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May 18, 2021

***Via Electronic Filing***

Public Utility Commission of Oregon  
Attention: Filing Center  
201 High Street SE, Suite 100  
P.O. Box 1088  
Salem, OR 97308-1088

Re: UM 2152 – PGE’s Detailed Depreciation Study of Electric Utility Properties

Dear Filing Center:

Enclosed for filing in the above-captioned docket are Portland General Electric Company’s Response to Alliance of Western Energy Consumers’ Motion to Compel Discovery, together with the supporting Declaration of John J. Spanos. These documents are being filed by electronic mail with the Filing Center.

Thank you for your assistance.

Sincerely,

*/s/ Douglas C. Tingey*

Douglas C. Tingey  
Associate General Counsel

DCT:hp  
Enclosures

1 **BEFORE THE PUBLIC UTILITY COMMISSION**  
2 **OF OREGON**

3 UM 2152

In the Matter of

PORTLAND GENERAL ELECTRIC  
COMPANY,

Detailed Depreciation Study of Electric Utility  
Properties.

**PGE’S RESPONSE TO THE  
ALLIANCE OF WESTERN  
ENERGY CONSUMERS’ MOTION  
TO COMPEL DISCOVERY**

4  
5 **I. INTRODUCTION**

6 On May 3, 2021, the Alliance of Western Energy Consumers (AWEC) moved to compel  
7 discovery of data supporting Portland General Electric Company’s (PGE or Company) latest  
8 depreciation study filed with the Public Utility Commission of Oregon (Commission). Even  
9 though PGE has already provided the same data in other native formats, AWEC’s motion requests  
10 that the Commission require PGE’s third-party consultant to reprogram its depreciation software  
11 to produce the data in a “machine readable format” for easier entry into AWEC’s modeling  
12 software.<sup>1</sup> In the alternative, AWEC requests that the Commission use this docket to open an  
13 investigation into minimum filing requirements for utility depreciation cases filed with the  
14 Commission.

15 AWEC’s motion relies on general discovery principles of relevance contained within the  
16 Oregon Rules of Civil Procedure. AWEC fails to cite or satisfy the Commission’s discovery rule  
17 directly applicable to its motion, OAR 860-001-0500(4), which requires a party to develop data

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<sup>1</sup> AWEC Motion to Compel at 1 (May 3, 2021).

1 pursuant to a discovery request only if (1) the ability to develop the data is uniquely possessed by  
2 the party, (2) the request is not overly burdensome, and (3) the information sought has a high  
3 degree of relevance.<sup>2</sup> AWEC cannot meet this standard because it already possesses the identical  
4 data in a different native format, AWEC acknowledges that it can convert the data itself, and  
5 reprogramming PGE’s third-party consultant’s depreciation software is overly burdensome under  
6 the circumstances. Finally, this PGE-specific docket is not the proper forum in which to seek a  
7 generic investigation. PGE respectfully requests that the Commission deny AWEC’s motion.

8 **II. BACKGROUND**

9 Under the stipulation filed in the Company’s last depreciation docket,<sup>3</sup> PGE initiated this  
10 docket by submitting an updated Depreciation Study (Depreciation Study or Study) on January 15,  
11 2021. The Depreciation Study—prepared by John J. Spanos of Gannett Fleming Valuation and  
12 Rate Consultants, LLC (Gannett Fleming)—updates the Company’s depreciation rates as of  
13 December 31, 2019.<sup>4</sup> The Study includes an analysis of all the Company’s generation,  
14 transmission, distribution, and general plant assets and recommends revisions in depreciation lives,  
15 curves, and salvage rates for all plant accounts. To prepare the Study, Gannett Fleming uses  
16 transactional data (Input Data) in its depreciation software to conduct statistical analysis.<sup>5</sup> Gannett  
17 Fleming included 463 pages of service life statistics,<sup>6</sup> net salvage statistics,<sup>7</sup> and detailed  
18 depreciation calculations<sup>8</sup> (collectively, the Output Data) to support the Study results.

