

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

DR 38

In the Matter of)	
)	
PACIFICORP, dba PACIFIC POWER & LIGHT COMPANY and HCA MANAGEMENT COMPANY, LLC)	ORDER
)	
Joint Petition for Declaratory Ruling.)	

**DISPOSITION: PETITION TO INTERVENE OUT OF TIME DENIED;
APPLICATION FOR RECONSIDERATION OR
REHEARING DENIED; PETITION TO DISMISS
DENIED; PETITION FOR STAY DENIED; CROSS-
MOTION TO AMEND ORDER GRANTED.**

On December 12, 2007, the Myra Lynne Homeowners Association (MLHA) and its President, tenant Gary Walters (collectively Movants), filed a petition challenging our declaratory ruling issued in docket DR 38, Order No. 07-455. In that decision, we determined that HCA Management Company, LLC, operator of the Myra Lynne Mobile Home Park (Myra Lynne), must bill each of its submetered tenants for electricity at PacifiCorp's dba Pacific Power (Pacific Power) residential Schedule 4 Rate.

The Movants, who were not a party to the proceeding, now challenge the decision. They contend that docket DR 38 violated due process and make multiple requests. First, they seek permission to intervene out of time. Second, they seek reconsideration of Order No. 07-455 or rehearing of DR 38. Third, they seek dismissal of the DR 38 proceeding. Finally, they ask the effectiveness of Order No. 07-455 be stayed pending a final determination of these requests.

On December 21, 2007, Pacific Power and Myra Lynne, the two parties that originally requested the declaratory ruling, each filed a response opposing Movants' requests. They contend that many of Movants' arguments appear to be based on a mistaken belief that the challenged order applies retroactively and provides retroactive relief. Pacific Power and Myra Lynne clarify that their original petition sought only a prospective declaration and neither oppose the Commission issuing a clarification that the declaratory ruling applies to electric billings on a prospective basis as of the date of the order.

For the reasons that follow, we deny Movants' petition and requested relief. However, on our own motion, we amend the order to clarify the prospective application of the order. We address each separately.

DISCUSSION

I. Request to Intervene

Position of the Parties

Movants first seek formal intervention in this proceeding and assert violations of due process. They acknowledge that the presiding Administrative Law Judge (ALJ) sent a letter addressed to MLHA's attorney and Walters inviting the tenants of Myra Lynne to participate in this proceeding. They explain, however, that the ALJ did not inform *all* the tenants, because only about 40 percent of the Myra Lynne tenants are members of the MLHA. Further, they contend the ALJ misled the tenants about the impact of the declaratory ruling proceeding. The letter stated that it "would not impact any outstanding litigation in the circuit court system," referring to Movants' separate claim seeking redress for alleged overcharges in violation of the Oregon Residential Tenant and Landlord Act (ORTLA). *See* ALJ Letter, May 11, 2007. Movants contend that the ALJ's assertion was incorrect, because they believe the declaratory ruling applies retroactively.

Pacific Power and Myra Lynne object to the request for later intervention. They both note that ORS 756.525(2) allows for any person to intervene at "any time before the final taking of evidence in the proceeding." Because the Commission issued its decision in October 2007, the petition seeking intervention in December 2007 is well beyond the time for the final taking of evidence. They also contend that Movants have failed to meet the requirements of ORS 756.525(2) showing that their intervention will not unreasonably broaden the issues or burden the record.

Resolution

The Commission has no authority to allow Movants to intervene at this time. ORS 756.525(1) authorizes the Commission to permit any person to become a party to the proceeding "if application therefor is made before the final taking of evidence in the proceeding." There is no provision authorizing the Commission to permit a person to become a party after the final taking of evidence, let alone after a final decision has been rendered.

Even if the Commission had such authority, Movants have failed to establish good cause to permit its late intervention. There is no dispute that Movants received direct notice of the declaratory ruling proceeding and had numerous opportunities to seek timely intervention. In addition to the ALJ letter referenced above, Movants' counsel was repeatedly encouraged to participate in this proceeding. Pacific Power and Myra Lynne invited Movants' counsel to have his clients join as co-petitioners to the case. He was provided a draft of the petition before it was filed with the Commission, and later was sent courtesy copies of the parties' briefs and stipulation of facts. Myra Lynne's attorney also updated Movants' counsel on the status of the Commission proceedings, and encouraged an

authorized representative of the tenants to meet with the DR 38 parties in the hopes of reaching a mutually satisfactory resolution of the issues. As Myra Lynne emphasizes, whatever the reason Movants may have had for not participating in this docket until now, it clearly was not lack of notice or opportunity.

Movants' reliance on alleged deficiencies in the ALJ's letter is misplaced. First, there was no requirement the Commission provide notice of the proceeding to *all* individual tenants. The ALJ's letter was a courtesy to Movants, intended to invite the participation of two known representatives of the tenants. Second, the letter contains no false statements. The invitation simply clarifies that, under ORS 756.450, a declaratory ruling is binding between the Commissioner and the petitioner and that the Commission will not address Movants' circuit court proceeding filed under the ORTLA. Third, any confusion on Movants part as to the scope of the Commission proceeding would have been eliminated by their receipt of courtesy copies of all relevant case filings in DR 38. Movants cannot now credibly claim they had no direct knowledge of, or the ability to comment on, the issues to be decided by the Commission.

Movants' petition to intervene must be denied.

