final item PGE objects to is the amended Introduction. PGE has recognized Introductions in pleadings as procedurally unnecessary. Substantively, the Introduction only provides St. Louis Solar’s view of the case and its position on the issues. St. Louis Solar believes the amended Introduction is likely to further the efficient administration of justice and should therefore be allowed.

## II. LEGAL STANDARD

Under ORS 756.500(4), the “complaint may, at any time before the completion of taking of evidence, be amended by order of the commission.”<sup>3</sup> Under OAR 860-001-0000(1), the Commission follows the ORCPs in contested case proceedings unless they are inconsistent with the Commission’s rules, an order, or an ALJ ruling.<sup>4</sup> 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>5</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

---

<sup>3</sup> ORS 756.500(4).

<sup>4</sup> OAR 860-001-0000(1). The Commission “liberally construe[s] these rules to ensure just, speedy, and inexpensive resolution of the issues presented.” *Id.*

<sup>5</sup> ORCP 23A.

relationship to the existing pleadings; 2) prejudice to the opposing party; 3) timing; and 4) the merit of the proposed amendment (the “*Ramsey* criteria”).<sup>6</sup>

### III. ARGUMENT

In the Second Amended Complaint, St. Louis Solar amended the Introduction and revised the numbered paragraphs as follows: removed 21 paragraphs, amended 25 existing paragraphs, and added 81 new paragraphs (including 75 factual allegations).<sup>7</sup> PGE objects to just three items: 1) the amended Introduction; 2) one amended paragraph; and 3) one new paragraph.<sup>8</sup> St. Louis Solar’s revisions, including the three disputed items, satisfy both the *Ramsey* criteria and the ALJ’s Ruling. PGE objects on the basis of an overly narrow reading of the ALJ’s Ruling. PGE’s objections are without merit, therefore the Commission should grant leave to file the Second Amended Complaint.

#### A. PGE’s Misinterpretation of the October 5, 2020 Ruling Would Create an Invalid and Absurd Result

The October 5, 2020 Ruling ordered St. Louis Solar to file an amended Complaint that would not prejudice PGE, but PGE misinterprets the Ruling to prohibit amendments even if they do not prejudice PGE and even if they would benefit the Commission’s administration of this case. This would be an absurd result, and the argument should be rejected.

---

<sup>6</sup> *E.g.*, Ruling at 5 (Oct. 5, 2020) (citing *Ramsey v. Thompson*, 162 Or App 139, 145 (1999), rev den, 329 Or 589 (2000)).

<sup>7</sup> Motion to Amend at Attachment A. St. Louis Solar provided a draft of its amended complaint, and PGE informally objected to many of St. Louis Solar’s amendment. While St. Louis Solar did *not* agree with PGE’s objections, in order to avoid disputed issues, St. Louis Solar made 13 changes in response to PGE’s initial review.

<sup>8</sup> PGE’s Comments on St. Louis Solar’s Draft Second Amended Complaint at 1 [hereinafter PGE Response to Motion to Amend].

The October 5, 2020 Ruling ordered St. Louis Solar to amend its Complaint “so as to comport with the intent of my July 15, 2020 oral ruling as expressly clarified in this ruling.”<sup>9</sup> The ALJ explained that the intent was for St. Louis Solar to file an amended Complaint “in keeping with the *Ramsey* criteria.”<sup>10</sup> The ALJ denied leave to file the First Amended Complaint because the ALJ found it would not satisfy the *Ramsey* criteria.<sup>11</sup> Specifically, the ALJ identified “prejudice to PGE” (one of the four criteria) as a concern presented by the First Amended Complaint.<sup>12</sup>

PGE, however, asserts that the intent was to prohibit *any* change beyond specified fact-specific items.<sup>13</sup> If this were the case, then the ALJ might have denied leave to file the First Amended Complaint on the grounds that it did not comply with the ALJ’s ruling, rather than on the grounds that it may prejudice PGE. The ALJ did not do so.<sup>14</sup> St. Louis Solar maintains its disagreement with the ALJ’s conclusion after applying the *Ramsey* criteria, and it believes the First Amended Complaint should have been accepted even if there was some prejudice to PGE.<sup>15</sup>

---

<sup>9</sup> Ruling at 5-6 (Oct. 5, 2020).

