

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2119, UE 394

In the Matters of

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 (UM 2119),

and

PORTLAND GENERAL ELECTRIC
COMPANY ,

Request for a General Rate Revision
(UE 394).

ORDER

DISPOSITION: ADMINISTRATIVE LAW JUDGE RULINGS CERTIFIED AND
AFFIRMED

I. INTRODUCTION

On November 9, 2021, the Alliance of Western Energy Consumers (AWEC), the Oregon Citizens' Utility Board (CUB), and Staff (Joint Parties) filed a motion seeking certification and Commission review of an October 25, 2021 ruling denying a motion to consolidate this docket with docket UM 2119. On November 18, 2021, Portland General Electric Company submitted a filing (1) responding to the Joint Parties request; (2) requesting to certify the November 10, 2021 ruling denying PGE's motion to strike; and (3) requesting an extension of its deadline to file reply testimony if the November 10,

2021 ruling is upheld. PGE requests expedited consideration because its reply testimony is due in two weeks under the current schedule. OAR 860-001-0110 does not require the opportunity to file additional briefing regarding certification of an ALJ ruling. We find additional briefing to be unnecessary to address these certification requests and will consider the motions based on filings to date.

II. JOINT PARTIES' MOTION TO CERTIFY

The Joint Parties argue that there is good cause to certify the ALJ's ruling denying consolidation because the ruling was based on the assumption that consolidation would require amending the UE 394 schedule to add a separate procedural track. They explain that the Joint Parties have already filed testimony regarding the Boardman deferral in this case, and that this issue may be addressed within the existing procedural schedule. The Joint Parties recognize that they have the burden of proof to demonstrate that deferral is appropriate, and accept the current UE 394 schedule, which gives PGE the last word. The Joint Parties also argue that the existing UE 394 procedural schedule provides ample opportunity for all parties to fully brief legal issues.

The Joint Parties contend that denying the request to consolidate may be detrimental to the public interest because the deferral balance that could be authorized may have a significant offsetting impact on the size of any rate increase. The Joint Parties argue that consolidation will allow parties to explore alternatives to address the effects of Boardman's closure and will help the Commission determine whether inclusion of these costs in rates is just and reasonable. Additionally, the Joint Parties argue that if the two dockets are litigated separately, any resulting rate changes would not coincide and by adjudicating the proceedings at the same time, the Commission can minimize the frequency of rate changes to customers, consistent with ORS 757.259.

III. PGE'S RESPONSE AND REQUEST TO CERTIFY

PGE requests that the Commission uphold the ruling denying consolidation, and reverse the ruling denying PGE's motion to strike. PGE argues the ruling denying the motion to strike did not provide clear direction on when, how and where the Commission will address the legal and factual issues associated with the deferrals addressed in intervenor testimony, and that the current schedule is not designed around the multi-stage inquiry the Commission applies in deferral cases. PGE argues there is inadequate time to fully address the novel legal and factual issues around the Boardman deferral, given the number of other issues pending in the rate case. PGE asserts that the ruling denying the motion to strike failed to account for all the issues associated with the three deferrals that the Commission would need to address and the compressed nature of the current

schedule. PGE asserts allowing the parties to develop a record without formal consolidation would constrain the schedule, effectively adding three new dockets to the rate case.¹ PGE contends that adding these significant deferrals to the case at this late stage will unfairly prejudice PGE by significantly expanding the issues that must be addressed within the current schedule.

PGE disputes that the deferrals are relevant to this proceeding, arguing that the deferrals and the rate case cover different time periods and are subject to distinct reviews for reasonableness. PGE asserts that because the Boardman deferral is intended to retroactively address plant in PGE's current rates, it cannot be considered in establishing just and reasonable rates on a prospective basis.

PGE asserts that although the ALJ found that the Commission could consider authorization and amortization simultaneously, the Commission's rules envision that it will authorize amortization of amounts "only for utility expenses or revenues for which the Commission previously has authorized deferred accounting." PGE explains that even if the Commission wanted to consider amortization simultaneously, PGE's results of operations for the 2021 deferral period will not be available for use in the earnings review until approximately May 2022, after the close of the record in this docket.

