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VIA ELECTRONIC FILING

Attention: Filing Center
Public Utility Commission of Oregon
P.O. Box 1088
Salem, Oregon 97308-1088

Re: UE 394 – *In the Matter of PORTLAND GENERAL ELECTRIC COMPANY, Request for a General Rate Revision.*

Attention Filing Center:

Attached for filing in the above-referenced docket is Portland General Electric Company's Motion to Strike, expedited consideration requested.

Please contact this office with any questions.

Sincerely,

Katherine McDowell

Attachment

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 394

In the Matter of

PORTLAND GENERAL ELECTRIC
COMPANY,

Request for a General Rate Revision.

**PORTLAND GENERAL ELECTRIC
COMPANY’S MOTION TO STRIKE**
*(EXPEDITED CONSIDERATION
REQUESTED)*

1 In early October 2021, the Alliance of Western Energy Consumers (AWEC) and the
2 Oregon Citizens’ Utility Board (CUB) moved to consolidate their request to defer costs associated
3 with the closure of the Boardman plant, filed a year earlier in docket UM 2119, with Portland
4 General Electric Company’s (PGE) general rate case, docket UE 394. On October 25, 2021,
5 Administrative Law Judge (ALJ) Alison Lackey denied this motion to consolidate.¹ Later that
6 same day, AWEC and CUB filed joint testimony in this case recommending amortization of their
7 Boardman deferral—even while acknowledging the ALJ’s Ruling denying consolidation.² AWEC
8 also filed separate testimony addressing the Boardman deferral,³ as did Public Utility Commission
9 of Oregon Staff (Staff).⁴

10 Pursuant to OAR 860-001-0420, PGE moves to strike the deferral testimony filed by
11 AWEC, CUB, and Staff. The deferral testimony is outside of the scope of this case, as defined by
12 the ALJ’s Ruling, and it is therefore irrelevant and inadmissible. Allowing this testimony would

¹ *In re Portland General Electric Company Request for a General Rate Revision*, Docket UE 394, and *In re Alliance 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 Plant*, Docket UM 2119, Ruling Denying Motion to Consolidate (Oct. 25, 2021) (“ALJ Ruling”).

² Docket UE 394, AWEC-CUB/100, Mullins-Gehrke/1 (Oct. 25, 2021).

³ Docket UE 394, AWEC/100, Mullins/45-50 (Oct. 25, 2021).

⁴ Docket UE 394, Staff/1800, Storm/1 (Oct. 25, 2021).

1 necessarily result in litigation of the Boardman deferral, contrary to the ALJ’s Ruling that there is
2 insufficient time for such litigation under the current schedule. The deferral testimony unfairly
3 prejudices PGE, confuses the issues, and potentially delays the case.

4 PGE requests expedited consideration of this Motion because PGE’s Reply Testimony is
5 due in five weeks, on December 2, 2021. Absent an expedited ruling, PGE would need to devote
6 resources to preparing testimony responding to the deferral testimony, which ultimately would be
7 unnecessary if the Motion to Strike is granted. PGE has conferred with AWEC, CUB, and Staff.
8 AWEC, CUB, and Staff oppose both the motion to strike and the request for expedited
9 consideration.

10 PGE understands that this is a procedural motion under OAR 860-001-0390(2)(b) because
11 it simply seeks to implement the ALJ Ruling regarding the scope of this case. Accordingly, PGE
12 proposes that responses to this Motion be due in five days, and PGE would not file a reply. If the
13 ALJ determines that the Motion is substantive, PGE proposes the same five-day response period,
14 with PGE filing its reply within two days of the response.

I. BACKGROUND

15 On October 8, 2020, AWEC and CUB filed an application to defer revenue impacts
16 associated with the retirement of the Boardman plant in docket UM 2119.⁵ PGE filed a timely
17 response, recommending that the Commission reject the application.⁶ To date, the Commission
18 has not ruled on whether to permit the deferral.

19 On July 9, 2021, PGE filed this rate case, with a rate effective date of May 9, 2022.⁷ Three
20 months later, on October 7, 2021, AWEC and CUB moved to consolidate their Boardman deferral

⁵ Docket UM 2119, Joint Application for Deferred Accounting of the Alliance of Western Energy Consumers and Oregon Citizens Utility Board (Oct. 8, 2020).

