

ORDER NO. 24-475

ENTERED Dec 31 2024

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 2352

In the Matter of

PORTLAND GENERAL ELECTRIC  
COMPANY,

Application for Extension of Partial  
Waiver of OAR 860-038-0580 Prevention  
of Cross-subsidization Between  
Competitive Operations and Regulated  
Operations.

ORDER

**DISPOSITION: STAFF'S RECOMMENDATION ADOPTED**

At its public meeting on December 31, 2024, the Public Utility Commission of Oregon adopted Staff's recommendation in this matter. The Staff Report with the recommendation is attached as Appendix A.

BY THE COMMISSION:



**Alison Lackey**

Chief Administrative Law Judge



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 Circuit Court for Marion County in compliance with ORS 183.484.

**PUBLIC UTILITY COMMISSION OF OREGON  
STAFF REPORT  
PUBLIC MEETING DATE: December 31, 2024**

**REGULAR** \_\_\_\_\_ **CONSENT**   X   **EFFECTIVE DATE** \_\_\_\_\_ **N/A**

**DATE:** December 23, 2024

**TO:** Public Utility Commission

**FROM:** Eric Shierman

**Through:** Caroline Moore, JP Batmale, and Sarah Hall **SIGNED**

**SUBJECT:** OREGON PUBLIC UTILITY COMMISSION STAFF:  
(Docket No. UM 2352)  
Portland General Electric application for renewal of partial waiver of  
OAR 860-038-0580 prevention of cross-subsidization between competitive  
operations and regulated operations.

**STAFF RECOMMENDATION:**

Grant the request of Portland General Electric (PGE or Company) for a partial waiver of  
OAR 860-038-0580(1) through January 1, 2026.

**DISCUSSION:**

Issue

Whether the Commission should approve PGE's request for a partial waiver of  
OAR 860-038-0580(1).

Applicable Law

Consistent with Senate Bill 1149, the Commission adopted the Code of Conduct rules in  
OAR 860-038-0500 through 0640 to 1) govern the interactions and transactions among  
the electric company, its Oregon affiliates, and its competitive operations, and 2) to  
protect against market abuses and anti-competitive practices in the Oregon retail  
electricity market. As relevant here, OAR 860-038-0580 limits the information an  
electric company may provide to its competitive operations without making available to  
other entities that provide electricity services to prevent cross-subsidization.

Per OAR 860-038-0001(4), upon a written request or its own motion, the Commission may waive any of the Division 38 rules upon a showing of good cause.

### Analysis

#### *Background*

On October 10, 2024, PGE filed for an extension of the 2023 partial waiver of OAR 860-038-0580(1) through January 1, 2026. This rules section is entitled, "Prevention of Cross-Subsidization between Competitive Operations and Regulated Operations" and section 1 states:

Other than information that is routinely made public by an electric company, or for which a tariff has been approved subject to OAR 860-086-0020, an electric company must not provide electric company operational or marketing information to its competitive operations unless it makes such information available to ESSs and other entities that provide electricity services or directly related products on identical terms and conditions.

The purpose of this partial waiver is to allow the competitive operation managing PGE's Green Future Enterprise (GFE) program to receive from the regulated operation a load forecast based on a customer using five years of load to avoid over- or under-purchasing RECs. The GFE program allows large non-residential customers on Schedules 83, 85, and 89 to self-direct their renewable public purpose charge away from Energy Trust's renewable programs toward the purchase of renewable energy certificates (RECs). For customers large enough to self-direct, PGE offers programs under Schedule 54, subject to a minimum purchase, up to 100 percent of their load. Customers can also work with PGE to purchase RECs from a specified facility. The Company's current partial waiver of this rule expires January 1, 2025.<sup>1</sup>

#### *PGE's 2023 Request for Waiver*

PGE filed its initial request for a partial waiver of the direct access rule on August 7, 2023. The Commission granted PGE's request on the condition that PGE update the Commission by February [28], 2025, with a report detailing the number of customers for which its competitive operations received a load forecast, the number of months of data utilized, and the estimated value. Staff further recommended that the Commission should not take a position on the direct access implications of HB 2021 but rather wait until the conclusion of dockets UM 2024, AR 651, and UM 2273 to determine if a rulemaking process is necessary to update OAR 860-038-0580.

Under this 2023 partial waiver, PGE requested two things, which it repeats in its 2024 request. First, the Company wanted approval to provide limited, load forecasting

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<sup>1</sup> Order No. 23-470, Docket UM 1631, p.1, December 13, 2024.

information from PGE's regulated operations to the PGE competitive operation that manages the GFE program. Second, PGE also sought to prevent any resulting customer load forecast information from being made public or provided to electricity service suppliers (ESSs) or other entities per the rule.

