

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UM 2119  
UE 394**

In the Matter of  
PORTLAND GENERAL ELECTRIC  
COMPANY,  
Request for a General Rate Revision,  
And

In the Matter of  
ALLICANCE OF WESTERN ENERGY  
CONSUMERS and OREGON CITIZENS'  
UTILITY BOARD,

Application for an Accounting Order  
Requiring Portland General Electric Company  
to Defer Expenses and Capital Costs  
associated with the Boardman Power Plan.

JOINT REQUEST OF THE OREGON CITIZENS'  
UTILITY BOARD, ALLIANCE OF WESTERN  
ENERGY CONSUMERS, AND STAFF OF THE  
PUBLIC UTILITY COMMISSION OF OREGON  
FOR CERTIFICATION OF MEMORANDUM  
DENYING CONSOLIDATION

**I. INTRODUCTION**

Pursuant to OAR 860-001-0110, the Oregon Citizens' Utility Board (CUB), Alliance of Western Energy Consumers (AWEC), and Staff of the Public Utility Commission of Oregon (Staff) (Joint Parties) respectfully request that the Administrative Law Judge (ALJ) certify the October 25, 2021 ruling denying AWEC's and CUB's request to consolidate Docket No. UE 394 with Docket No. UM 2119 based on the findings there is good cause to certify and that there is substantial detriment to the public interest if consolidation is not allowed.

CUB and AWEC jointly moved to consolidate Docket No. UM 2119 (Boardman Deferral) with UE 394 on October 7, 2021. CUB and AWEC explained that judicial efficiency warranted addressing issues related to the cessation of PGE's Boardman coal-fired power plant alongside the holistic review occurring in the ongoing general rate case (GRC). PGE filed a response opposing consolidation on October 15, 2021. On October 25, 2021, ALJ Lackey issued a ruling denying formal consolidation because it would "require amending the schedule to add a

1 separate track for testimony from the parties to address the Boardman deferral request.”<sup>1</sup>  
2 Although the ALJ concluded that adding a separate testimony track was procedurally  
3 impracticable, the ruling noted “that deferrals and their associated amortizations are often  
4 addressed within the context of a GRC. Even absent consolidation the parties remain free to  
5 address any number of pending deferrals or amortizations within a comprehensive settlement  
6 process in this proceeding.”<sup>2</sup>

7 The ALJ issued the Memorandum denying consolidation on the same day Staff and  
8 intervenors filed testimony in Docket No. UE 394. AWEC and CUB filed joint testimony in this  
9 case to align with the ALJ’s ruling and further the well-settled Commission practice of  
10 addressing pending deferrals in GRCs, like PGE has done in the past.<sup>3</sup> Similarly, AWEC and  
11 Staff filed separate Boardman deferral testimony to provide the Commission a robust evidentiary  
12 record—consistent with its preference<sup>4</sup>—to aid in the consideration of potential future  
13 settlement, as the ALJ’s ruling indicated.

14 PGE has asked to strike the testimony filed by AWEC, CUB, and Staff in Docket No. UE  
15 394 regarding the Boardman deferral. AWEC, CUB, and Staff have filed a Joint Response  
16 opposing the request to strike.

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20 <sup>1</sup> UM 2119 and UE 394 – ALJ Lackey’s Ruling at 2 (Oct. 25, 2021).

21 <sup>2</sup> *Id.* at 3.

22 <sup>3</sup> *See, e.g.*, UE 335 – PGE/800/Nicholson – Bekkedahl/17, lines 1-5 (“To the extent that UM  
23 1817 is unresolved, [PGE] request[s] the Commission approve our deferral and apply these costs  
24 associated with capital projects that were subject to a deferral authorized in UE 215 (capital  
deferrals).”) (Requesting recovery of deferred amounts in the context of a GRC.).

25 <sup>4</sup> *See, e.g., in re Public Utility Commission of Oregon Investigation to Determine the Resource*  
26 *Value of Solar*, OPUC Docket No. UM 1716, Order No. 16-404 (Oct. 19, 2016) (“[W]e do not  
believe it to be in the public interest to make findings unless the record is sufficiently robust to  
inform sound decisions and to provide meaningful guidance and direction.”).

1 **II. STANDARD OF REVIEW**

2 Under OAR 860-029-0120, a party may request that the ALJ certify an ALJ’s written or  
3 oral ruling for the Commission’s consideration within 15 days of the date of service of the ruling  
4 or date of the oral ruling. The ALJ must certify the ruling to the Commission under OAR 860-  
5 001-0090 if the ALJ finds that:

- 6 (a) The ruling may result in substantial detriment to the public interest or undue prejudice  
7 to a party;  
8 (b) The ruling denies or terminates a person’s participation; or  
9 (c) Good cause exists for certification.

