

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 416

In the Matter of

PORTLAND GENERAL ELECTRIC
COMPANY

Request for a General Rate Revision; and
2024 Annual Power Cost Update.

ORDER

DISPOSITION: APPLICATION FOR RECONSIDERATION DENIED;
APPLICATION FOR CLARIFICATION GRANTED

I. SUMMARY

This order addresses the Alliance of Western Energy Consumers' (AWEC) request for reconsideration and clarification of Order No. 23-386, entered on October 30, 2023, as it relates to the opening of an investigation regarding new load connection costs.¹ In that order we adopted the first, second, third, fourth, and sixth partial stipulations addressing general rate revision and net variable power cost issues. We adopted a seventh partial stipulation, addressing additional net variable power costs issues in an order entered on November 6, 2023.² We addressed the fifth partial stipulation, regarding Schedule 118, cost recovery for the income qualified bill discount program in a separate order, entered on December 18, 2023.

In this order, we deny AWEC's request for reconsideration and provide clarification regarding the directives in Order No. 23-386.

II. PROCEDURAL HISTORY AND BACKGROUND

On February 15, 2023, PGE filed Advice No. 23-03 to request a general rate revision and the 2024 annual power cost update. Staff of the Public Utility Commission of Oregon (Staff), the Alliance of Western Energy Consumers (AWEC), Calpine Energy Solutions, LLC (Calpine Solutions), Community Action Partnership of Oregon (CAPO),

¹ Order No. 23-386 (Oct. 30, 2023).

² Order No. 23-424 (Nov. 6, 2023).

Community Energy Project, Oregon Citizens' Utility Board (CUB), Fred Meyer Stores and Quality Food Centers, Divisions of The Kroger Co. (Fred Meyer), NewSun Energy LLC, (NewSun), Natural Resources Defense Council (NRDC) and the NW Energy Coalition (NWECA), Small Business Utility Advocates (SBUA), and Walmart Inc., participated as parties to this proceeding. During the course of the investigation, parties filed seven partial stipulations resolving all issues in the docket, six of which were unopposed. The fourth partial stipulation, filed October 6, 2023, addresses primarily rate spread and rate design issues, but also included a provision regarding opening an investigation into new load connection costs. The stipulating parties to the fourth partial stipulation are Staff, PGE, AWEC, CUB, Fred Meyer, SBUA, and Walmart. We adopted the fourth partial stipulation in Order No. 23-386, entered on October 30, 2023. On November 27, 2023, AWEC filed a request for reconsideration and clarification of directives in the order related to the opening of an investigation regarding new load connection costs. On December 11, 2023, Staff filed a response.

III. APPLICABLE LAW

OAR 860-001-0720(3) provides that the Commission may grant an application for reconsideration or rehearing if the applicant shows that there is:

- (a) New evidence that is essential to the decision and that was unavailable and not reasonably discoverable before issuance of the order;
- (b) A change in the law or policy since the date the order was issued relating to an issue essential to the decision;
- (c) An error of law or fact in the order that is essential to the decision; or
- (d) Good cause for further examination of an issue essential to the decision.

Additionally, the Commission has stated that to support a request for clarification, a party must cite to provisions in an order that are fatally vague or ambiguous and propose changes that correct those deficiencies. A request for clarification may not seek to change the result of the order.

IV. POSITIONS OF THE PARTIES

A. AWEC

AWEC 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 the directive to PGE to “be prepared to file a proposal for an interim tariff in this new docket by December 28, 2023.”³

1. Request for Clarification

AWEC requests clarification that 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 argues that the language in the fourth partial stipulation addresses new load generally, not new “large” load specifically. AWEC contends that the stipulating parties used this language intending to review new load connections holistically to provide a full picture of such connections and their associated costs and benefits before implementing any policy changes from the investigation. AWEC asserts that limiting the scope of the investigation to new “large” load does not effectuate the stipulation as written nor does it serve the public interest. AWEC requests 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.

2. Request for Reconsideration

AWEC requests that the Commission reconsider requiring PGE to “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.”⁴ AWEC contends that this directive is vague, additional to the stipulations the Commission approved, and unsupported by evidence. Additionally, AWEC asserts this requirement contradicts the Commission’s order adopting the stipulation, is inconsistent with Commission precedent, and will serve as a distraction in the investigation.

AWEC argues that the tariff filing requirement is unclear by not specifying whether PGE must make the tariff filing by December 28, 2023, or just be prepared to do so, and also does not address what the tariff should contain.

AWEC argues that the tariff directive is unsupported by record evidence. AWEC contends that the “customer risk” identified in the order, articulated as “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” is speculative.⁵

³ Order No. 23-386 at 14.

⁴ AWEC Application for Reconsideration and Clarification at 1 (Nov. 27, 2023), quoting Order No. 23-386 at 14.

⁵ *Id.* at 4, quoting Order No. 23-386 at 14.