⁶ Docket UM 2119, PGE Comments (Nov. 2, 2020).

⁷ Docket UE 394, Order No. 21-219 (July 12, 2021) (suspending tariffs for nine months from August 9, 2021).

1 into this case.⁸ PGE opposed this motion, explaining the many differences between the two
2 dockets and arguing that consolidation would unduly complicate disposition of the rate case.⁹ ALJ
3 Lackey denied the motion to consolidate, finding that consolidation would require parties to file
4 testimony in the rate case regarding the deferral on a separate timeline, which would complicate
5 the already broad rate case and constrain the rate case schedule.¹⁰

6 Despite the ALJ's Ruling denying their motion to consolidate, AWEC and CUB filed joint
7 testimony in the rate case addressing the substance of their Boardman deferral.¹¹ Their deferral
8 testimony explains the need for the requested Boardman deferral, provides the amount accrued to
9 the deferral, and recommends that the deferral balances be amortized over a three-year period
10 through Schedule 145—even though the Commission has never approved the deferral.¹² The
11 AWEC-CUB deferral testimony expressly acknowledges the ALJ's Ruling denying consolidation,
12 but claims that the Ruling's statement that, "[e]ven absent consolidation, the parties remain free to
13 address any number of pending deferrals or amortizations within a comprehensive settlement
14 process in this proceeding,"¹³ somehow permits them to file substantive testimony on the issue.
15 AWEC also filed separate testimony on the Boardman deferral, including a proposal that its
16 amortization be offset against amortization of other PGE deferrals not before the Commission in
17 this case.¹⁴

18 Staff also filed testimony supporting the proposed Boardman deferral.¹⁵ Staff's testimony
19 notes that the ALJ had not resolved AWEC's and CUB's motion to consolidate at the time Staff's

⁸ Dockets UE 394 and UM 2119, Joint Motion to Consolidate Dockets UE 394 and UM 2119 (Oct. 7, 2021).

⁹ Dockets UE 394 and UM 2119, PGE's Response in Opposition to Motion to Consolidate (Oct. 15, 2021).

¹⁰ ALJ Ruling at 2-3.

¹¹ Docket UE 394, AWEC-CUB/100, Mullins-Gehrke/1.

¹² Docket UE 394, AWEC-CUB/100, Mullins-Gehrke/1-7.

¹³ Docket UE 394, AWEC-CUB/100, Mullins-Gehrke/1 (quoting ALJ Ruling at 3).

¹⁴ Docket UE 394, AWEC/100, Mullins/45-50.

¹⁵ Docket UE 394, Staff/1800, Storm/7.

1 testimony was developed, but does not address why Staff’s testimony is appropriate in light of the
2 ALJ Ruling that preceded Staff’s filing.¹⁶

II. LEGAL STANDARD

3 The purpose of testimony is to provide relevant evidence,¹⁷ which is defined as “evidence
4 tending to make the existence of any fact at issue in the proceedings more or less probable than it
5 would be without the evidence.”¹⁸ Testimony that “does not relate to a ‘fact at issue’ in the
6 case . . . can be excluded on relevancy grounds.”¹⁹ Even relevant evidence “may be excluded if
7 the probative value is substantially outweighed by the danger of unfair prejudice, confusion of the
8 issues, or undue delay.”²⁰

III. DISCUSSION

9 **A. The Deferral Testimony Is Not Relevant to This Case.**

10 The ALJ Ruling makes clear that AWEC’s and CUB’s deferral application is not subject
11 to litigation in this proceeding. Because the deferral testimony of AWEC, CUB, and Staff does
12 not relate to any fact at issue in this case, the testimony is irrelevant and should be stricken.²¹

13 AWEC and CUB justify their decision to file their deferral testimony by referencing the
14 statement in the ALJ Ruling that parties are free to address pending deferrals through settlement.²²
15 This statement simply indicates that the Ruling does not preclude a settlement of this case that also
16 addresses pending deferrals. It does not state or imply that AWEC and CUB may litigate the