<sup>10</sup> *Id.* at 5.

<sup>11</sup> *Id.* St. Louis Solar maintains that the First Amended Complaint was in keeping with the *Ramsey* criteria. Nonetheless, it made revisions per the ALJ’s direction.

<sup>12</sup> *See id.* at 5.

<sup>13</sup> Response to Motion to Amend at 2 (arguing the Ruling only “authorized . . . (1) updating factual allegations to reflect events occurring between the filing of the original complaint and PGE’s answer; and (2) any directly consequential changes to the requests for relief”).

<sup>14</sup> *See* Ruling at 5 (Oct. 5, 2020).

<sup>15</sup> Motion to Amend at 4. St. Louis Solar understood the Ruling to hold that the Commission’s four-part test is not satisfied where a proposed amendment would prejudice the opposing party. St. Louis Solar maintains that it disagrees with this holding, since the other three criteria could justify amendments regardless of any prejudice to the opposing side. Regardless, even under the narrowed test, the Second Amended Complaint complies.

There is always some prejudice to the opposing party when a complaint is amended, but is balanced against the other criteria to determine if amendment should be granted.

PGE's argument does not focus on the ALJ's decision to apply the *Commission's adopted test* for deciding whether or not to grant leave to amend, but instead seeks to strictly assess compliance with its interpretation of an unclear oral ruling. The ALJ's Ruling must be consistent with the *Ramsey* criteria because St. Louis Solar believes any ruling on amendment that did *not* apply the Commission's test would have been invalid on its face.

Under PGE's interpretation, it is irrelevant whether an amendment prejudices the other party, even if the amendment furthers the efficient administration of justice. This absurd result is evident here, where PGE objects to three revisions in the Second Amended Complaint even though they do *not* prejudice PGE and could *benefit* the Commission's administration of this case.

**B. The Amended Introduction Does Not Prejudice PGE and Could Further the Efficient Administration of this Case**

It is unclear what benefit PGE sees (or what prejudice PGE seeks to avoid) in objecting to St. Louis Solar's amended introduction while PGE simultaneously does *not* object to any amended factual allegations or legal claims. PGE acknowledges that the Introduction is "an unnecessary element" of a pleading that provides only a "narrative . . . overview of [the] case and [the party's] position."<sup>16</sup> PGE may revise its own narrative or not. If it is unnecessary, then *ipso facto* St. Louis Solar's revisions impose no burden on nor prejudice PGE. On the contrary,

---

<sup>16</sup> PGE Response to Motion to Amend at 8; PGE's Answer, Affirmative Defenses, and Counterclaim at 5 [hereinafter PGE's Answer].



St. Louis Solar hopes that the amended Introduction helps clarify this case and facilitates a more speedy resolution.

**C. The Amended Prayers for Relief Do Not Prejudice PGE and Could Further the Efficient Administration of this Case**

The two amended prayers for relief impose no administrative or substantive burden on PGE. First, PGE's Answer responds to all of St. Louis Solar's prayers for relief with a blanket denial, and PGE has the option to do so again, whether the two disputed prayers for relief are included or not.<sup>17</sup> Thus, there is no administrative or procedural burden to including the amended prayers.

Second, neither prayer for relief creates a new substantive issue or claim, except as regards the newly added facts. Paragraph 367 reflects a reduction in an existing claim, and Paragraph 377 reflects a claim as to new facts.

**1. Paragraph 367 Should be Admitted Because it Simplifies the Case**

The first amended prayer (Paragraph 367) is revised to seek *less* relief, in an effort to reduce the complexity of this case. This paragraph previously sought an extension of the scheduled commercial operation date ("COD") and fixed-price period of as many as 30 months.<sup>18</sup> As revised, this paragraph now requests an extension of 14.5 months, or

---

<sup>17</sup> See PGE's Answer at P. 303 ("PGE does not understand the prayers for relief (paragraphs 303 to 324 of the Complaint) to contain allegations requiring a response, but to the extent they do, PGE denies all allegations contained in St. Louis Solar's Prayers for Relief and requests that the Commission deny the relief requested.").