AWEC points to a docket addressing changes to PacifiCorp's line extension rule based on new large load interconnection requests but notes that these two utilities have different customers, different systems, different cost allocation practices, and face different issues. Additionally, AWEC argues that as a separate docket based on different facts, the record in that docket cannot provide the basis for a decision in this case. AWEC asserts that while Staff raised concerns in this case about the allocation of new transmission costs based on the load growth of PGE's industrial rate schedules, that testimony addressed only allocation of incurred costs and did not address a need to modify PGE's tariffs. AWEC states that while Staff testified that "the issue of [transmission and distribution] upgrades related to large new load will only become an increasingly important issue," Staff acknowledged the need for more time to address the issue holistically.⁶ AWEC asserts that this issue was resolved, in part, by opening the investigation into new load connection costs. AWEC maintains that the parties to the stipulation did not deem it necessary for PGE to file an interim tariff to ensure just and reasonable rates pending investigation. AWEC argues that by finding that the stipulations "are supported by sufficient evidence, appropriately resolve the issues in this case, and will result in fair, just, and reasonable rates" there is no basis for an additional finding by the Commission that an interim tariff is needed.⁷ Further, AWEC argues that by directing an interim tariff, the Commission contradicts its decision to approve PGE's rates and tariffs as modified by the stipulations. AWEC argues that a determination that an interim tariff must be filed promptly indicates that the Commission believes at least one of PGE's tariffs may not be just and reasonable despite the decision that "the stipulations, taken together, represent a reasonable resolution of the identified issues."⁸

AWEC also argues that the directive to file an interim tariff is inconsistent with Commission precedent that approval of interim rates is an exceptional remedy based upon a compelling need. AWEC contends that by ordering PGE to request interim rates to address a concern PGE itself has not raised the Commission has gone beyond even this exceptional remedy and has done so in an order otherwise approving PGE's tariffs.

AWEC asserts that ORS 757.215(5), the basis for interim rates, provides the Commission the authority to maintain the financial health of a utility when necessary in narrow circumstances. AWEC contends that ORS 757.215(5) requires two elements that appear to be missing from the interim tariff directed by the Commission which AWEC identifies as a suspension order and an increase in revenues for PGE. AWEC argues that the statute does not authorize the Commission to request a company file an interim tariff but only authorizes the Commission to approve interim rates in a suspension order. AWEC also

⁶ *Id.* at 5, quoting Exhibit Staff/3300, Stevens/25-26.

⁷ *Id.* at 6, quoting Order No. 23-386.

⁸ *Id.* at 6-7, quoting Order No. 23-386.

argues that because the Commission has just established PGE's revenues, it is highly unlikely that PGE's filing will request a further increase in its revenues, and less likely that there would be a compelling need for such an increase to justify approval on an interim basis. AWEC argues that aside from a change in overall revenues, the only other revenue impact that could occur would be akin to PacifiCorp's changes to its line extension rule. AWEC asserts that such changes modifying the revenues applicable to a specific customer class by altering the line extension allowance are expressly prohibited by the law because an interim tariff cannot "materially chang[e] the revenue relationships among customer classes."⁹ AWEC further argues that if there is no revenue impact at all, then the Commission has no statutory authority to approve an interim tariff.

Finally, AWEC maintains that requiring PGE to file an interim tariff at the beginning of the investigation may distract from the issues that should be addressed in that investigation. AWEC asserts that whatever tariff PGE files will likely become the focus of attention in the investigation. AWEC argues that the parties to the investigation should be able to investigate new load connection costs holistically and follow where the facts lead.

B. Staff

1. Request for Clarification

Staff does not oppose clarification but disagrees with AWEC's interpretation of the stipulation. Staff contends that under the stipulation, the parties agreed to Staff proposing an investigation into new load connection costs. Staff asserts that it submitted testimony in this docket regarding its proposed investigation which related to the allocation of costs to interconnect large non-residential customers. Staff argues that its testimony addressed concerns that costs to interconnect new large customers are being spread to all customers when only some customers would benefit from the new facilities. Staff contends that to the extent the stipulating parties agreed to the investigation into new load connection costs as Staff proposed in its testimony, that investigation is related to costs to connect new large load. Staff requests that the Commission clarify that the investigation opened in Order No. 23-386 is the investigation Staff proposed in testimony.

2. Request for Reconsideration

Staff opposes AWEC's request for reconsideration. Staff argues that the language in the order only directs PGE to be prepared to make a filing and signals the Commission's interest in the investigation. Staff also contends that the record contains evidence regarding the time-sensitive nature of Staff's concern. Specifically, Staff asserts its

⁹ *Id.* at 8, quoting ORS 757.215(5).

testimony stated “[r]ecently Oregon, and in particular PGE’s service territory, has attracted many large customers. Many of these customers are in the energy intensive tech sector, and additional energy intensive tech companies have indicated plans for expansion in PGE’s service territory. Suffice to say, the issue of T&D upgrades related to large new load will only become an increasingly important issue.”¹⁰ Finally, Staff disputes AWEC’s contention that the order undermines precedent and argues that if PGE does file an interim tariff, that filing would be subject to review under the process set forth in ORS 757.205, et seq at that time.

