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**BEFORE THE PUBLIC UTILITY COMMISSION**  
**OF OREGON**

DR 28

In the Matter of a Declaratory Ruling for     )  
PORTLAND GENERAL ELECTRIC             )  
COMPANY pursuant to ORS 756.450.         )

ORDER

DISPOSITION: PETITION FOR RECONSIDERATION DENIED

On April 1, 2002, Blue Heron Paper Company (Blue Heron) filed a petition for reconsideration of Order No. 02-121 (February 25, 2002). On April 16, 2002, Portland General Electric Company (PGE) replied to Blue Heron's petition for reconsideration.

**Background**

In Order No. 02-121, the Commission declared that PGE is required to collect, and Blue Heron is required to return to PGE, a portion of an amount credited to Blue Heron under Schedule 86 of PGE's tariff. Blue Heron had asserted it does not have to return the amount to PGE. The amount in dispute is \$281,057.01. PGE's petition stems from a lawsuit filed by Blue Heron against PGE in Clackamas County Circuit Court (the Court).<sup>1</sup>

For background, we set forth the statement of assumed facts from the order:

Under PGE's Rate Schedule 86, Electricity Exchange Rider (now called the Demand Buy Back Rider), a customer may voluntarily reduce its electricity usage in exchange for a credit when PGE calls an exchange event. Schedule 86 describes the method for determining the amount of the credit. Blue Heron is a customer eligible for credits under Schedule 86.

Blue Heron participated in Schedule 86 exchange events in November and December 2000. Blue Heron received credits of \$196,689.85 for the November exchange and \$700,713.32 for the December exchange.

On March 16, 2001, PGE wrote a letter to Blue Heron explaining that it had discovered errors made in the calculation of Blue Heron's exchange

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<sup>1</sup> *Blue Heron v. PGE*, Clackamas County Circuit Court, Case No. 01-6-223.

credits, and that the errors had led to an overpayment of \$281,057.01 by PGE to Blue Heron for exchange events in November and December 2000. PGE notified Blue Heron that PGE was obligated to recover the overpayment.

On April 10, 2001, PGE wrote to Blue Heron and stated its expectation that the parties would work out a mutually acceptable resolution regarding the overpayment described in the March 16 letter. PGE suggested a repayment plan that would use the credits from Blue Heron's participation in exchange events in March and April 2001 to repay the overpayment amount, but left open to Blue Heron to suggest an alternative.

By letter dated May 4, 2001, PGE notified Blue Heron that it intended to take action to collect the overpayment under OAR 860-021-0135. The letter informed Blue Heron that PGE intended to deduct one-half of the \$140,528.51 overpayment from PGE's March Exchange credits, and the second half from Blue Heron's April exchange credits. PGE deducted the credits as promised.

Order No. 02-121 found that, under the assumed facts, PGE properly required Blue Heron to return the \$281,057.01. The order relies on OAR 860-021-0135, which requires a utility to rebill a customer if the utility undercharged the customer for utility service.

We based our conclusion on our understanding of the relationship between the exchange credit rate schedule, Schedule 86, and the schedule under which Blue Heron was purchasing power, Schedule 89.<sup>2</sup> We stated that, so far as this Commission is concerned, the rate schedules are based on a fundamental relationship between customer and utility, in which the customer purchases power and the utility delivers it. The credits are part and parcel of that relationship. We concluded that, under the rate schedules, the overcredit must be seen as an undercharge for utility service, rather than as an isolated transaction between the utility and customer. In effect, PGE undercharged for utility service by erroneously providing too large a credit.

### **Parties' Positions**

Blue Heron's application for reconsideration rests on its assertion that the Commission omitted essential facts about the business relationship between it and PGE. OAR 860-014-0095(3)(c). Had the Commission considered these additional facts, Blue Heron argues the Commission would have reached a different conclusion than found in Order No. 02-121.

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<sup>2</sup> In its response to Blue Heron, PGE correctly points out that Order No. 02-121 should refer to Schedule 89, not Schedule 83, as the schedule under which Blue Heron purchases power. For the purpose of this analysis, the difference is not meaningful. Schedule 89 is also listed in Schedule 86.

