

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 2057

ST. LOUIS SOLAR, LLC,  
Complainant,

vs.

PORTLAND GENERAL ELECTRIC  
COMPANY,  
Defendant.

Pursuant to ORS 756.500.

RULING

DISPOSITION: MOTION TO AMEND COMPLAINT DENIED; PARTIES PROVIDED FURTHER DIRECTION

**I. BACKGROUND**

On February 3, 2020, St. Louis Solar LLC (St. Louis) filed the complaint which is the subject of these proceedings. Included among the many allegations were the following:

104. St. Louis Solar has been unable to sell power pursuant to the PPA because of PGE's failure to complete interconnection.
105. St. Louis Solar is at risk of PGE terminating its PPA.
106. Failure to achieve COD constitutes a default under the PPA.
107. The PPA provides for a one-year cure period for failure to meet the COD.
108. After the one-year cure period ends, PGE may immediately terminate the PPA.

109. PGE's failure to complete interconnection is the reason why COD has not been achieved.

110. On February 11, 2020, the one-year cure period may end.

111. On February 11, 2020, PGE could demand to immediately terminate the PPA.

On May 26, 2020, Portland General Electric Company (PGE) filed an Answer, Affirmative Defenses, and Counterclaim. Among the statements contained in the answer were the following:

St. Louis Solar failed to complete construction and preparation of its Project and associated interconnection equipment until March 19, 2020. As a result, PGE could not place the interconnection in-service until March 26, 2020. As a further result, St. Louis Solar could not achieve its commercial operation date ("COD") until April 6, 2020. \* \* \* On April 3, 2019, PGE invoiced St. Louis Solar for \$12,569.94 in damages owed to PGE by St. Louis Solar under Section 9.2 of the PPA. On April 25, 2019, PGE invoiced St. Louis Solar for \$11,215.76 in damages owed to PGE by St. Louis Solar under Section 9.2 of the PPA. These are the only damages under Section 9.2 of the PPA invoiced by PGE. St. Louis Solar has paid the invoiced damages. \* \* \* PGE twice agreed to amend the PPA to extend the cure period for St. Louis Solar's breach of Section 2.2.2. PGE first agreed to extend the end of the cure period from February 11, 2020, to March 26, 2020. PGE then agreed to extend the end of the cure period from March 26, 2020, to April 9, 2020.<sup>1</sup>

On June 5, 2020, St. Louis filed a Motion to Dismiss or, in the Alternative, to Strike PGE's Counterclaims. In its motion, St. Louis noted that it had requested a refund of the payments identified in PGE's answer and that the return of St. Louis' allegedly improperly collected penalty payments to PGE under the terms of the PPA was properly before the Commission. PGE's request that the Commission find that it had properly collected the damages was, in complainant's view, not a counterclaim, but rather a defense. Even if properly pleaded, the Commission has generally declined jurisdiction over damages.<sup>2</sup>

On June 10, 2020, St. Louis filed a Reply to Answer and Affirmative Defenses, and Answer to PGE's Counterclaims. On June 22, 2020, PGE filed a Response to St. Louis Solar's Motion to Dismiss or, in the Alternative, to Strike PGE's Counterclaims. On June 29, 2020, St. Louis filed a Reply in Support of its Motion to Dismiss or, in the Alternative, to Strike PGE's

---

<sup>1</sup> PGE Answer at 1-2, 4 (May 26, 2020).

<sup>2</sup> St. Louis Motion to Dismiss at 2-3 (June 5, 2020).

Counterclaims. On July 14, 2020, PGE filed a 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 and a Sur-Reply to St. Louis Solar's Motion to Dismiss or, in the Alternative, to Strike PGE's Counterclaims.

In order to address the numerous responsive pleadings in a more orderly fashion, a telephone prehearing conference was held in this docket on July 15, 2020. At the conference, I stated that allegations of fact and the requests for relief in the original complaint appeared to have been mooted or significantly altered by the occurrence of events detailed in PGE's answer and occurring subsequent to the filing of the initial complaint. Furthermore, the question of damages paid to PGE in the months between the filing of the complaint and the answer created a new potential issue as did St. Louis's request to have those payments returned.

In order for the case to proceed in a more orderly and focused manner, so that we could address only issues that were still relevant or new issues that were now relevant due to the occurrence of events during the period between the filing of the complaint and the answer, I instructed the complainant to amend its application by removing allegations that were no longer true or relevant, to allege new facts arising between the time of the filing of the complaint and the time of PGE's answer, and to amend its prayer for relief to more formally reflect the intervening factual changes.<sup>3</sup>

On August 26, 2020, St. Louis filed a Motion for Leave to File First Amended Complaint. St. Louis states that the 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."<sup>4</sup>

On September 10, 2020, PGE filed a Response Opposing St. Louis Solar LLC's Motion for Leave to Amend Complaint. In its Response, PGE states that its understanding was that there are two purposes to be served by an amended complaint: "(1) to modify the complaint to remove claims and allegations related to potential termination of the PPA that have been mooted by subsequent events; and (2) to simplify and streamline the complaint to make the complaint proceeding more efficient."<sup>5</sup> PGE then asserts that St. Louis' amended complaint had added

---

<sup>3</sup> "It would be useful so that we are dealing with, rather than having to look at the counterclaim alleging the facts upon which the original complaint would be relying, it would be best to have the original complaint amended to reflect its understanding of the current facts." (Rec. at 14:32-14:47.)

