

ORDER NO: 17 256

ENTERED: JUL 13 2017

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1805

NORTHWEST AND
INTERMOUNTAIN POWER
PRODUCERS COALITION,
COMMUNITY RENEWABLE
ENERGY ASSOCIATION, and
RENEWABLE ENERGY COALITION,

Complainants,

vs.

PORTLAND GENERAL ELECTRIC
COMPANY,

Defendant.

ORDER

DISPOSITION: MOTION FOR SUMMARY JUDGMENT GRANTED;
ORDER NO. 05-584 CLARIFIED

I. SUMMARY

In this order, we grant the motion for summary judgment of Portland General Electric Company (PGE) and dismiss the complaint filed by Northwest Intermountain Power Producers Coalition (NIPPC), the Community Renewable Energy Association (CREA), and Renewable Energy Coalition (Coalition) (complainants). We find that PGE has lawfully offered standard contracts to operators of qualifying facilities (QFs) that have 15-year periods of fixed prices that begin on the date of execution, rather than on the date that the QF begins to transmit power.

We further conclude, however, that PGE must, on a going forward basis, offer standard contracts in which the 15-year period of fixed prices begins on the date that a QF begins to transmit power to the utility.

II. BACKGROUND

The Public Utility Regulatory Policies Act (PURPA) provides a market for the electricity produced by small power producers and co-generators. Although PURPA is a federal law,

states are responsible for implementing significant aspects of the law, and Oregon has enacted its own complementary legislation in ORS 758.505 *et al.*

In several dockets, we have revised the rates, terms, and conditions for QF power purchase agreements (PPAs) in Oregon. In one of these dockets, UM 1129, by Order No. 05-584, we provided QFs with nameplate capacity of 10 megawatts (MW) and below the opportunity to enter into standard contracts for up to 20 years, with 15-year fixed prices. The following sentence from that order lies at the heart of the dispute between the complainants and PGE:

Given our desire to calculate avoided costs as accurately as possible, and the testimony of several parties that avoided costs should not be fixed beyond 15 years, we are persuaded that standard contract prices should be fixed for only the first 15 years of the 20-year term.¹

III. DISCUSSION

A. Positions of the Parties

Complainants assert that PGE is implementing its standard contracts in a manner inconsistent with Commission policy. Complainants fault PGE for specifying that the 15 years of fixed prices begins when the contract between PGE and the QF is executed. Complainants contend that 15 years of fixed pricing commences when a QF achieves operation, *not* when the contract is executed. Alternatively, if the Commission determines that PGE's standard contracts did not violate any orders, but are still not consistent with Commission policy, Complainants request that we order PGE to file revised standard contracts clearly stating that the 15 years of fixed prices run from the delivery of net output.

Complainants note PGE's practice is inconsistent with that of other Oregon utilities. They emphasize that both PacifiCorp and Idaho Power have Commission-approved standard contracts that specify that the 15-year term of fixed prices begins on the date the QF begins to deliver power to the utility, not contract execution.

Intervenor Renewable Northwest (RNW)² supports the position of the complainants that the start date for the 15-year term of fixed prices begins when the QF starts to deliver power to the utility. RNW states that PGE's interpretation effectively makes it impossible for the QF to receive the full benefit of the 15-year offer and reduces the period of fixed prices that the QF is actually able to utilize. According to RNW, this is obviously not what the Commission must have intended.

¹ *In the Matter of Public Utility Commission of Oregon Staff's Investigation Relating to Electric Utility Purchases from Qualifying Facilities*, Docket No. UM 1129, Order No. 05-584 (May 13, 2005) at 20.

² RNW's December 21, 2016 petition to intervene was granted at the December 22, 2016 prehearing conference and memorialized in the prehearing conference memorandum, December 22, 2016 at 1.

PGE responds that its standard contracts are consistent with Commission policy and ask that the complaint be dismissed. The company argues that we should conclude as a matter of law that our orders and policies allow for a standard contract term to begin when the contract is executed. PGE notes that Order No. 05-584 requires only a 15-year term of fixed prices, and contains no language requiring a utility to pay fixed prices for 15 years from power delivery.

