

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1610

In the Matter of

PUBLIC UTILITY COMMISSION OF
OREGON,

Investigation into Qualifying Facility
Contracting and Pricing.

RULING

DISPOSITION: MOTION TO STRIKE DENIED

I. INTRODUCTION

On March 1, 2013, the Renewable Energy Coalition (REC) and Community Renewable Energy Association (CREA) filed a joint motion to strike testimony offered by Portland General Electric Company (PGE). Movants claim the testimony inappropriately addresses an issue reserved for a later phase of this proceeding—that is, the amount of time between contract execution, or legal obligation, and power delivery.

On March 7, 2013, PGE filed a reply opposing the motion. PGE contends that the challenged testimony appropriately addresses an issue identified for this phase relating to legally enforceable obligations.

II. DISCUSSION

This dispute centers on whether the challenged testimony appropriately falls within Issue 6B or 6C. Issue 6B, designated to be addressed in Phase I of this proceeding, asks: “When is there a legally enforceable obligation?” Issue 6C, designated as part of Phase II, asks: “What is the maximum time allowed between contract execution and power delivery?”

REC and CREA contend the challenged testimony, offered by Rob Macfarlane and John Morton, addresses Issue 6C. That testimony states that PGE supports a rule that no legally enforceable obligation may be created more than one year before the qualifying facility power is available.¹ PGE responds that the challenged testimony does not address the time between contract execution and power delivery. Rather, PGE explains, it addresses the separate issue of when a legally enforceable obligation exists—which is the subject of Issue 6B.

¹ PGE/100, Macfarlane – Morton/23 (Feb 4, 2013).

The joint motion to strike is denied. As made evident by its motion, REC and CREA conflate “legally enforceable obligation” and “contract execution.”² As PGE notes, a recent FERC opinion clarifies that the two are not one and the same:

Such commitment to sell to an electric utility, the Commission has found also commits the electric utility to buy from the QF; these commitments result either in contracts or in non-contractual, but binding, legally enforceable obligations.³

PGE’s testimony proposes the Commission adopt a rule that would preclude any legally enforceable obligation more than a year of power delivery. That proposal falls squarely within Issue 6B. It does not, as REC and CREA allege, address the separate matter of the amount of time between when a QF can finalize its contract and when the QF delivers power to the utility.

I acknowledge some overlap between the two issues. If the movants believe they should be considered together, I will entertain a motion to move resolution of Issue 6B to the second phase.

Dated this 12th day of March, 2013 at Salem, Oregon.



Michael Grant
Chief Administrative Law Judge

² REC’s and CREA’s motion states: “The established Issues List in this proceeding separated issues into Phase I and Phase II, and issues related to the amount of time between *contract execution, or legal obligation*, and power delivery are scheduled to be addressed in Phase II.” Joint Motion to Strike at 1 (Mar 1, 2013).

³ *Cedar Creek Wind, LLC*, 137 FERC P 61006 (2011) (quoting *JD Wind 1*, 129 FERC ¶ 61, 148 at P 25).