¹⁶ Docket UE 394, Staff/1800, Storm/1, 8.
¹⁷ See, e.g., *Am. Can Co. v. Lobdell*, 55 Or App 451, 466 (1982) (upholding Commission’s exclusion of irrelevant evidence); see also OAR 860-001-0480(10) (“written testimony is subject to rules of admissibility”).
¹⁸ OAR 860-001-0450(1)(a).
¹⁹ *In re Madras PVI, LLC v. Portland General Electric Company*, Docket UM 2009, Ruling Denying Motion to Strike at 3 (Dec. 9, 2019).
²⁰ OAR 860-001-0450(1)(c).
²¹ See, e.g., *Am. Can Co. v. Lobdell*, 55 Or App 451, 466 (1982) (upholding Commission’s exclusion of irrelevant evidence); see also OAR 860-001-0480(10) (“written testimony is subject to rules of admissibility”).
²² Docket UE 394, AWEC-CUB/100, Mullins-Gehrke/1 (quoting ALJ Ruling at 3).

1 Boardman deferral in this case—particularly when read with the surrounding context *denying*
2 consolidation. If the ALJ Ruling were interpreted as permitting parties to file substantive
3 testimony regarding the Boardman deferral application, then it would effectively bring that
4 application into this case and require parties to respond—contrary to the denial of consolidation
5 ordered by the ALJ Ruling. In addition, to the extent that AWEC and CUB claim they are
6 providing testimony as a part of settlement negotiations, this is improper under the Commission’s
7 rules governing the confidentiality of such negotiations.²³

8 **B. The Deferral Testimony Is Prejudicial to PGE.**

9 AWEC’s and CUB’s deferral testimony presents their recommendation for amortizing the
10 proposed Boardman deferral, omitting the critical fact that the Commission has never approved
11 the deferral.²⁴ Staff’s deferral testimony discusses why the proposed deferral may be necessary.²⁵
12 Allowing this testimony unfairly prejudices PGE by requiring it to spend time and resources
13 preparing substantive responsive testimony regarding the policy issues and parties’
14 recommendations associated with the proposed Boardman deferral—notwithstanding the fact that
15 the deferral application will not be resolved in this rate case, per the ALJ’s Ruling. Similarly,
16 allowing detailed testimony in this case about an issue that the Commission will resolve in docket
17 UM 2119 will unnecessarily add to an already lengthy record and confuse the issues in an already
18 broad rate case.

19 Finally, if AWEC and CUB were permitted to disregard the ALJ Ruling and bring
20 substantive consideration of the deferral application into this rate case through their deferral
21 testimony, the case would likely be delayed. AWEC’s and CUB’s deferral testimony ignores the

²³ OAR 860-001-0350.

²⁴ UE 394, AWEC-CUB/100, Mullins-Gehrke/2 (“We recommend that these amounts be amortized to the benefit of ratepayers over a three-year period . . .”).

²⁵ UE 394, Staff/1800, Storm/2-4.

1 fact that the Commission must make an initial legal determination about whether the deferral is
2 appropriate.²⁶ The Commission could deny their application in whole or in part, mooting or
3 changing AWEC's and CUB's current amortization proposals.

4 Thus, the schedule would need to be revised to accommodate potential additional briefing
5 and a Commission decision regarding the deferral request before PGE could respond to AWEC's
6 and CUB's testimony regarding amortization. This would not be possible under the current rate
7 case schedule, which is already very compressed. For these reasons, permitting the parties'
8 deferral testimony to remain in the record is likely to unduly delay the rate case.

IV. CONCLUSION

9 PGE respectfully requests that the ALJ strike AWEC's and CUB's joint deferral testimony,
10 AWEC's separate deferral testimony, and Staff's deferral testimony from the record in this case.
11 The Commission has already determined that the Boardman deferral application should not be
12 consolidated with this rate case, and therefore the testimony is irrelevant. Allowing such testimony
13 unfairly prejudices PGE and would likely cause confusion and delay in this rate case.

Dated October 28, 2021

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²⁶ *In re Public Utility Commission of Oregon Staff Request to Open an Investigation Related to Deferred Accounting*, Docket UM 1147, Order No. 05-1070 at 2-3 (Oct. 5, 2005) (explaining that a Commission decision regarding a request to defer costs involves two stages of review: (1) determination of whether the proposed deferral meets the statutory criteria, and (2) authorization to amortize deferred amounts).

PORTLAND GENERAL ELECTRIC COMPANY

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