Blue Heron first argues that the Commission order improperly concluded that PGE's overcredit resulted in a reduction of the amount Blue Heron paid for power it consumed under the standard retail rate schedule. Blue Heron asserts that at no time during the relevant period was Blue Heron allowed to use credits it earned by curtailing load under Schedule 86 to reduce or offset the price it paid for power that it purchased from PGE under the standard rate schedule. Blue Heron notes that while it paid PGE for the power it consumed, PGE retained the exchange credits and used them to reduce and eventually satisfy a debt Blue Heron owed PGE pursuant to agreements entered into between the parties in September 2000 and February 2001.

Blue Heron claims PGE applied the overcredit under Schedule 86 to the repayment of this debt, not to payment for the power Blue Heron consumed. As a result, Blue Heron contends the overcredit did not reduce the rate paid by Blue Heron for power, and hence result in an underbilling.

Second, Blue Heron argues the Commission improperly refused to include any references in the statement of assumed facts to Blue Heron's and PGE's contractual relationship that existed during the relevant time period. Because of this omission, Blue Heron claims the Commission was unaware that the credits were used exclusively to satisfy the terms of a settlement agreement, not to reduce the amount paid by Blue Heron for the power it purchased under Schedule 83.<sup>3</sup>

Blue Heron claims exclusion from the statement of assumed facts of the events surrounding the settlement agreement left the Commission without facts that are essential to a valid response to the questions posed by PGE's petition. The omission, in Blue Heron's view, leads the Commission to incorrectly conclude that a garden-variety utility-customer relationship existed between Blue Heron and PGE.

PGE argues the Commission should deny Blue Heron's petition for reconsideration. PGE agrees with the Commission's explanation of how Schedule 86 worked in practice with other rate schedules. PGE concurs with the order's conclusion that the schedules for purchasing power and the Electricity Exchange/Demand Buyback program were intertwined. While a customer participating in the exchange usually received a payment from PGE that was separate from its electric bill, the transactions were related. PGE agrees the payment or credit could be seen as an offset to the customer's electric bill.

### **Commission Decision**

Blue Heron is correct. We did assume that a garden-variety utility-customer relationship existed between PGE and Blue Heron. In our order, we

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<sup>3</sup> Blue Heron disagrees that exchange credits reduced the rate it paid for power. We presume that Blue Heron is disagreeing that the credits reduced the amount it owed for power, as that is how we phrased the issue in Order No. 02-121 at page 8 (cited on page 2 of Blue Heron's petition).

acknowledged that there is much more to this case than we described in the statement of assumed facts. As both parties have informed us, the Court will sort out the competing claims and the impact of the agreements on the transaction.

The reason we limited the statement of assumed facts is because our jurisdiction is limited to garden-variety utility-customer relationships. PGE's rate schedules are designed to deal with such relationships, as is our jurisdiction to set those rates. The parties' decision to use rate schedules enforced by the Commission for a private purpose may have been convenient for them, but is of no consequence to us, as long as the transaction does not run afoul of the nondiscrimination statutes and other provisions of ORS Chapter 757.

One of the main reasons for issuing the declaratory ruling was to provide the Court our view of how PGE's rate schedules and the statutes we implement would apply when used for their intended purpose. The Court may find our reasoning useful when evaluating Blue Heron's claim in the Circuit Court that the treble damages statute, ORS 757.185, applies in this case.

In our view, ORS 757.185 provides an extraordinary remedy for a utility's wrongful actions. The penalty relates directly to misdeeds associated with the provision of utility service. For that reason, we ignored facts surrounding the transaction unrelated to the typical transaction between a utility and customer for the purchase of power.

**ORDER**

IT IS ORDERED that Blue Heron's petition for reconsideration is denied.

Made, entered, and effective \_\_\_\_\_.

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**Roy Hemmingway**  
Chairman

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**Lee Beyer**  
Commissioner

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**Joan H. Smith**  
Commissioner

A party may appeal this order to a court pursuant to ORS 756.580.