

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

PCN 6

In the Matter of

PORTLAND GENERAL ELECTRIC
COMPANY,

Petition for Certificate of Public
Convenience and Necessity.

ORDER

DISPOSITION: MOTION TO RESET, SUSPEND, OR TERMINATE THE
PROCEEDINGS DENIED

I. BACKGROUND AND PROCEDURAL HISTORY

On December 2, 2024, Portland General Electric Company (PGE) filed a request to schedule a prehearing conference to discuss changing the deadline for cross-examination statements and exhibits to December 18, 2024, from December 23, 2024. PGE also requested to discuss procedures for cross-examination statements, exhibits, and the hearing.¹ PGE noted that neither the Staff of the Public Utility Commission nor the Willamette Water Supply System Commission objected to changing the deadline to December 18, 2024, but Ms. Bartholomew did. On December 3, 2024, Administrative Law Judge (ALJ) Sarah Spruce issued a ruling granting the request for a prehearing conference to discuss prehearing and hearing procedures, as well as a potential change to the procedural schedule, to be held December 12, 2024. In that ruling, ALJ Spruce requested that parties file any objections or additional modifications to PGE's proposed schedule modification by 3:00 p.m. on December 11, 2024. No party filed a written objection or additional modifications.

On December 12, 2024, ALJ Spruce held a virtual prehearing conference, which was recorded. In attendance were representatives for PGE, Staff, and Willamette Water Supply System Commission, and Ms. Bartholomew. At that conference, ALJ Spruce stated that no party had filed written objections to PGE's requested schedule change by December 11 as outlined in the December 3, 2024 ruling and asked for any objections not yet made. No party offered objection or comment. ALJ Spruce stated that, hearing no objections to the schedule change, she was inclined to reschedule the deadline for cross-

¹ PGE Motion to Schedule a Prehearing Conference at 1-2 & n.1 (Dec. 2, 2024).

examination statements and exhibits to December 18, 2024, and would issue a written ruling following the conference. ALJ Spruce also provided an overview of cross-examination statements and exhibits and cross examination at hearings before asking for questions from the parties. ALJ Spruce also mediated a discussion between the parties regarding potential mutual waivers of cross-examination, at the request of PGE. The parties agreed to email each other on December 16, 2024, and include ALJ Spruce on that email, confirming whether each party intended to cross-examine witnesses. On December 13, 2024, ALJ Spruce issued a written ruling modifying the procedural schedule to change the deadline for cross-examination statements and exhibits to December 18, 2024.

On December 16, 2024, counsel for PGE sent an email to the parties and ALJ Spruce stating that PGE remained open to waiving cross if Ms. Bartholomew waived cross. Ms. Bartholomew replied that she intended to participate in cross-examination and that she would submit her cross-examination statement and exhibits by the deadline of December 18, 2024.

On December 17, 2024, PGE filed a letter stating that witness Jason Salmi Klotz would be co-sponsoring a portion of Exhibit PGE/700, previously sponsored solely by Dr. Ian Beil, and that it would be filing amended testimony to reflect that co-sponsorship. On December 18, 2024, Ms. Bartholomew filed a request for additional time to submit her cross-examination statement and exhibits, in order to review PGE's expected amended testimony. That same day, PGE filed a response to Ms. Bartholomew's request that explained the company was only amending the testimony to incorporate Mr. Salmi Klotz, who was already a witness on Exhibit PGE/1200, and to incorporate an errata filing made on December 11, 2024. PGE subsequently filed its amended testimony that same day. Later that same day, Ms. Bartholomew filed a letter requesting additional time because it was unreasonable to expect her to review the newly submitted testimony and submit her cross-examination statement and exhibits that day. Ms. Bartholomew proposed to reinstate the original schedule or push the deadline until after the upcoming holidays. That same day, PGE filed a letter reiterating that there was no change to the substance of the testimony and no change to the procedural schedule was warranted.

On December 18, 2024, following the docketing of the amended testimony and the letters from the parties, ALJ Spruce issued a ruling granting a one-day extension to the deadline to submit cross-examination statements and exhibits. ALJ Spruce noted that the amendments to the testimony were non-substantive but found that a one-day extension was warranted given the confusion around the nature of the amendment.

On December 19, 2024, Ms. Bartholomew filed a request for an extension to December 26, 2024, to file her cross-examination exhibits. Ms. Bartholomew stated that

she needed time to review the amended reply testimony and to gather and properly format her exhibits. That same day, ALJ Spruce issued a ruling finding that there was no good cause for an extension and denying the request. Ms. Bartholomew subsequently filed a cross-examination statement stating that she would not be participating in cross-examination, because she did not have time to adequately prepare exhibits. In that same filing, Ms. Bartholomew stated that she intended to seek access to confidential information. On December 19, 2024, ALJ Spruce issued a ruling cancelling the hearing, because no party sought to cross-examine any witnesses.