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<sup>2</sup> See OAR 860-001-0500(4).

<sup>3</sup> See Docket No. UM 1809, Stipulating Parties/101, Peng–Mullins–Spanos/3 (“No later than the end of 2022, PGE shall file with the Commission another detailed depreciation study of its utility property.”).

<sup>4</sup> See *generally* Gannett Fleming, 2019 Depreciation Study (Jan. 6, 2021).

<sup>5</sup> Declaration of John J. Spanos, Attachment A (Spanos Decl.) ¶ 5.

<sup>6</sup> 2019 Depreciation Study, Part VII.

<sup>7</sup> 2019 Depreciation Study, Part VIII.

<sup>8</sup> 2019 Depreciation Study, Part IX.

1 After AWEC intervened in this docket, it submitted several data requests (DRs) asking PGE  
2 to provide the Output Data in different readable formats. Specifically, AWEC requested the  
3 Output Data in DR No. 001<sup>9</sup> and requested a “comma-delimited or tab-delimited text file” in DR  
4 No. 002.<sup>10</sup> In response to DR No. 001, the Company provided the Output Data in Microsoft Word,  
5 the native format for Gannett Fleming’s depreciation software. The Company could not comply  
6 with DR No. 002, however, because (1) the data in the requested format does not exist; and  
7 (2) Gannett Fleming would need to reprogram and recertify its depreciation software to provide  
8 the Output Data in AWEC’s requested format.<sup>11</sup>

9 In its response to DR No. 002, PGE explained that “[a]ttempting to convert the data to the  
10 format requested by AWEC could distort the data and provide inaccurate results.”<sup>12</sup> In response  
11 to DR No. 006, PGE also explained that AWEC itself could convert the Output Data to another  
12 Microsoft program, such as Excel.<sup>13</sup> In addition, the Company provided AWEC the Input Data in  
13 its native format, Microsoft Excel. With this data, AWEC possesses the capability to reproduce  
14 the results of the Depreciation Study to conduct its own statistical analyses.<sup>14</sup>

15 To respond to AWEC’s request, Gannett Fleming would have to reprogram its software and  
16 apply for recertification with International Standards of Operation (ISO) requirements for  
17 engineering firms.<sup>15</sup> Gannett Fleming provides depreciation studies to utility companies  
18 throughout the United States.<sup>16</sup> Gannett Fleming has never been asked or required to submit its

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<sup>9</sup> Attachment B (AWEC DR No. 001).

<sup>10</sup> AWEC Motion to Compel, Attachment B (AWEC DR No. 002).

<sup>11</sup> Spanos Decl. ¶ 7.

<sup>12</sup> AWEC Motion to Compel, Attachment B (PGE Response to DR No. 002).

<sup>13</sup> AWEC Motion to Compel, Attachment C (PGE Response to DR No. 006).

<sup>14</sup> Spanos Decl. ¶ 8.

<sup>15</sup> Spanos Decl. ¶ 9.

<sup>16</sup> Spanos Decl. ¶¶ 9 & 10.

1 depreciation studies in the format requested by AWEC.<sup>17</sup> Applying for ISO recertification for  
2 Gannett Fleming’s software is a major and costly undertaking, well outside the scope of work PGE  
3 requested from Gannett Fleming.<sup>18</sup>

4 Despite PGE informing AWEC of these facts, AWEC filed a motion to compel the Company  
5 to produce its Output Data as requested in DR No. 002. AWEC’s motion should be denied because  
6 AWEC already has the Output Data requested, the Output Data is not reasonably available from  
7 Gannett Fleming in the format AWEC has requested, AWEC has all the Input Data in Excel  
8 necessary to conduct its own statistical analysis, and AWEC itself can convert the Output Data  
9 into its preferred format to run its analysis of PGE’s proposed depreciation rates.

