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Subject: Sierra Club Filing
Date: Monday, October 1, 2018 3:23:39 PM

Ms. Smith,

I received notice of your complaint about how the Commission's Filing Center docketed your filing from last Friday, September 28, 2018. Below I explain why appeal of an ALJ ruling falls under OAR 860-001-0110, and in that rule "appeal" and "request to certify" are synonymous. I also explain potentially confusing language in OAR 860-001-0080(1) that only applies to the issuance of protective orders. Lastly, I provide information on how Sierra Club may seek waiver of the 15 day deadline for request for certification.

In the filing, Sierra Club challenges an ALJ ruling that addressed the designation of information as protected under a protective order. A challenge to an ALJ ruling is governed by OAR 860-001-0110, which provides:

Appeal to the Commission from Ruling of Administrative Law Judge

- (1) A party may request that the ALJ certify an ALJ's written or oral ruling for the Commission's consideration. A party must request certification of a ruling within 15 days of the date of service of the ruling or date of the oral ruling.
- (2) The ALJ must certify the ruling to the Commission under OAR 860-001-0090 if the ALJ finds that:
 - (a) The ruling may result in substantial detriment to the public interest or undue prejudice to a party;
 - (b) The ruling denies or terminates a person's participation; or
 - (c) Good cause exists for certification.

I acknowledge there is potentially confusing language in OAR 860-001-0080(1), on which you appear to rely in your filing. That rule provides:

Protective Orders

- (1) Upon request by a party and for good cause shown, an ALJ may issue protective orders to limit disclosure of information that falls within the scope of ORCP 36(C)(7). *Decisions by the ALJ regarding protective orders may be appealed to the Commission under OAR 860-001-0720.*

Although imprecisely worded, the second clause in the OAR 860-001-0080(1) language italicized above governs a challenge to the ALJ's actual issuance of a protective order. This is made clear by the context of that rule that governs the issuance of protective orders. Moreover, this reconsideration process under OAR 860-001-0720 is not available for an ALJ ruling, as that process clearly addresses orders by the Commission.

Finally, I note that your desire to have your challenge be classified as an appeal rather than a request

to certify an ALJ ruling may be due to the fact that there is a 15 day deadline in OAR 860-001-0110 for a request for certification. Sierra Club may seek a waiver of that deadline. The standard and process for seeking waiver are provided in OAR 860-001-0000(2):

Applicability and Waiver

(1) These rules govern practice and procedure before the Public Utility Commission of Oregon (Commission). The Commission will liberally construe these rules to ensure just, speedy, and inexpensive resolution of the issues presented. The Oregon Rules of Civil Procedure (ORCP) also apply in contested case and declaratory ruling proceedings unless inconsistent with these rules, a Commission order, or an Administrative Law Judge (ALJ) ruling.

(2) For limited purposes in specific proceedings, the Commission or ALJ may modify or waive any of the rules in this division for good cause shown. A request for exemption must be made in writing, unless otherwise allowed by the Commission or ALJ.

Thanks,
Mike

Michael Grant

Executive Director/Acting Chief Administrative Law Judge
Public Utility Commission of Oregon
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