On December 20, 2024, PGE filed a letter in response to Ms. Bartholomew outlining some concerns and anticipated potential objections to Ms. Bartholomew's access to protected and highly protected information. PGE proposed that the ALJ hold a conference to address these issues given the approaching holiday and the fact that Ms. Bartholomew indicated that she would be requesting expedited treatment.

On December 23, 2024, Ms. Bartholomew filed signatory pages for the General Protective Order No. 23-132 (GPO) and Modified Protective Order No. 24-087 (MPO), as well as a letter responding to PGE's December 20 letter. Ms. Bartholomew stated that she was available for a conference that week to discuss if needed. Ms. Bartholomew also requested expedited treatment for consideration of her signatory pages. That same day, the Commission scheduled a prehearing conference for December 30, 2024.

On December 27, 2024, Ms. Bartholomew filed a letter stating that PGE must expedite her access to all Critical Energy Infrastructure Information (CEII) and arguing that ALJ Spruce lacked the discretion to deny her access to CEII.

On December 30, 2024, ALJ Spruce held a virtual prehearing conference, which was recorded, to discuss Ms. Bartholomew's request to access the information under the GPO and the MPO.

On December 31, 2024, PGE filed its objection to Ms. Bartholomew accessing certain information under the GPO and CEII under the MPO. On January 3, 2025, Ms. Bartholomew filed a request that ALJ Spruce clarify the dates for her to respond to PGE's objection. On January 6, 2025, ALJ Spruce issued a memorandum confirming the deadline for Ms. Bartholomew to respond was January 8, 2025.

On January 8, 2025, both Ms. Bartholomew and Staff filed responses to PGE's objections to Ms. Bartholomew accessing certain protected information. Along with her response to PGE's objection, Ms. Bartholomew alleged that ALJ Spruce made three errors that prejudiced her case and requested that the Commission restore her to the position that she was in prior to December 19, 2024. Additionally, Ms. Bartholomew alleged that PGE

made false statements about the nature of its amended testimony and requested that the Commission terminate the proceedings.

On January 9, 2025, PGE filed a letter in response to Ms. Bartholomew stating that her response contained numerous unsupported and false accusations. PGE alleged that she violated OAR 860-001-0310(1) by failing to conform to the standards of ethical conduct.

II. ASSERTION OF ERROR AND REQUEST TO RESET, SUSPEND, OR TERMINATE THE PROCEEDINGS

In her January 8, 2024 response to PGE's objection to her accessing certain protected information, Ms. Bartholomew alleges that ALJ Spruce made three procedural errors that prejudiced her case. First, Ms. Bartholomew alleges that ALJ Spruce violated OAR 860-001-0420 by shortening the deadline for cross-examination statements and exhibits to December 18, 2024. Ms. Bartholomew argues that ALJ Spruce issued this ruling spontaneously without requiring a written motion to be filed by any party as required by OAR 860-001-0420 and without proper advance notice to all parties to allow them to respond to her intent to modify the procedural schedule.² Ms. Bartholomew states that she was never given notice that PGE intended to make an oral motion at the conference and that she was never given an opportunity to file a written response as required by OAR 860-001-0420. Ms. Bartholomew states that she never agreed to shorten the schedule. Ms. Bartholomew maintains that ALJ Spruce committed a serious and material procedural error by accepting PGE's oral motion to modify the procedural schedule and by shortening her time to file her cross-examination statement.

Second, Ms. Bartholomew alleges that ALJ Spruce committed an additional violation of OAR 860-001-0420 by treating PGE's motion for a prehearing conference as a motion to modify the procedural schedule. Ms. Bartholomew argues that PGE's motion stated that it was proposing a prehearing conference to discuss a potential change to the schedule and noted Ms. Bartholomew's objection to changing the deadline. Ms. Bartholomew contends that PGE's request was a request for the ALJ to facilitate an informal discussion between the parties. Ms. Bartholomew maintains that ALJ Spruce was on notice that she objected to the change in the schedule and that she committed a material and serious procedural error in violation of Ms. Bartholomew's due process rights.

Third, Ms. Bartholomew alleges that ALJ Spruce violated OAR 860-001-0420 and OAR 137-003-0530 by not requiring PGE to file a motion to amend its reply testimony and by not requiring PGE to confer with the parties prior to filing its amended testimony. Ms. Bartholomew argues that under OAR 860-001-0420, PGE was required to confer with her prior to informing the ALJ that it would be filing amended testimony. Ms.

