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November 27, 2023

## *Via Electronic Filing*

Public Utility Commission of Oregon  
Attn: Filing Center  
201 High St. SE, Suite 100  
Salem OR 97301

Re: In the Matter of PORTLAND GENERAL ELECTRIC COMPANY,  
Request for a General Rate Revision.  
**Docket No. UE 416**

Dear Filing Center:

Please find enclosed the Alliance of Western Energy Consumers' Application for Reconsideration and Clarification in the above-referenced docket.

Thank you for your assistance. If you have any questions, please do not hesitate to call.

Sincerely,

/s/ Anna V. Congdon  
Anna V. Congdon

Enclosure

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UE 416**

In the Matter of	)	
	)	
PORTLAND GENERAL ELECTRIC	)	APPLICATION FOR
COMPANY	)	RECONSIDERATION AND REQUEST
	)	FOR CLARIFICATION OF THE
Request for a General Rate Revision.	)	ALLIANCE OF WESTERN ENERGY
_____	)	CONSUMERS

**I. INTRODUCTION**

Pursuant to OAR 860-001-0720, the Alliance of Western Energy Consumers (“AWEC”) files this Application for Reconsideration and Request for Clarification with the Oregon Public Utility Commission (“Commission”) in the above-referenced docket. AWEC requests clarification that, under the Fourth Partial Stipulation approved by Order No. 23-386 (“Order”), the investigation to be opened with respect to new load connection costs applies to all new load, and not just to new “large” load. AWEC also seeks reconsideration of the Commission’s additional requirement that PGE “be prepared to file a proposal for an interim tariff” to “mitigate customer risk” associated with “new large load connections potentially emerging in our state.”<sup>1</sup> This directive is vague, is not contained in any of the stipulations the Commission approved, is untethered to any evidence in the record or recommendation by any party, contradicts the Commission’s Order, undermines longstanding and well-reasoned Commission precedent based on plain statutory language, and will become an unnecessary distraction in the investigation.

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<sup>1</sup> Order No. 23-386 at 14.

AWEC has conferred with the other parties to this docket. PGE does not take a position on the Request for Clarification or the Application for Reconsideration, but reserves its right to file a response. Staff opposes both the Request for Clarification and the Application for Reconsideration. CUB and SBUA do not oppose the Request for Clarification and take no position on the Application for Reconsideration. Walmart and Kroger do not oppose the Request for Clarification or the Application for Reconsideration. Calpine Solutions takes no position on either the Request for Clarification or the Application for Reconsideration.

## II. REQUEST FOR CLARIFICATION

Paragraph 17.b of the Fourth Partial Stipulation provides that “Parties agree to Staff proposing an investigation be opened into new load connection costs.” In the Order, the Commission approved this term without modification and opened the investigation.<sup>2</sup> However, within the context of this investigation, it noted specifically the “fast pace and large scale of new *large* load connections” and the need to “promptly consider both the needs of these new *large* customers and the potential costs and risks to other customers.”<sup>3</sup>

The language in the adopted Fourth Partial Stipulation speaks to new load generally, not to new “large” load specifically. The parties to the Fourth Partial Stipulation deliberately selected and negotiated this language in order to review new load connections holistically so that the Commission has a full picture of such connections and their associated costs and benefits before implementing any policy changes from this investigation. Accordingly, AWEC requests

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<sup>2</sup> *Id.*

<sup>3</sup> *Id.* (emphasis added).

that the Commission clarify that the language of the Order does not change the intended scope of the investigation to review *all* new load connection costs.

Staff opposes AWEC's Request for Clarification. In discussions with Staff prior to filing this Request, it appears that the basis for Staff's opposition is that it believed the scope of the investigation would be limited to new large load connections. While AWEC will not discuss specific settlement discussions, suffice it to say that the plain language of the Stipulation is clearly not limited to large customer connections and this fact should not have been a surprise to Staff – indeed, Staff's opposition was a surprise to AWEC. Staff's position is apparently not shared by any other party, as it alone opposes AWEC's Request. Staff is, of course, free to focus on new large customer interconnections in the investigation, but limiting the scope of the investigation in this way does not effectuate the Stipulation as written. Nor does it serve the public interest. Ensuring that the scope of the investigation reviews all new customer connections will only serve to provide the Commission with a fuller picture of these connections in order to ensure that all customers are treated equitably.

### **III. APPLICATION FOR RECONSIDERATION**

In addition to its Request for Clarification above, AWEC seeks reconsideration of the Commission's directive that PGE "be prepared to file a proposal for an interim tariff in this new [investigatory] docket by December 28, 2023." AWEC seeks reconsideration for the following reasons.

#### **A. The Commission's requirement is unclear.**

The Commission's directive to PGE to file an interim tariff is unclear because it does not indicate whether PGE must actually file this tariff by December 28, 2023, or if it just needs to be

“prepared” to make such a filing (and presumably make the filing upon further request by the Commission). Furthermore, it is unclear what this interim tariff should contain because there is nothing in the record identifying the issue this interim tariff is supposed to address. As discussed further below in Section D, depending on the characteristics of this interim tariff, there is a good chance it will be unlawful if approved.

