

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 435

In the Matter of

PORTLAND GENERAL ELECTRIC
COMPANY,Request for a General Rate Revision.

ORDER

**DISPOSITION: MOTION TO DISMISS OR IN THE ALTERNATIVE SEGREGATE
CERTAIN ISSUES IS DENIED.**

We deny the motion to dismiss filed by the Oregon Citizens' Utility Board (CUB). The motion is legally questionable, but more importantly fails to persuade us as a matter of policy to abandon practices important to the integrity of the Public Utility Commission (PUC) as a fair, deliberative, and evidence-based decision-making body. We will continue to follow the procedural schedule in this case so that we can fully examine Portland General Electric's rate request, including evidence and arguments from CUB that PGE's filing is repetitive, unreasonable, or for any other reasons should not be approved.

I. BACKGROUND

PGE filed the general rate case (GRC) that is the subject of this motion to dismiss on February 29, 2024. In it, PGE seeks a revenue requirement increase of \$202 million, constituting a 7.3 percent increase.

A. CUB's Motion to Dismiss

On March 14, 2024, CUB filed a motion to dismiss or, in the alternative, segregate certain issues. CUB's motion argued that "due to the unnecessary complexity of this proceeding, coupled with the fact that the Public Utility Commission of Oregon [] recently approved a significant rate increase for Portland General Electric" the Commission should "exercise its broad authority to dismiss this proceeding." In the alternative, CUB argues that the Commission should exercise its authority under ORS 756.528 to segregate certain unnecessary and likely contentious issues from this proceeding and to address them in the public meeting process instead.

In support of its motion, CUB cites to the fact that this GRC was filed less than sixty days after its GRC that became effective on January 1, 2024. That case ultimately reached a

stipulated outcome and the Commission approved six stipulations which CUB characterizes as resulting in just and reasonable rates. CUB states that PGE now “seeks to re-litigate many of the contentious issues that were collaboratively resolved and determined to result in just and reasonable rates mere weeks earlier.” It argues that the Commission should avoid burdening Staff and stakeholders with litigation of this case and instead should use its broad supervisory powers over utilities to dismiss the proceeding. In the alternative, CUB argues the Commission should segregate issues such as return on equity, the request to increase the basic customer charge, and the request to institute an investment recovery mechanism and decide them in the public meeting process.

B. Staff’s Response

Staff filed a response to CUB’s motion on March 29, 2024. In it, Staff states that it “does not disagree with sentiments underlying CUB’s Motion to Dismiss.” However, it goes on to state that the legislature has adopted a specific process that utilities must use for filing and changing rates that includes the right to a hearing on the rate change if one is requested by the utility. Staff cites to ORS 757.210(1), which states in relevant part: “The commission shall conduct the hearing upon written complaint filed by the utility, its customer or customers, or any other proper party within 60 days of the utility’s filing.” Staff concludes that it would be inconsistent with the statutory requirement to dismiss the tariff when the utility has made a request for a hearing.

Staff agrees with CUB that the Commission has authority to segregate issues raised in PGE’s GRC but does not believe the Commission can segregate revenue requirement issues such as return on equity without potentially violating the mandate to hold a hearing when requested. It also believes the Commission should not do so even if allowed because it would interfere with the Commission’s ability to judge the overall reasonableness of the rates.

C. PGE’s Response

PGE also filed a response to CUB’s motion on March 29, 2024. In it, PGE argues that, where CUB claims the motion should be considered under the just and reasonable standard, under the Oregon Rules of Civil Procedure, when considering a motion to dismiss, “all factual allegations are assumed to be true, and construed in a light most favorable to the nonmoving party.”¹ PGE then argues that accepting the factual assertions in its complaint as true, it has met the standard for a rate increase because without the requested rate change, it would have a revenue requirement deficiency of \$202 million in 2025 and would earn a return on equity well below its authorized rate.

¹ *In re the Complaint of Portland Gen. Elec. Co. against Dayton Solar I LLC, Tygh Valley Solar I LLC, Wasco Solar I LLC, Fort Rock Solar II, LLC, Alfalfa Solar I LLC, and Harney Solar I LLC, Pursuant to ORS 756.500*, Docket No. UM 2151, Order No. 21-210 at 3 (June 25, 2021).

PGE also argues that this case is not a repeat of its last GRC because the two cases use different test years and thus, by definition, request recovery of different costs. Similarly, PGE argues that by their terms, the stipulations that determined the last GRC applied only to that case and did not preclude PGE from filing a subsequent rate case or seeking Commission direction on the future treatment of settled issues.

Finally, PGE argues that the Commission cannot segregate certain issues and address them at a public meeting without running afoul of the requirement to hold a hearing under ORS 757.210(1).

D. Other Comments

On March 22, 2024, the Energy Advocates² filed a letter in support of CUB's motion. The Energy Advocates note that PGE asked for this rate increase less than two months after a significant increase, and that it comes at a time when communities are generally burdened by higher prices. They conclude: "adjustments in addition to the 2023 rate case have caused PGE customers to see their bills increase by about 1/3 since December 2022. In the context of such steep increases, PGE's request is unreasonable and amounts to too much too soon."

On March 29, 2024, ChargePoint, Inc., filed a response taking no position on the substantive issues in CUB's motion but expressing concern that dismissing the case would eliminate the Commission's opportunity to review PGE's proposed update to Schedule 50, the tariff that sets the pricing charged to drivers using PGE-owned-and-operated electric vehicle charging stations.