<sup>4</sup> St. Louis Motion at 2 (Aug 26, 2020).

<sup>5</sup> PGE Response at 2 (Sep 10, 2020).

nearly 35 pages and over 260 paragraphs of new material to the complaint. PGE argues that the amended complaint needlessly adds complexity in four ways:

1. The amended complaint nearly doubles the length of the complaint, from 40 to 75 pages.
2. The amended complaint adds facts and legal theories that could have been asserted earlier, but were not, thereby causing PGE to re-investigate the same issues for the new allegations. St. Louis Solar's proposed amendments cover issues that could have been raised in its initial complaint or at the very least could have been raised last spring after St. Louis Solar successfully interconnected.
3. The amended complaint adds additional claims and theories of relief within existing claims, with the net result that certain supposedly separate claims are actually multiple different claims and counts. This is in violation of the Oregon Rules of Civil Procedure.
4. The amended complaint increases the number of prayers for relief from 22 to 31, and continues to fail to explain which prayers for relief correspond to which claims and continues to fail to allege the relief sought within the claims, as required by the Rules.<sup>6</sup>

On September 17, 2020, St. Louis filed a Reply in Support of Motion for Leave to File First Amended Complaint, stating that there was no dispute as to whether the complaint should be amended. In St. Louis' view, the only question at 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."<sup>7</sup>

## II. DISCUSSION

Oregon Administrative Rule 860-001-0000(1) provides that the Oregon Rules of Civil Procedure (ORCP) apply in contested case proceedings unless inconsistent with a Commission order or an Administrative Law Judge ruling. ORCP Section 23 A provides that, after a responsive pleading has been filed, "a party may amend the pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires." The Oregon Court

---

<sup>6</sup> *Id.* at 3-4.

<sup>7</sup> St. Louis Reply at 2 (Sep 17, 2020).

of Appeals has set four criteria to be considered in allowing a party to amend a pleading after a response has been filed: (1) the nature of the proposed amendments and their relationship to the existing pleadings; (2) the prejudice, if any, to the opposing party; (3) the timing of the proposed amendments and related docketing concerns; and (4) the colorable merit of the proposed amendments.<sup>8</sup> At the July 15 prehearing conference, as described above, I noted that a number of material facts forming the basis of the claims and prayer for relief had changed and that an orderly conduct of the proceedings would be more easily accomplished by amending the complaint to reflect the events which had occurred between the date the complaint was filed and the date on which PGE filed its answer.

In directing St. Louis to amend its complaint, I did not intend to provide St. Louis with the opportunity to amend its complaint beyond the narrow parameters of updating the factual allegations to reflect events occurring between the filing of the original complaint and PGE's answer and any directly consequential changes in the requests for relief. By amending the complaint in that manner, there would no longer be allegations of fact which were no longer true or relevant, nor would there be claims for relief based upon those facts. Rather, the amended complaint would instead allege facts now true and relevant and request relief specific to those new facts. At the same time, there would be no prejudice to PGE, because there would be no changes to the complaint relating to matters beyond the changes in fact occurring between the filing of the complaint and PGE's answer, which facts were raised by PGE. To allow a more expansive amendment would not be in keeping with the *Ramsey* criteria.

St. Louis states as the first purpose in its motion to amend, is that the amended complaint provides greater specificity as to facts and claims raised in the original complaint. However, the complainant was not directed to make any revisions with respect to revisiting issues or amending arguments or requests for relief beyond addressing changes in facts in the time period between the filing of the complaint and the answer, and to indicate any associated relief that may be requested directly related to events within that time frame.

The Motion for Leave to File First Amended Complaint should therefore be denied. Denying the motion does not, however, achieve the result requested at the July 15, 2020 telephone prehearing conference, and a clarifying ruling directing the actions of the parties is therefore necessary.

### III. RULING

1. St. Louis Solar LLC's Motion for Leave to File First Amended Complaint is denied.
2. On or before October 12, 2020, St. Louis Solar, LLC shall file a draft Second Amended Complaint, utilizing the complaint filed with the Commission on February 3, 2020,

---

<sup>8</sup> *Ramsey v. Thompson*, 162 Or App 139, 145 (1999), rev den, 329 Or 589 (2000).

tracking all language stricken and all language added to the complaint so as to comport with the intent of my July 15, 2020 oral ruling as expressly clarified in this ruling.

3. At the time the draft Second Amended Complaint is filed, the St. Louis Solar LLC shall state whether it can represent that Portland General Electric Company agrees that its tracked draft Second Amended Complaint complies with this ruling. Portland General Electric Company does not have to agree that any requested relief is appropriate for St. Louis Solar LLC to make this representation.
4. In the event that St. Louis Solar LLC does not represent that Portland General Electric Company agrees that the tracked draft complies with this ruling, Portland General Electric Company shall have until October 19, 2020, on which to comment on the proposed second amended complaint.

Dated this 5th day of October, 2020, at Salem, Oregon.



---

Allan J. Arlow  
Administrative Law Judge