

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1971

WACONDA SOLAR, LLC,

Complainant,

vs.

PORTLAND GENERAL ELECTRIC
COMPANY,

Defendant,

Pursuant to ORS 756.500.

RULING

DISPOSITION: MOTION TO AMEND COMPLAINT GRANTED

I. INTRODUCTION

In this ruling, I grant Waconda Solar LLC's (Waconda) motion to amend its complaint. I apply the Commission's four part test for consideration of motions to amend a complaint, find that justice is served by permitting the amendment, and that resolution of this dispute would be delayed by a denial of the motion.

II. PROCEDURAL HISTORY

Waconda filed its original complaint on September 28, 2018. On November 11, 2018, Portland General Electric Company (PGE) filed an answer to the complaint. At numerous times, both parties requested cancelation of prehearing conferences that the Administrative Hearings Division calendared. On July 8, 2019, Waconda filed a motion seeking leave to amend the complaint. On July 23, 2019, PGE filed its response in opposition to that motion, and a motion for summary judgment. On July 30, 2019 Waconda filed a response in support of its motion.

III. DISCUSSION

A. Position of the Parties

PGE argues that the request to amend the complaint should be denied because the amendment would substantially change the cause of action, and argues that the changes are broad. PGE also contends that the company is prejudiced, because it has spent time developing responsive pleadings and a motion for summary judgement prior to the

amendment, and relied on promises of opposing counsel in the course of the development of a procedural schedule. PGE argues that allowing the amendment will create interconnection queue delays. PGE observes that Waconda could have asserted new claims many months ago but did not. As for the new claims, with regard to those relating to PGE's duties under the Commission's enabling statutes, PGE asserts that they are meritless, because the bar is high to apply these standards where specific rules apply. Finally, PGE argues that Waconda's amendments do not conform to ORCP 16 C, which requires that a plaintiff separately state each claim.

Waconda responds that its amendment serves to elaborate the legal basis for its claims. Waconda states that PGE is not prejudiced, because PGE's efforts to settle a case, or its unilateral determination to prepare a motion for summary judgement do not constitute a basis upon which to find prejudice to preclude modification of a complaint. Waconda argues that its amendments are responsive to Order No. 19-218 and were filed shortly after this order was issued.

B. Law

ORS 756.500 provides that a complaint may be amended at any time before the completion of taking of evidence by order of the Commission. The Commission shall freely give leave to amend a pleading when justice so requires.¹

The Commission reviews four factors when considering a motion 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."²

C. Resolution

Consistent with previous Commission decisions, I find that Waconda's amendment to its original complaint should be permitted. While largely expanding the legal justification for the complaint, the amendment is consistent with the original pleading in that it continues to allege that PGE acted improperly towards Waconda throughout the interconnection process. The amendments more specifically identify the legal basis of several of the claims. I find no prejudice towards PGE, as the fundamental questions at issue in this proceeding are not substantively changed by the amendment, and more importantly this complaint has not progressed significantly. PGE argues that Waconda is at fault for this lack of progress; but the numerous requests to delay a prehearing conference filed in this docket were either requested or not opposed by PGE.

At this early stage of the proceeding, the complainant would be permitted to dismiss the complaint without prejudice, and file an alternative complaint at a later date identical to the amended complaint. Judicial economy is served by avoiding a dismissal and re-filing which would prolong this dispute. As explained by Waconda, the amendment is in part

¹ ORCP 23 A.

² *Nw. Pub. Commc'ns Council v. Qwest Corp.*, Order No. 09-155 at 8 (May 4, 2009).

responsive to a Commission order that in part resolved legal questions in an interconnection dispute on the grounds that the pleadings of the complainant were inadequate.³ Not long after the issuance of this decision, Waconda filed its motion requesting leave to amend. Accordingly, Waconda acted in a timely manner. Waconda acted appropriately through this amendment to ensure that its complaint conformed to the expectations of the Commission, as expressed through order No. 19-218. The claims of the July 8, 2019 motion are separate claims, and refiling is not necessary and would further delay this proceeding.

Finally, I emphasize that I do not draw a conclusion regarding communication or expectations between attorneys in the period leading up to this ruling. The negotiations and back-and-forth between attorneys on procedural issues or in settlement discussions are areas where Commissioners and Administrative Law Judges must steer clear, giving space to parties to facilitate free discussion, and to avoid prejudice. Accordingly, it would be improper to wade into a dispute arising from such conversations unless absolutely necessary. Attorneys practicing before the Commission are expected to comport themselves with a high degree of professional integrity, and outside of extraordinary circumstances we will not take action to resolve professional conduct claims or disputes between attorneys.

IV. RULING

Waconda's motion for leave to amend its complaint as filed on July 8, 2019, is granted. PGE's may file an answer to the amended complaint pursuant to OAR 860-001-0400(4)(a).

Dated this 31st day of July, 2019, at Salem, Oregon.



Nolan Moser
Chief Administrative Law Judge

³ *Sandy River Solar, LLC v. PGE*, Docket No. UM 1967, Order No. 19-218 at 25 (Jun 24, 2019).