ORDER NO. 19-128

ENTERED Apr 11, 2019

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UE 335

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

DISPOSITION: RECONSIDERATION GRANTED IN PART AND DENIED IN PART

I. SUMMARY

We grant in part the request of the Alliance of Western Energy Consumers (AWEC) to reconsider Order No. 18-464, and we find good cause to modify the order in part to more clearly explain findings of fact. We deny all other rehearing and reconsideration requests from AWEC.

II. BACKGROUND

Order No. 18-464 resolves all issues related to Portland General Electric's (PGE) general rate revision proceeding. As part of this order, we adopted a stipulation on direct access issues that was opposed by the Oregon Citizens' Utility Board (CUB) and AWEC. The stipulation was supported by PGE; Staff of the Public Utility Commission of Oregon; Calpine Energy Solutions, LLC (Calpine Solutions); Safeway Inc. and Albertson's, LLC (Albertsons), and Fred Meyer Stores, Inc. a subsidiary of The Kroger Co. and Quality Food Centers, a Division of the Fred Meyer Stores, Inc. (Fred Meyer) (collectively the Supporting Parties). AWEC specifically objected to the portion of this stipulation that would result in maintaining the existing 300 aMW direct access participation cap. Staff, Albertsons, Fred Meyer, PGE, CUB, Calpine Solutions, Northwest Intermountain Power Producers Coalition, and AWEC all filed testimony on the direct access stipulation.

III. REQUEST FOR RECONSIDERATION OR REHEARING

ORS 756.561(1) allows any party in a proceeding to apply for rehearing or reconsideration of an order. OAR 860-001-0720(3)(d) provides that we may grant an application for rehearing or reconsideration if we find "Good cause for further examination of an issue essential to the decision."

AWEC cites four grounds for rehearing and reconsideration. First, AWEC argues that Order No. 18-464 is legally deficient because it lacks findings of fact with regard to the direct access cap that is part of the stipulation. Second, AWEC argues that the participation cap in the stipulation results in discrimination to customers who may trigger the cap. Third, AWEC argues that PGE did not meet a burden of proof in supporting the participation cap. Finally, AWEC asserts that in not making a legal determination on cost-shifting, we failed to ensure that direct access programs do not result in unwarranted cost-shifts.

Staff, PGE, and Calpine Solutions argue that we should reject AWEC's request. Staff states that we provided adequate findings for adopting the stipulation, because we stated that the joint testimony of the stipulating parties supported the stipulation. Staff notes that testimony in the record in these proceedings indicates that the direct access participation cap limit is necessary in order to balance interests and protect against cost-shifting.

Calpine Solutions observes that our order outlines and affirms longstanding policy, and that the stipulation preserves the direct access program as it currently exists. Also, Calpine Solutions argues that we made sufficient findings in determining that the stipulation as a whole results in just and reasonable rates. Calpine Solutions summarizes that "The Stipulation presents a reasonable compromise to simply preserve the status quo as it existed before this case."[1]

PGE also states that our decision to approve the stipulation was supported by the joint testimony, and our finding that the stipulation will result in just and reasonable rates. Like Calpine Solutions, PGE observes that the stipulation results in no significant change to the currently approved direct access program elements, and that this program has not materially changed in over 10 years. PGE disputes AWEC's claims of discrimination, arguing that the cap has been known and understood since its inception, and is applied equally to all customers. PGE argues that the relief requested by AWEC—elimination of

[1] Calpine Solutions Response to AWEC Application for Reconsideration and Rehearing at 5 (Feb 27, 2019).

the participation cap in order to allow a very limited group of extremely large customers to participate—would itself result in an act of discrimination.

IV. DISCUSSION AND RESOLUTION

We find good cause to modify Order No. 18-464 to more clearly outline findings of fact that support our decision. We reject AWEC's additional grounds for rehearing and reconsideration.

We determine that the participation cap is not discriminatory. As observed by PGE, it is applied equally to all customers, and has been since its inception. We routinely use caps and limits to place bounds on potential negative outcomes, particularly where future system impacts for a course of action are unknown or unknowable. Caps can act as a tool used to balance policy priorities and protect against potential negative impacts. Such caps can only be considered discriminatory where they are not applied equally to all customers. Essentially, the direct access participation program cap creates a first-come, first-served opportunity to use the direct access program for customers. In this case, all customers had equal access to the direct access program at the time of its inception, regardless of size, and their participation is limited only by the extent to which they chose to take advantage of direct access opportunities early or later in its availability.