PGE's 2023 waiver request stated four overarching reasons for the request, referenced again in the 2024 request:

1. House Bill (HB) 2021 limited the Commission's oversight of the competitive market to between just two types of entities, electric utilities and ESSs. As the GFE program is administered by PGE's competitive operations, the PUC no longer has jurisdiction over sharing information between PGE's regulated and competitive operations.
2. The GFE program is administered by a PGE competitive operation, not a market affiliate. HB 2021's statutory changes limit preferential treatment between a utility and its generation or market affiliate. Because PGE narrowly defines the administrator of the GFE program as a competitive operation—and not a PGE generation or market affiliate—PGE claims the activities are outside the scope of the PUC's statutory direction regarding preferential treatment.
3. HB 2021 added language to ORS 757.646 to avoid limiting or delaying the offering of programs or services that aid in reducing emissions. As proposed, PGE sees the partial waiver assisting in the reduction of costs and complications for large, non-residential customers attempting to green some or all their load, which has emission reduction benefits.
4. The nature of the information being provided by PGE's regulated operations—a load forecast based on historic data—is not of such a special nature that it would require release. PGE further claims that the load forecast information provides no specific competitive advantage to PGE's competitive operations.

#### *Stakeholder Comments*

On November 26, 2024, Staff met with PGE, NIPPC, and the Citizens' Utility Board. All participating parties to this docket support PGE's request provided the conditional terms of the previous waiver remain in effect.

#### *Good Cause Exists for Extending the Partial Waiver*

Staff believes that good cause exists to grant an extension of the partial waiver. In 2023, the Commission adopted Staff's recommendation, concluding that PGE had shown good cause for the partial waiver.<sup>2</sup> There are two valuable services being sought by PGE's competitive operation under this waiver: first, seamlessly acquiring five years of

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<sup>2</sup> Order No. 23-470, Docket No. UM 1631, Appendix A p. 6, December 13, 2023.

customer data for analysis, and second, the services from the regulated operations to develop the load forecast information using this customer data.

As noted in Staff's memo on the 2023 partial waiver request, Schedule 300 makes at least 12 months of interval data available to non-residential customers for free but does not preclude customers asking for or PGE from providing more than 12 months of interval meter history data.<sup>3</sup>

While PGE customers do not receive the customer interval meter data history or the resulting load forecast information,<sup>4</sup> PGE's competitive operations use both to refine REC purchases for select Schedule 54 customers. Staff continues to believe that PGE's regulated operations do not have load forecasters superior to the broader market, and that large customers are aware that they can request their underlying usage data and provide it to a different firm to develop a competing load forecast.

Thus, Staff found good cause for the Commission to grant PGE's request for an extension of the partial waiver because:

- The request is time-limited to the end of 2026 or until new rules are adopted.
- Due to the fourth stipulation in Docket No. UE 416, the same underlying data is available to customers to request and use as they see fit.
- PGE's goal is to avoid expensive over and under purchasing of RECs in supporting customers sustainability goals.
- Stakeholders, CUB and NIPCC, support granting the extension of the partial waiver.

*Conditions on Request: Monitoring and Reporting on Cross-Subsidization*

The Commission also adopted the conditions Staff recommended for the 2023 waiver request. Staff, PGE<sup>5</sup> and stakeholders all agree that it is appropriate to continue these conditions in an extension of the partial waiver.

Staff remains concerned about the extent of potential cross-subsidization and notes continuing uncertainty around expenditures the regulated operations in providing these services to the competitive operation and potential costs to ratepayers. Thus, Staff looks forward to PGE's update to the Commission by February 28, 2025.

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<sup>3</sup>*Id.*, Appendix A, at p. 5, *citing* Docket No. UE 416, 4<sup>th</sup> Stipulation, Stipulation #14, p. 4, October 6, 2023.

<sup>4</sup> *Id.*, *PGE response to docket UM 1631 Staff Information Request 26*, Appendix A, p. 7, December 13, 2023.

<sup>5</sup> Docket No. UM 2352, *PGE Application or Extension of Partial Waiver of OAR 860-038-0580*, p. 4, October 24, 2024.

*Resolving the Impact of HB 2021 on Direct Access Regulation in the Future*

Several of PGE's justifications for this waiver emanate from the Company's interpretation of HB 2021's impact upon on direct access. Here again, Staff does not draw any conclusions on the merits of PGE's arguments on that issue.

Further Staff notes, that like our January 2023 memo approving PGE's waiver to the Code of Conduct reporting requirement, two comprehensive dockets, UM 2024 and AR 651, dealing with a multitude of direct access issues are underway. In addition, Docket No. UM 2273, is currently trying to establish how to approach several REC issues since the passage of HB 2021. Staff defers to these dockets in the meantime and upon their respective conclusions, will be open to discussing with PGE and all other parties as to what other work needs to be done, if any, to update OAR 860-038-0580.

Conclusion

Staff finds good cause in PGE's request and recommends again granting a partial waiver to the Company under the same terms as the previous waiver. Staff does not take a position on the direct access implications of HB 2021. Rather, Staff suggests the Commission wait until the conclusion of dockets UM 2024, AR 651, and UM 2273 to determine if a rulemaking process is necessary to update OAR 860-038-0580.

**PROPOSED COMMISSION MOTION:**

Grant the request of Portland General Electric (PGE or Company) for a partial waiver of OAR 860-038-0580(1) through January 1, 2026.

CA16 – UM 2352