### III. LEGAL STANDARD

10 The Commission has adopted the Oregon Rules of Civil Procedure for contested case  
11 proceedings.<sup>19</sup> However, the Commission’s specific discovery rules supersede these more general  
12 rules to the extent they are inconsistent.<sup>20</sup> In 2010, the Commission adopted several rules to  
13 “provide more thorough guidelines for discovery in Commission proceedings” by providing  
14 “general limits to discovery” requests.<sup>21</sup> OAR 860-001-0500(4) provides that:

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<sup>17</sup> Spanos Decl. ¶ 10.

<sup>18</sup> Spanos Decl. ¶ 9.

<sup>19</sup> OAR 860-001-0000(1); *Citizens’ Util. Bd. of Or. v. Or. Pub. Util. Comm’n*, 128 Or App 650, 655 (1994) (“[The Commission] has adopted the Oregon Rules of Civil Procedure (ORCP) as its own procedure.”).

<sup>20</sup> OAR 860-001-0000(1) (“The Oregon Rules of Civil Procedure (ORCP) . . . apply in contested case and declaratory ruling proceedings unless inconsistent with these rules, a Commission order, or an Administrative Law Judge (ALJ) ruling.”); *see also Nw. Pub. Commc’ns Council v. Or. Pub. Util. Comm’n*, 805 F Supp 2d 1058, 1069 (D Or 2011) (acknowledging that written procedures under OAR 860 and the Oregon Rules of Civil Procedure govern discovery in Commission proceedings); *cf.* ORS 174.020(2) (“When a general provision and a particular provision are inconsistent, the latter is paramount to the former so that a particular intent controls a general intent . . .”).

<sup>21</sup> *In re Pub. Util. Comm’n of Or. Revisions to the Admin. Rules Regarding Practice & Procedure*, Docket No. AR 535, Order No. 10-400 at 18 (Oct. 14, 2010). AWEC’s predecessor organization, the Industrial Customers of Northwest Utilities (ICNU), was a party to these rule changes and supported the changes to

1  
2 A party will not be required to develop information or prepare a study for  
3 another party, unless the capability to prepare the study is possessed uniquely by  
4 the party from whom the discovery is sought, the discovery request is not unduly  
5 burdensome, *and* the information sought has a high degree of relevance to the issues  
6 in the proceedings.<sup>22</sup>  
7

8 Thus, under the Commission’s discovery rules, AWEC must show that (1) PGE uniquely  
9 possesses the capability to develop the Output Data, (2) AWEC’s request is not unduly  
10 burdensome, and (3) the development of the data is highly relevant to the proceeding.<sup>23</sup> AWEC  
11 must meet all three elements of this test to compel discovery.<sup>24</sup>

#### IV. DISCUSSION

##### A. PGE does not uniquely possess the capability to develop the Output Data.

12 As AWEC stated in its motion to compel, its fundamental goal is to “audit the statistical  
13 analysis” PGE used to support its Study.<sup>25</sup> While AWEC acknowledges that the Company already  
14 supplied the necessary Output Data in PDF and Microsoft Word formats,<sup>26</sup> it asserts that it must  
15 have the data in a “computer readable format” to conduct its own statistical analysis and accrual  
16 calculations.<sup>27</sup> But critically, AWEC does not claim that the ability to perform the conversion to  
17 its requested format is possessed uniquely by PGE. Without such a showing, AWEC’s motion  
18 fails.  
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the discovery rules, which it characterized as “common sense revisions.” Docket No. AR 535, ICNU Final Comments at 3 (Apr. 20, 2010).

<sup>22</sup> OAR 860-001-0500(4) (emphasis added).

<sup>23</sup> See OAR 860-001-0500(4).

<sup>24</sup> OAR 860-001-0500(4); *cf. Broadway Cab LLC v. Emp’t Dep’t*, 358 Or 431, 443 (2015) (reiterating that when a statute uses the conjunctive “and” the party must prove all elements to meet the statute’s requirements).

<sup>25</sup> AWEC Motion to Compel at 6.

<sup>26</sup> AWEC Motion to Compel, Attachment A (Kaufman Aff.) ¶ 6.

<sup>27</sup> AWEC Motion to Compel, Attachment A (Kaufman Aff.) ¶ 7.

