

1 **BEFORE THE PUBLIC UTILITY COMMISSION**
2 **OF OREGON**
3 **UE 375**

4 In the Matter of

5 PACIFICORP, dba PACIFIC POWER,

6 2021 Transition Adjustment Mechanism.

NOTICE OF EX PARTE
COMMUNICATIONS

7
8 Pursuant to OAR 860-001-0340(4), Oregon Public Utility Commission Staff (Staff)
9 notifies the Chief Administrative Law Judge of two instances in which *ex parte* communications
10 may have occurred.

11 The Public Utility Commission’s rules provide that an *ex parte* contact occurs when a
12 person makes a verbal or written communication on the merits of an issue directly to a
13 Commissioner or presiding Administrative Law Judge (ALJ) outside the presence of other
14 parties in a pending contested case without notice and opportunity for rebuttal by all parties. *See*
15 OAR 860-001-0340(2)(a-c). Under the Commission’s Internal Operating Guidelines,
16 Commission Advisors are subject to *ex parte* restrictions in OAR 860-001-0340 and “may only
17 discuss matters relating to the merits of a contested case with decision meeting participants.”
18 Even though the administrative rule is not clear on this point, we consider *ex parte*
19 communications to occur when communication from or directly on behalf of a Commissioner,
20 Administrative Law Judge or Commission Advisor, on the merits of an issue in a contested case
21 proceeding, are provided directly to a testifying Staff witness.

22 In the first instance, Scott Gibbens, a testifying Staff witness in this contested case
23 proceeding, received an e-mail from Shelly-Ann Maye, a technical advisor to the Commission,
24 asking for assistance in locating certain materials to assist a Commissioner in preparing for an
25 upcoming Transition Adjustment Mechanism (TAM) Commissioner Workshop. Although the e-
26 mail was seeking the location of certain materials, the e-mail was from a Commission Advisor to

1 a testifying Staff witness and also indicated directly that a Commissioner had an interest in
2 substantive issues in the TAM proceeding, which implicate the merits of a contested case. In a
3 phone call to Ms. Maye, Mr. Gibbens indicated that the Oregon DOJ was concerned that such
4 communications constituted an *ex parte* contact and that he would not be able to discuss these
5 matters further.

6 In the second instance, Scott Gibbens and Sabrina Soldavini received an e-mail from
7 John Crider, Division Administrator, requesting that Staff include certain information in Staff's
8 TAM testimony because he thought a Commissioner was interested in the information being
9 included in the record. In this case, both Mr. Gibbens and Ms. Soldavini are testifying witnesses
10 in the TAM proceeding. The e-mail indicates Mr. Crider's understanding of Commissioner
11 interest the merits of certain issues in the TAM, as indicated by the request to include the
12 information in the record in this proceeding on behalf of the Commissioner. Neither Mr.
13 Gibbens nor Ms. Soldavini responded to Mr. Crider's email.

14 Pursuant to OAR 860-001-0340(4), we notify the Chief Administrative Law Judge of
15 these two instances of *ex parte* communications.

16
17 DATED this 15th day of April 2020.

18 Respectfully submitted,

19 ELLEN F. ROSENBLUM
20 Attorney General

21 */s/ Sommer Moser*

22 _____
23 Sommer Moser, OSB # 105260
24 Assistant Attorney General
25 Of Attorneys for Staff of the Public Utility
26 Commission of Oregon