**B. The Commission’s requirement is not based on record evidence.**

ORS 756.558(2) requires the Commission to “prepare and enter findings of fact and conclusions of law upon the evidence received in the matter.” It is well established that the Commission’s decisions must be based on the facts and evidence in the record.<sup>4</sup> Here, the Commission states that “we wish to consider whether to adopt an interim measure to mitigate customer risk during the pendency of the investigation.”<sup>5</sup> The “customer risk” the Commission identifies is “the fast pace and large scale of new large load connections potentially emerging in our state” and the need to “promptly consider both the needs of those new large customers and the potential costs and risks to other customers.”<sup>6</sup> Since the Commission does not cite to any record evidence, it is unclear what the basis of this concern is or why it requires “prompt[]” attention. The Commission’s statement that this new load is “potentially” emerging in the state indicates that the basis for the concern is speculative.

The Commission recently approved an interim change to PacifiCorp’s line extension rule based on new large load interconnection requests and PacifiCorp’s assertion that such requests

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<sup>4</sup> *American Can Co. v. Davis*, 28 Ore. App. 207, 216-17 (1977); *Valley & Siletz Railroad Co.*, 195 Ore. 683, 711-12 (1952).

<sup>5</sup> Order No. 23-386 at 14.

<sup>6</sup> *Id.*

raised cost-shifting risks for other customers.<sup>7</sup> However, PacifiCorp is obviously not PGE – the two utilities have different customers, different systems, different cost allocation practices, and face different issues. And, of course, PacifiCorp’s filing was in a different docket based on different facts, so it cannot form the basis for the Commission’s decision in this case. Furthermore, as AWEC argued in response to PacifiCorp’s filing, that filing was factually unsupported as well, so there certainly are not facts in that filing that could be used here.

In this case, Commission Staff did raise concerns about the allocation of new transmission costs based on the load growth of PGE’s industrial rate schedules.<sup>8</sup> However, Staff’s testimony was limited to the allocation of costs already incurred and did not identify any emergent need to modify PGE’s tariffs.<sup>9</sup> Indeed, while Staff testified that “the issue of [transmission and distribution] upgrades related to large new load will only become an increasingly important issue,” it specifically stated that it was “not prepared to offer adjustments to PGE’s transmission or distribution marginal cost studies at this time” and that “[a]ny potential adjustments to PGE’s transmission and distribution marginal cost study will need to address the issue holistically and will likely take more time on Staff and PGE’s part.”<sup>10</sup> Moreover, PGE and AWEC both rebutted Staff’s testimony and the issue was resolved, in part, by opening the investigation the Commission approved in the Fourth Partial Stipulation (which, again, is intended to examine *all* new load connection costs, consistent with Staff’s own testimony that adjustments to PGE’s marginal cost study should be addressed “holistically”).<sup>11</sup> The parties to

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<sup>7</sup> Docket No. ADV 1534.

<sup>8</sup> Exh. Staff/2000, Stevens/38:13-40:10.

<sup>9</sup> Exh. Staff/2000, Stevens/39:14-40:10.

<sup>10</sup> Exh. Staff/3300, Stevens/25:9-26:2.

<sup>11</sup> Exh. PGE/2600, Macfarlane-Pleasant/20-22; AWEC/700, Kaufman/11-13.

that Stipulation did not find it necessary to require an interim tariff filing to ensure fair and reasonable rates for PGE and its customers, and the Commission affirmatively found that the five partial stipulations it approved “are supported by sufficient evidence, *appropriately resolve the issues in this case*, and will result in fair, just, and reasonable rates.”<sup>12</sup> It also found that “the stipulations, taken together, represent a reasonable resolution of the identified issues ...”<sup>13</sup> There is no basis for the Commission’s additional finding that an interim tariff is necessary.

**C. The Commission’s requirement for an interim tariff filing contradicts the findings of its Order.**

For the same reasons, the Commission’s directive to PGE to file an interim tariff contradicts its own decision. In this general rate case, all of PGE’s rates and tariffs are up for review.<sup>14</sup> With the exception of the cost cap on PGE’s Income-Qualified Bill Discount Program, which remains litigated and is unrelated to new large load connections, the Commission approved all of PGE’s rates and tariffs in the Order, as modified by the stipulations. Thus, the Commission affirmatively found that, based on the substantial record evidence, PGE’s tariffs, as modified, are just and reasonable. Yet, in the same Order, the Commission appears to take the position that at least one of PGE’s tariffs in fact is not, or may not be, just and reasonable and an interim tariff to remedy this deficiency must be filed “promptly”. The Commission cannot have it both ways. AWEC agrees with the Commission’s decision that “the stipulations, taken

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<sup>12</sup> Order No. 23-386 at 14 (emphasis added).