PGE also notes that the Commission has repeatedly reviewed and approved its standard contract forms. For example, PGE notes that its first standard contract approved by the Commission in Order No. 07-065 specified the date of execution of the standard contract as the 15-year fixed prices start date. PGE adds that no party ever objected to subsequent standard contract filings that “unambiguously provided for a maximum term of 20-years measured from contract execution and unambiguously limited the availability of fixed prices to the first 15-years of that term.”³

B. Resolution

When we concluded that QFs should receive 15 years of fixed prices under standard contracts in Order No. 05-584, we did not specify the date on which that 15-year term begins. Rather, as we later explained in Order No. 06-538, we acknowledged that utilities might not use identical standard contract templates:

In Order No. 05-584, we specifically declined to adopt a model standard contract form. Instead, we indicated that each utility should draft its own standard contract. We expected each standard contract form to contain terms and conditions that were consistent with the resolution of issues in Order No. 05-584, or past orders, as appropriate. We did not expect terms to be identical across all standard contract forms. We also recognized that standard contracts would contain terms addressing issues that were not addressed in the first phase of the docket, nor in any prior proceeding. We expected, however, that all of the terms in a standard contract, individually and collectively, would be consistent with, or in the spirit of, our general conclusions about implementation of PURPA.⁴

Due to this fact, Oregon utilities have filed, and we have approved, standard QF contracts that have used, as the triggering event, both the date of contract execution and the date of power delivery.

Because we approved PGE’s standard contract filings that limited the availability of fixed prices to the first fifteen years measured from contract execution, PGE cannot be found to have been in violation of our orders. Accordingly, PGE’s motion to dismiss the complaint should be granted.

³ *Id.* at 1.

⁴ Order No. 06-584 at 8 (Sept 28, 2006).

We take this opportunity, however, to clarify our policy in Order No. 05-584 to explicitly require standard contracts, on a going-forward basis, to provide for 15 years of fixed prices that commence when the QF transmits power to the utility.⁵ Standard contracts, whether prepared by PGE, Idaho Power or PacifiCorp, all contain QF performance benchmark event dates that must be achieved before the QF can offer power to the utility.

The 15-year period of fixed prices is, of necessity, tied to these benchmarks. Prices paid to a QF are only meaningful when a QF is operational and delivering power to the utility. Therefore, we believe that, to provide a QF the full benefit of the fixed price requirement, the 15-year term must commence on the date of power delivery.

Having found that PGE's past standard contracts have not been in violation of our orders, we shall not require that existing executed contracts be revised. However, PGE should promptly file revisions to Schedule 201 which shall include a revised standard contract PPA with language consistent with our requirement that the 15-year term of fixed prices commences when the QF transmits power to the utility.

IV. ORDER

IT IS ORDERED that:

1. The complaint filed by Northwest Intermountain Power Producers Coalition, the Community Renewable Energy Association and Renewable Energy Coalition against Portland General Electric Company is dismissed.

⁵ See *In the Matter of Public Utility Commission of Oregon Investigation into Qualifying Facilities Contracting and Pricing*, Docket No. UM 1610 Phase II, Order No. 15-130, entered April 16, 2015, adopting a stipulation of the parties, including, among others, PGE, the Coalition and CREA. Among the provisions described at page 2 of the order is the agreement that the scheduled commercial operation date chosen by the QF must be within three years of the date of the execution of the standard contract, subject to certain conditions.

2. Within five business days of the date of this order, Portland General Electric Company shall file revisions to Schedule 201 of its tariffs consistent with this order.

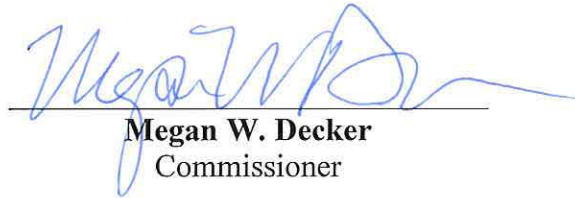
Made, entered, and effective JUL 13 2017.



Lisa D. Hardie
Chair



Stephen M. Bloom
Commissioner



Megan W. Decker
Commissioner

A party may request rehearing or reconsideration of this order under 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 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480 through 183.484.