V. RESOLUTION

We deny AWEC’s request for reconsideration and grant AWEC’s request for clarification. AWEC’s reconsideration request is denied because the interim tariff it objects to has not been adopted or filed, and therefore any claim that the tariff is legally infirm is premature. If a proposed tariff is filed, interim or otherwise, AWEC may challenge it at that time. Additionally, we decline to restrict the investigation into addressing only new large load at this time and will address scoping in Docket No. UE 430. We address the reconsideration request and clarify our order below.

In Order No. 23-386, we adopted five partial stipulations, addressing numerous general rate revision and power cost issues, including the fourth partial stipulation, which included a provision regarding opening an investigation to address new load connection costs. While the stipulating parties to the fourth partial stipulation agreed “to Staff proposing an investigation be opened into new load connection costs,” we opened the investigation in Order No. 23-386, recognizing the fast pace and large scale of new large load connections potentially emerging in Oregon.¹¹ We directed the Administrative Hearings Division to open a docket and set a schedule and indicated that we wished to consider in the near term whether to adopt an interim measure to mitigate customer risk during the pendency of the investigation. In doing so, we indicated that “PGE should be prepared to file a proposal for an interim tariff in this new docket by December 28, 2023.”¹²

We deny AWEC’s request to reconsider this language. Instead, we clarify that the directive that PGE be prepared to file an interim tariff was intended to ensure the ability to institute some measure, if needed, to mitigate potential risks to other customers associated with new large load during the course of the ordered investigation. Our intent was to enable quick action if deemed necessary in the investigation docket. Since the issuance of Order No. 23-386, the Administrative Hearings Division opened Docket

¹⁰ Staff Response at 3, quoting Staff/300, Stevens/25-26 (Dec. 11, 2023).

¹¹ Order No. 23-386 at 14.

¹² *Id.*

No. UE 430 regarding the investigation into new load connection costs and the potential interim tariff filing. On December 11, 2023, the Chief Administrative Law Judge (CALJ) conducted a procedural conference to address the filing deadline to be established for any interim measure.¹³ The CALJ also solicited feedback from the parties on a variety of topics, including “[t]he urgency, timing, and need of PGE filing a proposal for an interim tariff” and “process options for review and Commission decision on any needed interim tariff.”¹⁴

At the procedural conference, the parties discussed the filing of an illustrative tariff no later than March 31, 2024. The parties agreed to work together to evaluate the immediacy of need for an interim measure and propose a filing deadline for an illustrative tariff filing. On December 19, 2023, Staff and PGE filed a letter proposing a preliminary schedule including a January 18, 2024, deadline for a PGE filing addressing customer mitigation measures and a March 31, 2024, deadline for a tariff filing. Consistent with the actions thus far in Docket No. UE 430, any illustrative tariff filing or other proposal for an interim measure will be subject to review in a process to be established in that docket. In the event that an interim tariff is proposed in that docket, AWEC may pursue its objections at that time.

Additionally, we disagree with AWEC’s assertion that our directives are inconsistent with our adoption of the stipulations in this docket and findings that the stipulations result in just and reasonable rates. Our determination that the company’s tariffs and rates, for effect January 1, 2024, are just and reasonable does not mean that there are no issues that warrant investigation or that such investigation might reveal a need for changes to the company’s rates or tariffs. This is especially true where one of the stipulations itself contemplated such an investigation. As addressed in Staff’s testimony, there is the potential for future connection requests that could pose a cost shifting risk to customers. The stipulating parties’ agreement in the fourth partial stipulation that Staff would request to open an investigation into new load connection costs demonstrates that some inquiry is warranted to evaluate whether future changes may be needed to the company’s tariffs.

Finally, AWEC requests we clarify that the investigation into new load connection costs applies to all new load, and not just to new “large” load. Staff opposes the request and argues that the investigation Staff proposed, as addressed in Staff testimony, was related to costs to connect new large load. By the terms of the stipulation, Staff would have proposed to open an investigation into new load connection costs. From Staff’s testimony and response to AWEC, we understand that the scope of investigation that Staff would have proposed would have been limited to new large load connection costs. We also

¹³ Representatives appeared on behalf of PGE, Staff, and AWEC at the procedural conference.

¹⁴ Memorandum Opening Docket and Notice of Scheduling of Status Conference (Dec. 1, 2023)

recognize that Staff's concern regarding new large load underlies the inclusion of this provision in the stipulation. However, the language of the stipulation is not so limited. In opening an investigation on our own motion, we recognized the potential risks that large load may bring but opened an investigation into new load connection costs, consistent with the language of the stipulation. Our expectation is that addressing the concerns raised by Staff regarding new large load connection costs will be a primary focus of the investigation. This, however, does not foreclose examination of other new load connection costs. We anticipate defining the scope at the outset of the investigation in Docket No. UE 430 and will solicit scoping proposals from parties in that docket.

VI. ORDER

IT IS ORDERED that the Alliance of Western Energy Consumers' request for reconsideration is denied and its request for clarification is granted.

Made, entered, and effective Dec 21 2023.

Megan W. Decker

Megan W. Decker
Chair

Letha Tawney

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 through 183.484.