² Bartholomew Response to PGE Objection at 7 (Jan. 8, 2024).

Bartholomew contends that while PGE may have been permitted to amend the testimony, it was required to first file a motion. Ms. Bartholomew maintains that ALJ Spruce welcomed PGE's late-filed amended testimony and argued that it was non-substantive. Ms. Bartholomew questions how ALJ Spruce could have known the substance was non-substantive given that she had not yet seen the contents of the amended testimony. Ms. Bartholomew argues that ALJ Spruce erroneously permitted PGE to file amendments to previously filed testimony after the deadline for filing cross-examination statements and exhibits.

Ms. Bartholomew requests that the Commission cure these errors by restoring her to the position that she was in on December 12, 2024.³

Additionally, Ms. Bartholomew alleges that counsel for PGE made false statements to ALJ Spruce regarding the nature of the amended reply testimony.⁴ Ms. Bartholomew contends that PGE's filing included Exhibit PGE/702, which was not being adopted by witness Jason Salmi Klotz and therefore should not have produced an amended version.⁵ Ms. Bartholomew contends that the exhibit may thus be a fraudulently marked and altered version of the original non-amended version. Ms. Bartholomew states that she is not asking for the Commission to retroactively reject PGE's late filed testimony, which would prejudice her further. Ms. Bartholomew requests that the Commission terminate these proceedings and deny PGE's petition.

III. RESOLUTION

A. Decisions Of The ALJ

An ALJ is delegated the authority under our rules to manage contested cases and, where assigned, non-contested case proceedings to facilitate efficient use of Commission resources and lead to the presentation of issues to the Commission with records that can support Commission consideration and decision.⁶ The ALJ must exercise such authority in a manner that is consistent with rule and law, including due process protections. Through our rules, we have delegated authority to the presiding ALJ to engage in a variety of activities and make certain decisions in matters pending before the

³ Bartholomew Response at 8, 9, 11.

⁴ Bartholomew Response at 11-14.

⁵ Bartholomew Response at 13.

⁶ See OAR 860-001-0090 and ORS 756.055 ("Except as provided in subsection (2) of this section, the Public Utility Commission may designate by order or rule any commissioner or any named employee or category of employees who shall have authority to exercise any of the duties and powers imposed upon the commission by law. The official act of any commissioner or employee so exercising any such duties or powers is considered to be an official act of the commission."); See also *In the Matter of Idaho Power Company, Petition for a Certificate of Public Convenience and Necessity*, Docket No. PCN 5, Order No. 23-103 at 5 (Mar. 20, 2023).

Commission.⁷ One area of delegated authority relates to scheduling in contested cases and deciding procedural matters.⁸

Ms. Bartholomew has identified three decisions made by ALJ Spruce as erroneous and prejudicial to her participation in these proceedings: 1) the decision to move the deadline for cross-examination statements to December 18, 2024; 2) the decision to accept the amended testimony of PGE; and 3) the decision to deny Ms. Bartholomew an extension beyond December 19, 2024, to submit her cross-examination exhibits. We address each of these decisions, treating Ms. Bartholomew's assertions of error as equivalent to motions for certification. Though these assertions were filed after the deadline for motions for certification, we nonetheless will take them up because of the importance of ensuring fair treatment for both pro se litigants and utilities.

1. The Cross-Examination Deadline

As to the concern that ALJ Spruce treated PGE's request for a prehearing conference to discuss a schedule change as a motion to modify the schedule without providing an opportunity for parties to respond, we conclude that the procedure followed was informal but sufficient to enable all parties to be heard if they objected to the date change, and therefore, not a prejudicial error.

ALJ Spruce issued a ruling requesting any objections to the schedule modification to be discussed at the December 12, 2024 prehearing conference be made in writing by December 11, 2024, one day prior to the conference. This provided nine days from PGE's filing raising the schedule change and eight days from ALJ Spruce's ruling explaining how objections to the schedule change could be provided. This exceeds the seven-day reply window set forth in OAR 860-001-0420(4) for procedural motions. Additionally, at the beginning of the conference, which Ms. Bartholomew attended, ALJ Spruce stated that she had not received any objections by the deadline and asked for any objections at that time. No party spoke in response to this request. While it may have been a best practice when managing cases with unrepresented litigants for ALJ Spruce to specifically call on Ms. Bartholomew to confirm whether she retained her objections to the proposed December 18 deadline that she relayed to PGE, we do not find that it was erroneous for ALJ Spruce to rely on both her written and oral requests for any objections before moving on to other matters when no objections were offered.