PGE asserts that the threshold issue is whether the Boardman deferral is appropriate under the Commission's laws and policies, and that if the Commission finds the Boardman deferral should not be authorized as a matter of law, the filing of multiple rounds of testimony will have been wasted. PGE argues that under the rulings, the Commission could face concurrent litigation of the deferrals in the rate case and in the separate deferral dockets, and that developing a record on the deferral issues in the rate case while retaining the possibility that the issues will not be resolved in this case is an inefficient use of resources.

PGE also argues that addressing the 2020 Wildfire Emergency deferral will also include amortization of the regulatory asset to track the undepreciated balance of destroyed plant removed from rate base and that while Staff had recommended that the parties bring a joint proposal to the Commission when amortization is considered, no party has filed testimony regarding this aspect of the 2020 Wildfire Emergency deferral.

PGE requests an extension of time to file its reply testimony, and extensions of the briefing and oral argument schedules for deferral issues in the event that the Commission

¹ Docket No. UM 2119 (Boardman), docket No. UM 2115 (Wildfire Emergency), and docket No. UM 2156 (Ice Storm).

determines the deferral issues should be resolved in this docket. PGE contends that the existing briefing schedule is compressed, and the company would not have agreed to this schedule had it known that the deferrals would be added to the case. PGE asserts that addressing these issues in testimony will require a significant amount of time from PGE personnel who are currently responding to other issues in the rate case. PGE requests that its responsive testimony be due two weeks after the decision on PGE's request for certification, but that the rest of the testimony schedule remain unchanged to avoid compressing preparation for the hearing. PGE also requests a separate, extended briefing schedule for deferral issues with simultaneous opening briefs due March 1, simultaneous closing briefs due on March 9, and oral argument on March 11.

IV. RESOLUTION

The ALJ has found good cause to certify the rulings under OAR 860-001-0110(2). We affirm the ALJ's rulings. Taken together, the rulings allow the parties to pursue their various positions regarding the treatment of deferrals that PGE did not choose to include in its filed case without formal consolidation of multiple dockets. This, however, does not mean that the Commission will necessarily reach a final decision on all issues raised in the deferral dockets implicated by the parties' positions, after a review of the record in UE 394. We expect that any potential duplicative litigation of issues can be avoided by allowing the parties to pursue the issues in UE 394, and only subsequently taking up any remaining issues in the deferral dockets after the close of this proceeding, including the potential for the application of an earnings test.

Where PGE included the amortization of certain deferrals in its rate filing, we find unpersuasive the argument that other parties should be precluded from presenting a case regarding that the deferrals that PGE did not propose to include. PGE's arguments regarding retroactive ratemaking are more applicable to the parties' substantive arguments, rather than whether the issues should be allowed to be developed at all. Further, the issues regarding these deferrals were timely raised by the intervening parties in their opening testimony in UE 394, providing PGE with adequate time to respond under the procedural schedule, just as with any other issue raised in opening testimony that the company may not have anticipated. Finally, because there are any number of issues raised in a rate case that ultimately may be decided based on a question of law, we disagree that we must reach a decision on a threshold legal issue prior to the parties presenting the evidence relevant to their cases for the Boardman and other deferrals.

Given the proximity of this order relative to PGE's deadline for reply testimony, we agree that an extension until 3:00 p.m. on December 8, 2021, is reasonable for PGE's

reply testimony regarding the deferrals. We do not agree that further adjustment to the briefing schedule or oral argument date is warranted.

V. ORDER

IT IS ORDERED that:

1. The motion to certify the Administrative Law Judge ruling, dated October 25, 2021, is granted.
2. The Administrative Law Judge ruling dated October 25, 2021, is affirmed.
3. The motion to certify the Administrative Law Judge ruling, dated November 10, 2021, is granted.
4. The Administrative Law Judge ruling dated November 10, 2021, is affirmed.

Made, entered, and effective Nov 24 2021.



Megan W. Decker
Chair



Letha Tawney
Commissioner



Mark R. Thompson
Commissioner

A party may request rehearing or reconsideration of this order under ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480 through 183.484.