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BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UM 989

In the Matter of the Application of)
PORTLAND GENERAL ELECTRIC)
COMPANY for an Accounting Order) ORDER
and Order Approving Tariff Sheets)
Implementing a Rate Reduction.)

DISPOSITION: ORS 756.500 COMPLAINT DISMISSED

On August 31, 2000, Portland General Electric Company (PGE) filed an Application for an Accounting Order and Order Approving Tariff Sheets Implementing a Rate Reduction. The filing included Advice No. 00-13. PGE requested that the accounting actions be effective as of September 30, 2000, and that the tariff sheets comprising Advice No. 00-13 be effective on October 1, 2000.

The Commission considered PGE's filings during its Public Meeting on September 28, 2000. The Commission granted authority for the requested accounting actions and allowed the tariff sheets to go into effect for service rendered on and after October 1, 2000. On September 29, 2000, the Commission issued Order No. 00-601 memorializing the decisions reached at the Public Meeting and explaining the reasons for those decisions.

On September 30, 2000, the Utility Reform Project, Lloyd K. Marbet, and Linda K. Williams filed a Complaint and Petition to Intervene. The complaint is filed under ORS 756.500 and ORS 757.210. Petitioners request that the Commission conduct a contested case hearing under the Commission's ratemaking procedures established in ORS 757.210 and also under the Commission's complaint procedures established in ORS 756.500 and ORS 756.512.

On November 24, 2000, PGE filed an answer to the complaint. No objections were filed to the petition to intervene. On November 28, 2000, Administrative Law Judge Lowell Bergen granted petitioners party status.

Petitioners filed their complaint under both ORS 757.210 and ORS 756.500. ORS 757.210 requires the Commission to hold a hearing after a utility company files tariff schedules establishing new rates or increasing existing rates if the utility's customers file a complaint within 60 days of the utility's filing. Petitioners' complaint is sufficient to require a hearing pursuant to ORS 757.210. The utility will have the burden of persuasion at the hearing.

Petitioners also filed their complaint under ORS 756.500, the statute that authorizes persons to file complaints against utility companies regulated by the Commission. Under that statute, the moving party, the complainant, has the burden of persuasion. Therefore, the two statutes place the burden of persuasion on different parties. It would be confusing and unworkable to conduct a hearing in which two opposing parties have the burden of persuasion on the issues. We have addressed this problem before. *See* Order No. 94-771 and Order No. 95-785.

On November 28, 2000, Administrative Law Judge Bergen issued a Ruling in which he noted the conflict created by the complaint citing two statutes and asked petitioners to choose which statute they wanted to proceed under. He stated that if no election were filed, the portion of the complaint relating to ORS 756.500 would be dismissed. Petitioners have not filed an election with the Commission.

ORDER

IT IS ORDERED that the portion of petitioners' complaint filed under ORS 756.500 is dismissed.

Made, entered, and effective _____.

Ron Eachus
Chairman

Roger Hamilton
Commissioner

Joan H. Smith
Commissioner

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order to a court pursuant to applicable law.