<sup>18</sup> The original request sought relief based on whichever date the Commission found that PGE had represented the St. Louis Solar project could be interconnected by. St. Louis Solar maintains PGE made numerous representations, and the Commission may have agreed with any of the alleged dates. One alleged date would have been at some point earlier than October 31, 2017; an extension from October 31, 2017 to April 6, 2020 would be approximately 30 months long.

approximately *half* the originally requested relief.<sup>19</sup> St. Louis Solar did not need to amend this paragraph but did so in the hopes of avoiding expensive factual or procedural disputes. There is no prejudice to PGE from the amended Paragraph 367.

St. Louis Solar believes that both its original and amended claims for relief would ultimately be permissible under ordinary civil pleadings and practice. St. Louis Solar has requested the Commission grant any other such relief as the Commission deems necessary. This case includes a wide variety of delays and harmful actions by PGE, the details and extent to which are impossible to determine at this stage of the case without discovery. A complainant is not precluded from seeking more specific relief as factual evidence regarding the specific harms and their details are revealed. However, St. Louis Solar sought to provide more clarity to the ALJ and the Commission regarding its specific request in Paragraph 367.

To the extent the ALJ concurs with PGE that the revisions are unacceptable, then St. Louis Solar will simply proceed with the *larger* request for relief at this time, and request the more specific relief in the motions or briefing stage. However, if the ALJ denies the second amended complaint, then St. Louis Solar requests the ALJ clarify whether he is precluding St. Louis Solar from seeking a *lesser* request for of relief, or simply denying the specific amendment and allowing St. Louis Solar to request a lesser from of relief later in the proceeding.

## **2. Paragraph 377 Should Be Admitted Because It Involves New Facts and Its Similarity to Existing Demands Does Not Prejudice PGE**

The second amended prayer for relief (Paragraph 377) similarly does not create a new substantive issue or claim, except for relief arising from the new facts, as directed by the ALJ.

---

<sup>19</sup> This was an alternative claim for relief as St. Louis Solar's other claims for argue for a greater extension of relief. *See, e.g.*, Second Amended Complaint at P. 366.

The new paragraph asks that the Commission “[o]rder[] PGE to refund St. Louis Solar for any costs for interconnection service that were wrongly incurred due to PGE’s mistakes or misdeeds.”<sup>20</sup> St. Louis Solar maintains that PGE wrongly incurred (and/or caused St. Louis Solar to wrongly incur) various interconnection costs between February 3, 2020 and May 26, 2020. The ALJ’s Ruling expressly authorized the inclusion of directly consequential prayers for relief for facts arising between these dates.<sup>21</sup> PGE does not contest that the prayer complies with the ALJ’s Ruling as to this time period.<sup>22</sup> St. Louis Solar does not know how it could have requested refunds for costs that were incurred after it filed its original complaint, and PGE’s request to strike should be denied on this basis alone.

PGE primarily objects on the basis that this paragraph could be interpreted to apply to previous facts as well as new facts.<sup>23</sup> St. Louis Solar agrees that certain prior facts also justify a request for refunds, which is why St. Louis Solar *already requested them*.<sup>24</sup> The original Complaint adequately raised the issue of a “refund . . . for the amount incorrectly billed for [interconnection] work that PGE was obligated to perform.”<sup>25</sup> St. Louis Solar acknowledges the original Complaint’s demand for refunds quoted above was stated in a Legal Claim rather than in the Prayer for Relief, but PGE has in this docket asserted that prayers are *only* valid when

---

<sup>20</sup> Second Amended Complaint at P. 377.

<sup>21</sup> Ruling at 5 (Oct. 5, 2020).