We reject AWEC's claim that PGE did not meet its burden of proof. First, PGE did provide evidence supporting the cap and the Supporting Parties presented evidence supporting the stipulation, which we relied on to find that the stipulation is likely to result in just and reasonable rates. As Calpine Solutions correctly observes, we evaluate rates based on "the reasonableness of the overall rates," and not necessarily the "theories or methodologies used or individual decisions made."[2] We have determined, both in this docket and others before it, that PGE's direct access program which includes the participation cap is reasonable. Second, we note that PGE's statutory burden of proof requires that it must show "that the rate or schedule of rates proposed to be established or increased or changed is fair, just and reasonable."[3] As PGE and Calpine Solutions point out, the stipulation does not change the existing participation cap or establish a participation cap; the same cap has been in place since PGE's direct access program was first approved a decade ago.

Finally, we conclude that in not explicitly addressing or analyzing or making a legal determination regarding cost-shifting, we did not approve a direct access program that

[2] *In the Matter of PacifiCorp dba Pacific Power Request for a General Rate Revision*, Docket No. UE 210, Order No. 10-022, at 6 (Jan 26, 2010), quoting In re PGE Docket No. DR 10, et al., Order No. 08-487 at 7-8 (Sept 30, 2008).
[3] ORS 757.210(1)(a).

results in an "unwarranted shifting of costs," as prohibited in statute.[4] Our order provided that in approving the stipulation, we did not reach a legal conclusion regarding cost-shifting.[5]

Unwarranted cost-shifting requires a conclusion of fact, then one of law. In order for a rate to violate ORS 757.607(1), we must be presented with a record that includes evidence of direct access participation shifting costs from direct access retail participants to "other retail electricity consumers of the electric company."[6] Such a determination requires us to find, as a matter of fact, that a direct access program element was likely to, or actively does, shift costs from participants to non-participants. We would then need to determine whether or not this shift in costs was unwarranted, as the statute contemplates that there may be warranted shifts in costs between participants and non-participants. This second part of the analysis requires a legal determination; we must determine what represents a legally unwarranted shifting of costs.

Our order correctly observed that we made no such legal determination in approving the direct access stipulation. AWEC's application for reconsideration and rehearing cites no portion of the record which demonstrates such cost-shifting with respect to the stipulated direct access program. In contrast, we determined that the record did not support a 10-year transition charge, which CUB argued was needed to prohibit unwarranted cost-shifting.[7] Accordingly, we do not make a legal determination as to whether the shifting of costs is warranted or not.

We will continue to review evidence of cost-shifting from direct access participants to non-participants in direct access programs. At some future time a party may present evidence of such cost-shifting. Should we determine that a cost-shift has or will likely occur under the program, we will then make a legal determination according to statute as to whether or not the cost-shifting is warranted.

Finally, we do find good cause to modify Order No. 18-464 to more clearly outline findings of fact that support our decision. Though we believe that our order was sufficiently clear as to factual findings supporting the decision to meet statutory obligations, we find good cause to modify the order to further clarify those findings, and do so through the modified order that is incorporated into this decision.

[4] ORS 757.607(1).
[5] Order No. 18-464 at 18 (Dec 14, 2008).
[6] ORS 757.607(1).
[7] Order No. 18-464 at 19 (Dec 14, 2008).

V. ORDER

IT IS ORDERED that:

1. The Alliance of Western Energy Consumers' request for reconsideration of Order No. 18-464 is granted in part.

2. Order No. 18-464, as corrected and supplemented by Order No. 18-467, is modified.

3. The Alliance of Western Energy Consumers' remaining requests for reconsideration or rehearing are denied.

Made, entered, and effective Apr 11 2019.

Megan W. Decker
Chair

COMMISSIONER BLOOM WAS UNAVAILABLE FOR SIGNATURE

Stephen M. Bloom
Commissioner

Letha Tawney
Commissioner

A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480-183.484.