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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

DR 22

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

DISPOSITION: MOTION DENIED; WITHDRAWAL ALLOWED

On February 12, 1999, Portland General Electric Company (PGE) filed a petition for a declaratory ruling, pursuant to ORS 756.450 and OAR 860-013-0020. PGE requests a ruling that a customer, Boise Cascade in St. Helens, Oregon, is located within a service territory exclusively allocated by the Commission to PGE pursuant to ORS 758.400. On February 22, 1999, Columbia River People’s Utility District (CRPUD) filed a petition to intervene, alleging that the Boise Cascade facility is located within the territory of CRPUD. Boise Cascade also filed a petition to intervene. We granted both petitions to intervene in Order No. 99-271. On April 28, 1999, at a prehearing conference, Oregon Energy LLC filed a motion to intervene. Administrative Law Judge Lowell Bergen granted the petition at the conference. On August 18, 1999, CRPUD filed a motion for an order dismissing this proceeding, or in the alternative accepting CRPUD's notice of withdrawal from the proceeding. On September 10, PGE filed a response to the motion, opposing the motion to dismiss and the proffered notice of withdrawal. On September 20, 1999, Boise Cascade filed a brief addressing issues raised in the motion and in PGE's petition for a declaratory ruling.

Motion to Dismiss, or Notice of Withdrawal

In its motion, CRPUD alleges that in 1984 CRPUD and PGE filed several documents in the Columbia County Circuit Court relating to electric utility service in Columbia County. Those documents included a Stipulated Judgment, a Stipulated Entry of Judgment, and an Acquisition Agreement. Those documents were filed to settle negotiations between CRPUD and PGE about compensation for certain PGE facilities condemned by CRPUD. The Stipulated Judgment provides that “[a]ll facilities and property necessary to serve Boise-Cascade and the sole and exclusive right to serve and provide electricity to Boise-Cascade shall remain with and is reserved to defendant [PGE]. Plaintiff [CRPUD] expressly relinquishes and waives forever any and all rights to

acquire the facilities and properties necessary to distribute electricity to or serve Boise-Cascade.” In 1986, the Commission issued Order No. 86-1012 approving the sale of the subject facilities.

The 1984 order from the Columbia County Circuit Court included the statement that it retained jurisdiction “to aid in the enforcement, completion or termination of the agreements.” CRPUD asks the Commission to dismiss this proceeding because the Columbia County Circuit Court has retained jurisdiction to interpret the documents submitted to the court. CRPUD also makes arguments in support of its position that it has the authority to provide electric service to the subject mill.

In the alternative, CRPUD asks the Commission to accept its notice of withdrawal from the proceeding. It states that CRPUD and PGE have different interpretations of the relevant documents, and a declaratory ruling by the Commission would be valid only to the extent of the evidence and facts presented to the Commission. CRPUD states that all of the relevant evidence and facts are not now before the Commission, but does not offer to provide any missing information.

Boise Cascade says it is not in position to support either PGE’s or CRPUD’s opinion. However, Boise Cascade argues that a declaratory ruling is neither necessary nor appropriate. Because there is an underlying dispute between PGE and CRPUD about the facts stated in PGE's petition, Boise Cascade recommends that the Commission not issue a declaratory ruling. Alternatively, Boise Cascade recommends that the Commission require PGE to seek resolution of the issues through another mechanism or to refile the dispute as a contested case proceeding.

PGE Response

PGE argues that it clearly has been allocated exclusive authority to provide electricity to the Boise Cascade mill in St. Helens and asks the Commission to declare that to be the case in this proceeding. PGE points out that administering the territorial allocation statutes is the Commission’s job. PGE states that it and CRPUD disagree about the interpretation of the Commission’s 1986 order, and it is within the Commission’s jurisdiction to resolve any disputes about the meaning of that order.

PGE asks the Commission not to grant CRPUD's request to withdraw from the proceeding. PGE is concerned that CRPUD would argue in another forum in the future that it really was not a part of this proceeding.

Resolution

We addressed PGE's request for a declaratory ruling during our public meeting on March 16, 1999. ORS 756.450 establishes our declaratory ruling authority, and we noted that previous Commission decisions were being questioned. We decided to issue a declaratory ruling to clarify whether PGE has an exclusive territorial allocation

for the Boise Cascade facilities at issue, and memorialized that decision in Order No. 99-271.

ORS 758.405 establishes the state policy of preventing and eliminating duplication of utility facilities. ORS 758.400 through 758.475 confers on the Commission the authority and responsibility to approve or reject contracts and applications for the allocation of territory among utility service providers. The Commission has issued orders relating to the territories that PGE has the exclusive right to serve, dating to 1963. There now is a dispute between CRPUD and PGE about the right to provide electric service to a customer in St. Helens. Our previous orders allocating territory to PGE are at issue. We accept our responsibility over territorial allocations and will issue a declaratory ruling about PGE's authority to provide service to the Boise Cascade mill in St. Helens. The fact that the Columbia County Circuit Court in 1984 retained jurisdiction over the enforcement of documents filed by CRPUD and PGE relating to a condemnation proceeding in Columbia County does not deprive us of our authority and responsibility to regulate the allocation of utility service territories in Columbia County.

A declaratory ruling proceeding is an appropriate mechanism for declaring rights of a party when there are disputes about the meaning of orders the Commission has issued. The ruling will be based on the facts alleged in the petition and our previous relevant orders. We have the responsibility to allocate territories in Oregon, and it would not be appropriate for us to require a utility company we regulate to seek resolution of territorial allocation issues in another forum. PGE is petitioning for a declaratory ruling, and we will not dismiss its petition because it might have sought resolution of the issues in another type of proceeding or forum.

CRPUD and PGE disagree about whether CRPUD should be allowed to withdraw from this proceeding. This is a declaratory proceeding in which we have been requested to issue a ruling concerning the territorial allocation statutes we administer. Interested persons other than the petitioning party may participate in declaratory proceedings (assuming they show they meet party status requirements), but generally they are not necessary parties. CRPUD is not a necessary party to this declaratory proceeding. CRPUD and Boise Cascade both petitioned and were granted party status because of their obvious interest in the declaration requested. However, we plan to resolve the issues raised in the petition for a declaratory ruling with or without the participation of other persons. Neither CRPUD nor Boise Cascade is a utility company under our general regulatory jurisdiction. They may participate in this proceeding if they choose, but we will not require them to participate.

ORDER

IT IS ORDERED that the motion to dismiss this proceeding, filed by CRPUD, is denied, and CRPUD may withdraw from further participation in this proceeding.

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

Dr22pgecrpudord