II. DISCUSSION

We deny CUB's motion. Under ORS 757.210(1)(a), when a utility files a rate case, we are charged with determining whether the rates filed by the utility are fair, just and reasonable. In investigating the rate request, we weigh the evidence submitted by the utility, Staff, and other parties, with the utility bearing the burden of showing that the proposed rates are fair, just and reasonable. A motion to dismiss, which asks that we resolve a case before a hearing or the development of an evidentiary record, is not evaluated using that standard. Specifically, in evaluating a motion to dismiss, we must assume "all factual allegations" are true and construe the facts in the light most favorable to the non-moving party in determining whether that party has stated facts sufficient to constitute a claim.³

² Oregon Physicians for Social Responsibility, Community Energy Project, MCAT Steering Committee, Oregon Solar + Storage Industries Association Self Enhancement, Inc., Green Energy Institute at Lewis & Clark Law School, Verde, Sierra Club, Oregon Just Transition Alliance, Coalition of Communities of Color, Climate Oregon Environmental Council.

³ *In re the Complaint of Portland Gen. Elec. Co. against Dayton Solar I LLC, Tygh Valley Solar I LLC, Wasco Solar I LLC, Fort Rock Solar II, LLC, Alfalfa Solar I LLC, and Harney Solar I LLC, Pursuant to ORS 756.500*, Docket No. UM 2151, Order No. 21-210 at 3 (June 25, 2021).

Here, viewing PGE's GRC filing through that lens, there is no basis for dismissal as a matter of law. PGE has alleged that for its new test year it will fall short of the revenue requirement it needs to run its business and have the opportunity to earn an authorized rate of return. Accepting this allegation as true, which we are required to do in evaluating a motion to dismiss, leaves us no grounds to dismiss the case. Accordingly, to argue that the Commission may simply dismiss the rate case at this juncture is not an accurate representation of the options available to us. Under these circumstances, we must evaluate the substance of PGE's GRC request based on a full evidentiary record under the fair, just and reasonable standard. To do otherwise would be to deviate from both the core legal expectations for a motion to dismiss and our decades of established practice. Further, as argued by Staff and PGE, dismissal would also be inconsistent with the statutory requirement for the Commission to hold a hearing.⁴ Given these factors, we are surprised that CUB asks us to do so. We depend on long-term, expert participants like CUB to be constructive leaders for a new generation of ratepayer and energy justice advocates in this process. Those advocates, as well as the general public should not operate under the impression the Commission can take summary action without the essential legal conditions being met.

We are also unpersuaded by CUB's requests as a matter of policy. We are navigating a fast-changing and challenging time in the electricity sector. Summary dismissal of this GRC would erode the value of our long-established, deliberative process for consideration of rate changes. We acknowledge the need for flexibility and creative solutions for adapting ratemaking to new realities. CUB and others should continue to engage on this effort, but need to recognize that our ability to evolve is limited to the bounds of our authority granted by statute.

Likewise, we are not persuaded by CUB's alternative request to segregate issues into a public meeting process. While we may have authority to do that for certain issues, it is not clear that the hearing requirement under the statute would be met if we did so. More importantly, doing so would force us to consider issues in isolation rather than in the full context of PGE's rate request. We do not believe this would be beneficial to customers or consistent with the Commission's mission to examine the justness and reasonableness of rates as a whole.

In denying CUB's motion, we do not believe we are leaving CUB or other stakeholders without recourse. CUB will have the opportunity to present evidence and point out substantive weaknesses in PGE's filing. Also, where, as CUB claims, PGE is repeating arguments from prior rate cases requiring intervenors to again address the same assertions, CUB also may simply reprise its own prior testimony in arguing that PGE's proposals are not justified. We agree with CUB that it is not reasonable to expect parties to develop exclusively new arguments and evidence anew so shortly following PGE's

⁴ ORS 757.210(1).

previous rate case. We also note that stipulations are a tool that CUB and stakeholders can (and often do) use to narrow the issues in a case, and that these may include creative mechanisms like stay-out provisions that limit when a company can file a new rate case or reintroduce proposals. Clearly, while there are often good reasons for parties to enter into a stipulation, no party is required to settle issues on which they prefer to obtain firm decisions from the Commission.

We understand the fundamental asymmetry of resources between the company and stakeholders like CUB is a significant challenge for intervenors in a rate case. Fully litigating even some issues in a rate case is taxing for intervenors and historically all-party settlements have proven a reasonable approach to managing this resource difference. We understand that those resource challenges are exacerbated now, where four different utilities have ongoing general rate cases, in addition to annual energy cost adjustments and a wide range of complex policy issues. We remain open to suggestions from CUB and stakeholders for actions within our legal authority that we may take to eliminate barriers and facilitate meaningful participation.

Ultimately, our intent is that, whether this case is fully litigated or includes some form of party stipulation, we will have a fair and open process leading to fair, just and reasonable rates.

III. ORDER

IT IS ORDERED that the motion to dismiss or in the alternative segregate certain issues filed by the Oregon Citizens' Utility Board is denied.

Made, entered, and effective Apr 25 2024.



Megan W. Decker
Chair



Letha Tawney
Commissioner



Les Perkins
Commissioner