1 In fact, AWEC acknowledges that it can convert the Output Data into its requested format.  
2 AWEC’s consulting expert, Dr. Lance Kaufman, estimates it would take up to ten hours to convert  
3 and error check the Output Data to run his own statistical analysis.<sup>28</sup> While this conversion process  
4 may take time, neither Dr. Kaufman nor AWEC claims that this task is impossible with the  
5 information they already possess. The Commission’s rules do not require PGE or Gannett Fleming  
6 to “develop” its data at the request of AWEC unless AWEC cannot develop the data on its own.<sup>29</sup>  
7 PGE should not be required to convert its Output Data to a particular format for the simple reason  
8 that AWEC does not want to do the conversion itself.

9 AWEC also argues that because the conversion process runs the risk of producing errors,  
10 PGE should be required to conduct the conversion.<sup>30</sup> But the risk of distorting the data during the  
11 conversion process remains regardless of who performs the conversion. In other words, neither  
12 party “uniquely possesses” the ability to prevent error during the conversion process.<sup>31</sup> Because  
13 AWEC plans to audit PGE’s results with its own statistical analysis, it makes sense for AWEC to  
14 convert the Output Data for this analysis. AWEC has provided no evidence that compelling PGE  
15 to conduct the conversion lessens the risk of error during the conversion process.

16 Finally, AWEC argues that the Commission previously determined in Order No. 03-533 that  
17 model inputs developed by a third party can be discoverable if the utility does not “produce [the]  
18 data underlying their model.”<sup>32</sup> This decision is inapposite. PGE is not objecting to providing the  
19 Output Data because Gannett Fleming developed it—PGE has already provided the Output Data

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<sup>28</sup> AWEC Motion to Compel, Attachment A (Kaufman Aff.) ¶ 7.

<sup>29</sup> See OAR 860-001-0500(4).

<sup>30</sup> AWEC Motion to Compel at 7–8.

<sup>31</sup> See OAR 860-001-0500(4).

<sup>32</sup> *In re Qwest Corp., Investigation to Review Costs & Establish Prices for Certain Unbundled Network Elements provided by Qwest Corp.*, Docket No. UM 1025, Order No. 03-533 at 8 (Aug. 28, 2003).

1 in its Depreciation Study<sup>33</sup> and in its response to AWEC’s DR No. 001.<sup>34</sup> Instead, PGE’s position  
2 is that it should not be required to recreate the Output Data in a format that is incompatible with  
3 Gannett Fleming’s software. In Order No. 03-533, AT&T and WorldCom had never provided the  
4 “documents and data” it relied upon and instead offered to give the data to Qwest for thousands of  
5 dollars per day.<sup>35</sup> Qwest estimated that it would have to spend approximately \$100,000 to receive  
6 the information and may not be able to conduct a meaningful audit even after obtaining the data.<sup>36</sup>

7 Here, AWEC admits that its motion to compel “is limited to the production of the same  
8 information Gannett Fleming has already publicly provided” during discovery.<sup>37</sup> Unlike AT&T  
9 and WorldCom, PGE has provided the Output Data in multiple formats already. Because PGE  
10 does not “uniquely possess” this data as required by the Commission’s current discovery rules,  
11 AWEC cannot compel PGE to produce it in its preferred format.

12 **B. AWEC’s discovery request is unduly burdensome to PGE and Gannett Fleming.**

13 As the Commission has recognized, discovery must be “commensurate with the needs of the  
14 case and may not be unreasonably cumulative, duplicative, burdensome, or overly broad.”<sup>38</sup>  
15 AWEC argues that reprogramming depreciation software to provide the Output Data in its  
16 preferred format is a “straightforward exercise”<sup>39</sup> that Gannett Fleming could perform with  
17 “minimal effort.”<sup>40</sup> AWEC misrepresents the cost and expense involved with reprogramming  
18 Gannett Fleming’s software. Not only would the software change require multiple hours of

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<sup>33</sup> 2019 Depreciation Study, Parts VII, VIII, & IX.