10 **III. ARGUMENT**

11 **A. Good cause supports certification of the ALJ’s ruling to the Commission.**

12 The ALJ explained that she denied the request to consolidate for the following reasons:

13 Under the existing schedule for docket UE 394, intervenor opening testimony is  
14 due October 25, 2021. To consolidate these proceedings at this time would  
15 require amending the schedule to add a separate track for testimony from the  
16 parties to address the Boardman deferral request. While noting the possibility  
17 of a separate track of testimony to address this issue in the GRC, AWEC and  
18 CUB's reply did not address the specific changes to the schedule that would be  
19 required to accommodate their request within the statutory suspension period.  
20 At this point in the proceeding, the changes necessitated by consolidation would  
21 constrain the remainder of the schedule due to the amount of time left in the  
22 GRC's suspension period. Additionally, formal consolidation at this time could  
23 serve to further complicate the already broad scope of the GRC.<sup>5</sup>

19 In short, the ALJ’s denial of the request to consolidate was largely based on the  
20 assumption consolidating UE 394 and UM 2119 would require amending the UE 394 schedule to  
21 add a separate procedural track for testimony on the Boardman Deferral. However, the Joint  
22 Parties believe this assumption has proved to not be correct and that a separate track for  
23 testimony regarding the Boardman Deferral is not necessary. Indeed, in CUB and AWEC’s  
24 Reply to PGE’s Response to the Motion to Consolidate, CUB and AWEC offered to allow PGE  
25 the last response under the current UE 394 schedule, even though CUB and AWEC retain the

26 <sup>5</sup> UM 2119 and UE 394 – ALJ Lackey’s Ruling at 2 (Oct. 25, 2021).

1 burden of proof in the UM 2119 deferral.<sup>6</sup> Accordingly, the Joint Parties request that the ALJ  
2 find good cause to certify the ruling denying the motion to consolidate to the Commission.

3 For reasons discussed above, the Joint Parties have already filed testimony regarding the  
4 Boardman Deferral in Docket No. UE 394. PGE now has the opportunity to file testimony in  
5 response on December 2, 2021. If PGE argues the December 2, 2021 due date does not leave  
6 PGE sufficient to time to formulate a response, the argument is not well taken. PGE has already  
7 filed comments in opposition to the Boardman Deferral request, which has been pending for  
8 more than a year.<sup>7</sup>

9 Following PGE's rebuttal testimony, the intervenors and PGE will each have another  
10 round of testimony in which to address the Boardman Deferral. Although the Joint Parties have  
11 the burden of proof to show deferral is appropriate, the Joint Parties accept the current UE 394  
12 schedule, which gives PGE the last word. In addition, all parties will have opportunity to cross-  
13 examine witnesses and to submit legal arguments on issues presented by the Boardman Deferral.  
14 Notably, PGE appears to take the position that the Boardman deferral should not be authorized at  
15 all, as a basis for its opposition both to CUB and AWEC's Motion to Consolidate and in PGE's  
16 Motion to Strike the Joint Parties' respective testimonies. This position is primarily a legal one,  
17 governed by the deferral statute and the Commission's well-settled precedent on deferrals. There  
18 is ample opportunity in the existing UE 394 procedural schedule for all parties to fully brief this  
19 issue. To date, PGE has not made any convincing argument that the facts underlying the deferral  
20 – including how much is at stake and what this amount relates to – cannot be fully developed in  
21 this case, or are even disputed.

22 The Joint Parties recognize that the ALJ's assumption that consolidating Docket No. UM  
23 2119 and UE 394 would require a separate procedural track within UE 394 was a reasonable one.

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25 <sup>6</sup> UM 2119 and UE 394 – AWEC and CUB's Joint Reply to PGE's Response at 5 (Oct. 21,  
2021).

26 <sup>7</sup> UM 2119 – Comments of Portland General Electric Company (Nov. 2, 2020).

1 However, this assumption has not proven to be true. In fact, the Joint Parties were able to  
2 include testimony relating to the Boardman Deferral in their Opening Testimony filed on  
3 October 25, 2021, and the remaining procedural schedule allows for ample opportunity to fully  
4 litigate the issues presented by AWEC's and CUB's request to defer. The Joint Parties believe  
5 these circumstances are good cause to certify the ALJ's ruling denying consolidation to the  
6 Commission.

7 **B. Denial of the request to consolidate may be detrimental to the public interest.**

8 PGE seeks to increase its rates in Docket No. UE 394. If AWEC's and CUB's request to  
9 defer is approved and the Commission subsequently authorizes amortization, the deferral balance  
10 could have a significant impact on the size of any rate increase. CUB and AWEC have calculated  
11 the balance in the Boardman deferral to include at least \$89,549,246 per year of revenue in  
12 connection with the plant's retirement.<sup>8</sup> Separately addressing the Boardman Deferral is not in  
13 the public interest if efficient resolution of the issues presented by the deferral in this rate case  
14 may mean any rate increase stemming from this case will be offset by benefits owed to  
15 customers.

16 Consolidating the Boardman Deferral with this GRC enables the Commission to employ  
17 its broad authority to set rates under a flexible scheme. Rather than considering the impact of the  
18 Boardman deferral on a standalone basis, the Commission can consider its impacts within the  
19 context of an overall rate review. Consolidation will enable parties to explore various  
20 alternatives to treat the impacts of Boardman cessation and will help the Commission determine  
21 whether inclusion of these costs in rates is just and reasonable.

22 If Docket No. UM 2119 and UE 394 are litigated separately, it is more likely that any rate  
23 change resulting from UE 394 will not coincide with any rate change stemming from UM 2119.  
24 It is not in the public interest to select such a procedural path. By adjudicating both proceedings  
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26 <sup>8</sup> UE 394 – AWEC – CUB/100/Mullins – Gehrke/1-2.

1 in tandem, the Commission can minimize the frequency of rate changes to customers, consistent  
2 with the ORS 757.259 deferral statute.

3 **IV. CONCLUSION**

4 For the reasons discussed above, the Joint Parties respectfully urge the ALJ to certify its  
5 October 25, 2021 ruling denying the request to consolidate Docket Nos. UE 394 and UM 2119 to  
6 the Commission.

7 Dated this 4<sup>th</sup> day of November, 2021.

8 Respectfully Submitted,

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