Nor do we find it erroneous for ALJ Spruce to have treated PGE's request as functionally a motion to modify the schedule. PGE's motion included a specific modification to the schedule, though it sought to address it at a prehearing conference. A discussion of

⁷ OAR 860-001-0090.

⁸ OAR 860-001-0090(a), (g), (m).

changing the deadline, whether it was entirely confined to the prehearing conference or not, should have been expected to potentially result in a change to the deadline. That it did should not have been a surprise to any party, and the request for written objections ahead of the conference provided further notice that the deadline could be changed. Ms. Bartholmew had the opportunity to formally object both by the written deadline set by the ALJ or in response to her oral request for objections and did not do so.

We do not find that the ALJ made any error regarding the December 18 deadline that has prejudiced Ms. Bartholomew's participation in this proceeding and decline to alter or reset the procedural schedule as requested. Even if we were to find an error, the relief Ms. Bartholomew requests—to reset, suspend, or terminate the proceeding—would be significantly out of proportion to its nature.

2. Acceptance of PGE's Amended Reply Testimony

As to the concern that ALJ Spruce permitted PGE to file amended reply testimony without a motion, we do not find that the ALJ erred. It is not unusual for parties to file amended testimony, particularly to address non-substantive issues such as adding a sponsoring witness, and we do not find that ALJ Spruce violated any rule or law in accepting PGE's amended testimony. The amended testimony did not alter the substance of the testimony, and no party was prejudiced by its admission. Had any party wished to cross-examine PGE regarding the substance of Exhibits PGE/700 through 702, the only change they would have had to make to their cross-examination statements would have been to add the co-sponsoring witness.

3. Denial of an Extension to File Cross-Examination Exhibits

We do not find that the ALJ erred in granting Ms. Bartholomew one additional day to prepare her statement and exhibits and denying her request for additional time. ALJs have delegated authority over scheduling and procedural matters, including extensions and modifications to the deadline. As discussed above, the amended testimony at issue made only the non-substantive change of adding a co-sponsoring witness, who was already a sponsoring witness of other testimony in the proceeding.⁹ We do not find that ALJ Spruce's decision to deny additional time to Ms. Bartholomew, beyond the one additional day granted, was inconsistent with any rule or law, nor that it prejudiced Ms. Bartholomew.

B. PGE's Amended Testimony and Exhibit PGE/702

Ms. Bartholomew also alleges that PGE may have fraudulently marked and altered an exhibit when it amended its reply testimony to add Jason Salmi Klotz as a co-sponsor to

⁹ PGE/1200, Salmi Klotz (Oct. 30, 2024).

testimony originally sponsored solely by Dr. Ian Beil. We have reviewed the exhibit in question and find that there does not appear to be any change to the document from that originally filed on October 30, 2024, except to add Jason Salmi Klotz’s surname to the header. We do not find any evidence supporting the claim that PGE fraudulently represented the contents of its amendments to Exhibits PGE/700 through 702.

To the extent that Ms. Bartholomew’s complaint is that Mr. Salmi Klotz’s name should not have been added to Exhibit PGE/702, we find that there was nothing fraudulent or erroneous in PGE’s marking of the exhibit to match the additional co-sponsor of PGE/700. Under OAR 860-001-0480(1), testimony is to be marked with the convention “Party Name/Exhibit Number” followed by “Witness Last Name/Page Number.” The names of all witnesses for joint testimony are included in the “Witness Last Name” portion. Under OAR 860-001-0480(2), supporting attachments to testimony keep the same convention, with the assigned exhibit number incrementing one number (e.g. the first supporting attachment for PGE/700 becomes PGE/701). These supporting exhibits would retain the same sponsoring witness names as the primary testimony. Even had it been in error, such a relatively minor marking error would not rise to the level of requiring the Commission to terminate the proceedings and could instead be cured by resubmitting the document with proper markings. We note also that Mr. Salmi Klotz included Exhibit PGE/702 in his declarations accompanying PGE’s motion to admit, and he is considered a sponsoring witness for the exhibit.¹⁰

We deny Ms. Bartholomew’s request to terminate the proceedings.

IV. ORDER

For the above reasons, Ms. Bartholomew’s motion to reset, suspend, or terminate the proceedings is denied.

Made, entered, and effective Jan 21 2025.



Megan W. Decker
Chair



Letha Tawney
Commissioner



Les Perkins
Commissioner

¹⁰ PGE Motion to Admit, Declaration of Jason Salmi Klotz (Jan. 8, 2025).