<sup>34</sup> Attachment B (PGE’s Response to AWEC’s DR No. 001).

<sup>35</sup> Order No. 03-533 at 4.

<sup>36</sup> *Id.*

<sup>37</sup> AWEC’s Motion to Compel at 10.

<sup>38</sup> *In re PacifiCorp, dba Pac. Power, Request for a General Rate Revision*, Docket No. UE 374, Order No. 20-473 at 136 (Dec. 18, 2020) (internal quotations removed).

<sup>39</sup> AWEC Motion to Compel at 8.

<sup>40</sup> AWEC Motion to Compel, Attachment A (Kaufman Aff.) ¶ 9.



1 reprogramming, it would necessitate an ISO recertification process for Gannett Fleming.<sup>41</sup>  
2 Requiring PGE’s third-party consultant to reprogram its depreciation software and trigger a major  
3 recertification process to prevent ten hours of reformatting by AWEC is both unreasonable and  
4 unduly burdensome.

5 AWEC also argues that other depreciation software used by other companies in other states  
6 provides data in the requested format.<sup>42</sup> But this information is of no relevance to this case. PGE  
7 and other Oregon utilities have previously filed Gannett Fleming’s Depreciation Studies without  
8 any disputes over data formatting.<sup>43</sup> PGE has provided all of the information required for AWEC  
9 to conduct a meaningful audit of the Company’s Study, and AWEC’s DR No. 002 is unduly  
10 burdensome.

11 **C. This docket is not the appropriate forum to establish minimum filing requirements**  
12 **for utility depreciation cases.**

13 In the alternative, AWEC argues that the Commission should open an investigation to  
14 establish minimum filing requirements for utility depreciation cases if its motion to compel fails.  
15 This request is outside the scope of this docket, and it should not be considered without notice to  
16 and responses from all interested parties. If AWEC wants the Commission to open a generic  
17 investigation, it should make that request in a manner that allows all interested parties to be heard.  
18 Among the factors the Commission should consider in opening a separate, generic investigation is  
19 whether the Commission’s resources should be applied to develop new rules or procedures for

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<sup>41</sup> Spanos Decl. ¶ 10.

<sup>42</sup> AWEC Motion to Compel, Attachment A (Kaufman Aff.) ¶ 10.

<sup>43</sup> See, e.g., Docket No. UM 1968, PAC/202 (2017 PacifiCorp Depreciation Study) (Aug. 29, 2018); Docket No. UM 1809, 2015 PGE Depreciation Study (Dec. 1, 2016); Docket No. UM 1808, 2015 NW. Nat. Gas Co. Depreciation Study (Nov. 29, 2016).

1 depreciation filings to save AWEC’s expert approximately 10 hours of data input and review. That  
2 question, however, is premature to address in this PGE-specific filing.

V. CONCLUSION

3 AWEC’s motion to compel relies on general discovery rules in the Oregon Rules of Civil  
4 Procedure to justify its request that PGE reformat its Output Data. The Commission’s specific  
5 discovery rules, however, require AWEC to show that (1) PGE uniquely possesses the ability to  
6 perform the reformatting, (2) the reformatting is not unduly burdensome, and (3) the information  
7 is highly relevant to the proceeding. AWEC has admitted that it already possesses the information  
8 required to reformat the data into its requested format. Furthermore, PGE has shown that  
9 reprogramming and recertifying Gannett Fleming’s depreciation software would be costly and  
10 time-consuming. Finally, this PGE-specific docket is not the proper forum to review a request to  
11 open a utility-wide investigation into minimum filing requirements for depreciation dockets. PGE  
12 respectfully requests that the Commission deny AWEC’s motion.