<sup>13</sup> *Id.*

<sup>14</sup> OAR 860-022-0019(1).

together, represent a reasonable resolution of the identified issues.”<sup>15</sup> There is no reason or justification to say more.

**D. The Commission’s Order undermines long-standing precedent and is likely unlawful.**

Furthermore, the Commission’s Order undermines decades of established and well-reasoned Commission precedent. That precedent makes clear that approval of interim rates is an exceptional remedy based upon a “compelling need.”<sup>16</sup> This is because it allows the rate or tariff change to go into effect before it has been determined to be just and reasonable.<sup>17</sup> Consequently, “the use of such rates is disfavored.”<sup>18</sup> Yet in its Order, the Commission goes beyond even this exceptional remedy and *sua sponte* orders PGE to request interim rates to address a concern PGE itself has not raised and for which supporting evidence is wholly lacking. And it does this in the very Order in which it has just approved PGE’s tariffs. AWEC is unaware of another circumstance in which the Commission has made such an extraordinary request.

The Commission’s decisions addressing interim rates are grounded in ORS 757.215(5), which provides that “[t]he commission may in a suspension order authorize an interim rate or rate schedule under which the utility’s revenues will be increased by an amount deemed reasonable by the commission, not exceeding the amount requested by the utility.” The law goes on to state that “[a]ny such interim increase ... shall be effected by rates designed to increase the utility’s revenues without materially changing the revenue relationships among customer classes

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<sup>15</sup> Order No. 23-386 at 14.

<sup>16</sup> *Re Portland General Electric Co.*, Docket Nos. UE 47/UE 48, Order No. 87-1017, 1987 Ore. PUC LEXIS 5 at \*96 (Sept. 30, 1987).

<sup>17</sup> *Re Pacific Nw. Bell Tel. Co.*, Docket No. UT 43, Order No. 87-406, 1987 Ore. PUC LEXIS 2 at \*197 (Mar. 31, 1987).

<sup>18</sup> *Re Portland General Electric Co.*, Docket No. UE 204, Order No. 09-108 at 6 (Mar. 30, 2009).



....” This statute requires two elements that appear to be missing from the interim tariff the Commission has required of PGE: a suspension order and an increase in revenues for PGE. While the interim tariff has not yet been filed, the statute only authorizes the Commission to approve interim rates in a suspension order; it does not authorize the Commission to request that a utility file an interim tariff. Furthermore, because the Commission has just established PGE’s revenues, it seems highly unlikely that PGE’s interim tariff will request a further increase in its revenues, and even less likely that such an increase would be justified on an interim basis based on a compelling need.

Even if these two elements could be met, this does not rescue the Order from its unlawful effect. Assuming PGE does not seek to modify its overall revenues, the only other revenue impact that could occur from an interim tariff filing is similar to PacifiCorp’s changes to its line extension rule, in which the revenues applicable to a specific customer class are modified by altering the line extension allowance. That type of revenue impact, however, is expressly prohibited by the law – an interim tariff cannot “materially chang[e] the revenue relationships among customer classes.”<sup>19</sup> And, if there is no revenue impact at all from PGE’s interim tariff, then no statutory authority exists to approve such a tariff. ORS 757.215(5) addresses a narrow and specific circumstance – it ensures the Commission has the authority to maintain the financial health of a utility when necessary. No other statute gives the Commission additional interim rate authority. Because the Commission has a general obligation to ensure that all rates and rate schedules are “fair, just and reasonable,”<sup>20</sup> the Commission must have express statutory authority

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<sup>19</sup> ORS 757.215(5).

<sup>20</sup> ORS 757.210(1)(a).

to authorize a tariff on an interim basis, which by definition, means that the Commission has not yet determined whether the rate or schedule is fair, just and reasonable.

**E. Requiring PGE to file an interim tariff will be an unnecessary distraction in the investigation.**

Requiring PGE to file an interim tariff at the beginning of the investigation opened under the Fourth Partial Stipulation may also unnecessarily distract from the issues that should be addressed in that investigation. Since there is no indication of what concrete harm needs to be remedied, there is no indication of what PGE is supposed to file. It is all but certain, however, that whatever PGE files will become the focus of attention in the investigation even if it becomes clear through the investigation that other matters may be of more significance to new load connection costs than PGE’s interim tariff. The parties to the investigation should have the discretion to investigate new load connection costs holistically and follow where the facts lead, not be pulled in any particular direction based on a tariff PGE did not ask to file.

**IV. CONCLUSION**

For the foregoing reasons, AWEC respectfully requests that the Commission: (1) clarify that the scope of the investigation to be opened under the Fourth Partial Stipulation includes all new load, not just new large load; and (2) reconsider its directive to PGE to “be prepared to file a proposal for an interim tariff in this new [investigatory] docket by December 28, 2023.”

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Dated this 27th day of November, 2023.

Respectfully submitted,

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/s/ Tyler C. Pepple

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