II. Request for Reconsideration or Rehearing

Position of the Parties

Movants raise several grounds for reconsideration of Order No. 07-455 or rehearing of DR 38. They contend the order: (1) erroneously negates the ORTLA; (2) failed to consider the prior version of the ORTLA; (3) improperly interpreted the 2005 amendments to the ORTLA; and (4) impermissibly allows landlord to provide utility service for profit.

Pacific Power and Myra Lynne dispute Movants' arguments. They first claim that Movants have no standing to seek reconsideration or rehearing. They also claim that Movants have either misinterpreted Order No. 07-455 or present arguments already thoroughly considered and rejected by the Commission. For this reason, they contend that Movants' application for reconsideration or rehearing should be denied.

Resolution

There is no statutory provision authorizing Movants to seek reconsideration of Order No. 07-455 or rehearing of DR 38. ORS 756.561 provides that, after the Commission has issued an order in any proceeding, "any party thereto may apply for rehearing or reconsideration thereof within 60 days[.]" As determined above, Movants were not a party to the DR 38 proceeding, and are unable to become parties now.

Even if Movants had standing to challenge Order No. 07-455, we agree with Pacific Power and Myra Lynne that Movants raise no valid reason to revisit the order. Our decision addressed two issues. In Stipulated Issue No. 1, we examined Pacific Power’s requirements for service imposed on Schedule 48 customers and customers that resell service. Contrary to Movants’ apparent assertion, we did not assess the validity of any charges Myra Lynne billed its tenants for electric service, nor determine whether Myra Lynne had satisfied requirements imposed by the ORTLA.

In Stipulated Issue No. 2, we examined Pacific Power’s requirements for service and how they relate to the ORTLA amendments made by House Bill 2247. We interpreted the statute using the analysis set forth in *PGE v. Bureau of Labor and Indus.*, 317 Or 606 (1993), and concluded that the legislative changes were expressly “subject to the policies of the utility.” ORS 90.532(1). We are not persuaded by any of Movants’ arguments—many of which were made earlier by Myra Lynne—to reconsider that analysis or our conclusion.

Movants’ application for reconsideration or rehearing must be denied.

III. Petition to Dismiss

Position of the Parties

Movants ask that this proceeding be dismissed because Myra Lynne is a California company not registered to do business in the State of Oregon. Because a foreign company may not maintain any court proceeding under ORS 63.701 and ORS 63.704, Movants contend that Myra Lynne was prohibited from filing its request for a declaratory ruling.

Pacific Power and Myra Lynne dispute Movants’ assertion. Both point out that, regardless of Myra Lynne’s registered status, Pacific Power is a legitimate party to this proceeding and could have maintained this action on its own. Myra Lynne also disagrees with Movants’ assertions and contends it complies with ORS Chapter 63.

Resolution

Movants fail to provide an adequate basis to dismiss DR 38. The dispute as to the applicability of provision in ORS Chapter 63 is immaterial. As Pacific Power and Myra Lynne note, there were two petitioners to this case. Pacific Power is not affected by any issue under ORS Chapter 63 and could have maintained this action on its own.

Movants’ petition to dismiss should be denied.

IV. Petition to Stay

Movants request for stay pending the resolution of its petition has been rendered moot by this order. Accordingly, it should be dismissed.

V. Commission Clarification of Order

As discussed above, Movants contend they were never notified that the declaratory ruling might have a retroactive effect. We have rejected above Movants' assertion about lack of notice. Nonetheless, on our own motion, and with the permission of Pacific Power and Myra Lynne, we amend Order No. 07-455 to clarify its intended prospective application.

This declaratory ruling proceeding concerned the application of Pacific Power's rules and rate schedule to Myra Lynne Mobile Home Park. Movants appear concerned about the resolution of Stipulated Issue 2, which addressed the application of those rules and rate schedules following the passage of HB 2247. We determined that Myra Lynne was required to apply Pacific Power's residential Schedule 4 in calculating tenant electrical charges after HB 2247 took effect, just as it had done before the law changed. Given that decision, Movants now fear that Myra Lynne will seek to recoup underpayments from its tenants for the time period from HB 2247's effective date in 2006 to the date of Order No. 07-455.

Pacific Power and Myra Lynne point out that, in their joint motion for a declaratory ruling, they requested that "the Commission apply its determination on a prospective-only basis, effective for utility billings issued after the date of its order." Joint Petition at 10 (Mar. 20, 2007). Accordingly, we adopt Pacific Power's and Myra Lynne's suggestion and amend Order No. 07-455 to clarify that our resolution of Stipulated Issue No. 2 shall be implemented on a prospective-only basis.

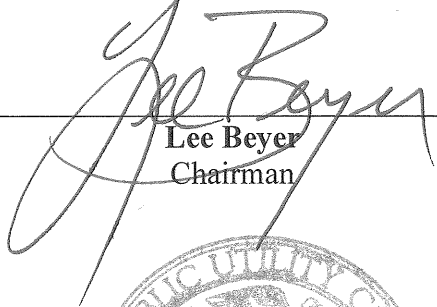
ORDER

IT IS ORDERED that:

1. The petition to intervene, application for reconsideration or rehearing, petition to dismiss, and petition to stay Order No. 07-455, filed by Myra Lynne Homeowners Association and Gary Walters, are dismissed.

2. Order No. 07-455 is amended to clarify that our resolution of Stipulated Issue No. 2 shall be implemented on a prospective-only basis, as of October 22, 2007. The remainder of the order is unchanged.


Made, entered, and effective JAN 18 2008.



Lee Beyer
Chairman



John Savage
Commissioner



Ray Baum
Commissioner



A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480-183.484.