<sup>22</sup> PGE Response to Motion to Amend at 4.

<sup>23</sup> *Id.*

<sup>24</sup> *E.g.*, Second Amended Complaint at P. 324 (“PGE should refund St. Louis Solar for the amount incorrectly billed for work that PGE was obligated to perform.”); *see also* Second Amended Complaint at PP. 319, 321, 322.

<sup>25</sup> Second Amended Complaint at P. 324.

included in the Legal Claim.<sup>26</sup> Further, even if the demand had not been not adequately pled, the Commission could still grant relief.<sup>27</sup>

PGE had adequate notice that refunds for inappropriate interconnection costs were at issue in the case and that St. Louis Solar's position was that PGE should issue a refund. Paragraph 377 does not prejudice PGE, because PGE's concern of an impliedly new demand was already in the Complaint. To the extent PGE wishes Paragraph 377 specified a time period, St. Louis Solar's position is that that specificity would be unnecessary and likely confusing, as it would contradict other language in St. Louis Solar's Complaint.

If, however, the ALJ finds that Paragraph 377 could prejudice PGE and must be more specific, the ALJ should also explain its decision so that St. Louis Solar can clearly understand the decision's impact on this case and whether St. Louis Solar should seek certification from the Commission. On one hand, the ALJ could base its decision on form and process without precluding St. Louis Solar from obtaining the relief it is seeking.<sup>28</sup> For example, the ALJ could find that St. Louis Solar has adequately raised the issue of earlier incurred costs but that Paragraph 377 alone does not address those costs. On the other hand, the ALJ could frame the

---

<sup>26</sup> PGE'S Response Opposing St. Louis Solar, LLC's Motion for Leave to Amend Complaint at 5-6 (asserting each claim must contain a demand for relief and including claims in the prayer but not the claims is procedurally inadequate). St. Louis Solar disagrees with PGE's understanding of the procedural rules.

<sup>27</sup> OAR 860-021-0135(2)(b); *see* Second Amended Complaint at P. 383 (praying for "any other such relief as the Commission deems necessary").

<sup>28</sup> For example, the ALJ could rule that Paragraph 377 may only cover costs wrongly incurred after the Complaint was first filed while also ruling that the Legal Claim language either 1) presents a satisfactory Prayer for Relief; or 2) is an issue not being decided at this time.

decision in a way that might negatively impact St. Louis Solar's substantive rights (i.e., finding St. Louis Solar has *not* raised the issue of earlier incurred costs).

Both St. Louis Solar and PGE will benefit from a clear understanding of what costs the ALJ believes are appropriately subject to dispute. St. Louis Solar believes all wrongly incurred costs, whether incurred before or after the Complaint was filed, are adequately presented for resolution in the Second Amended Complaint. Based on PGE's objection to Paragraph 377, St. Louis Solar understands that PGE has a different view. Therefore, if the ALJ denies St. Louis Solar's motion, then St. Louis Solar requests that the ALJ explain:

- 1) Whether St. Louis Solar can seek refunds from various interconnection costs that PGE wrongly incurred (and/or caused St. Louis Solar to wrongly incur) between February 3, 2020 and May 26, 2020; and
- 2) Whether St. Louis Solar can seek refunds for the amount incorrectly billed for interconnection work that PGE was obligated to perform before February 3, 2020 when St. Louis Solar included that request for refunds in its Legal Claims but did not include that exact language in its Prayer for Relief.

#### **IV. CONCLUSION**

For the reasons stated above, leave should be granted to amend the complaint. The Second Amended Complaint complies with the ALJ's Ruling. For the reasons discussed herein, PGE's objections to the contrary are without merit and should be dismissed.

Dated this 2nd day of November 2020.

Respectfully submitted,



---

Irion A. Sanger  
Joni Sliger  
Sanger Law, PC  
1041 SE 58th Place  
Portland, OR 97215  
Telephone: 503-756-7533  
Fax: 503-334-2235  
irion@sanger-law.com

Of Attorneys for St. Louis Solar, LLC