13 DATED this 18th day of May, 2021.

14 Respectfully submitted,  
15  
16 */s/ Douglas C. Tingey*

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18 \_\_\_\_\_  
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1 **BEFORE THE PUBLIC UTILITY COMMISSION**  
2 **OF OREGON**

3 UM 2152

4 In the Matter of

5 PORTLAND GENERAL ELECTRIC  
6 COMPANY,

7 Detailed Depreciation Study of Electric Utility  
8 Properties

**DECLARATION OF JOHN J.  
SPANOS**

9  
10 I, John J. Spanos, declare under penalty of perjury under the laws of the state of  
11 Oregon:

12 1. My full name is John J. Spanos. I am the President of Gannett Fleming  
13 Valuation and Rate Consultants, LLC (Gannett Fleming). I have worked for Gannett  
14 Fleming since June 1986.

15 2. Portland General Electric Company (PGE) filed its 2019 Depreciation Study  
16 (Depreciation Study) on January 15, 2021, in the above-captioned docket before the Public  
17 Utility Commission of Oregon (Commission).

18 3. Gannett Fleming prepared the Depreciation Study by following generally  
19 accepted practices in the field of depreciation valuation. The study was produced under my  
20 direction and control.

21 4. The methods, procedures, and format of this Depreciation Study are the same  
22 as those used in past studies for PGE, as well as in past studies Gannett Fleming has  
23 submitted to the Commission on behalf of other Oregon utilities. Gannett Fleming based  
24 the depreciation rates on the equal life group procedure and remaining life method for all  
25  
26

1 asset classes, however, generation facilities built after 2012 had depreciation rates based on  
2 the average service life procedure and remaining life method.

3 5. To prepare the Depreciation Study, Gannett Fleming uses transactional data  
4 (Input Data) in its proprietary depreciation software to conduct statistical analysis. Parts  
5 VII, VIII, and IX of the Depreciation Study (collectively, the Output Data) include the  
6 graphs, tables, and data related to the service life, net salvage analyses, and detailed  
7 depreciation calculations for each account.

8 6. As part of PGE's initial filing in this docket, the Output Data Gannett Fleming  
9 used in its calculations was presented in a .pdf format. After the Alliance of the Western  
10 Energy Consumers (AWEC) intervened in the docket, they served several Data Requests  
11 (DRs) on PGE. To comply with AWEC's DR No. 001, I understand that PGE supplied the  
12 Output Data to AWEC in Microsoft Word format. Microsoft Word is the native format of  
13 the Output Data used by Gannett Fleming's depreciation software. If desired, the Output  
14 Data can be converted to another Microsoft program, such as Excel, by the end user.

15 7. AWEC's DR No. 002, requested the Output Data in a "comma-delimited or  
16 tab-delimited text file." To comply with this request, Gannett Fleming would need to  
17 reprogram its software to produce the Output Data in AWEC's requested format.

18 8. Gannett Fleming has provided the Input Data in its native format, Microsoft  
19 Excel. With this data, AWEC possesses the capability to reproduce the results of the  
20 Depreciation Study to conduct its own statistical analyses.

21 9. Reprogramming is a major undertaking for Gannett Fleming because it would  
22 trigger a recertification process for its software due to the International Standards of  
23 Operation (ISO) requirements for engineering firms. Gannett Fleming works with utility  
24 clients throughout the United States. Gannett Fleming would incur substantial costs for the  
25 entire engineering firm if it were required to reprogram and recertify its software, and this  
26 request is outside of the scope of work PGE requested from Gannett Fleming. In addition,

1 Gannett Fleming’s time-sensitive work for other utility clients would be delayed by the  
2 recertification process. AWEC’s request is unreasonable and burdensome, and for this  
3 reason, Gannett Fleming has not agreed to reprogram and recertify its proprietary software  
4 in response to AWEC’s request.

5 10. Gannett Fleming has worked with utility clients in all 50 states, and it has  
6 never been asked or required to supply its Output Data in AWEC’s requested format.

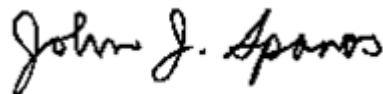
7 I hereby declare that the above statement is true to the best of my knowledge and  
8 belief, and that I understand it is made for use as evidence before the Public Utility  
9 Commission of Oregon and is subject to penalty for perjury.

10 DATED this 18th day of May, 2021.

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14 John J. Spanos

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